

1 409.912, 410.031, 410.034, 415.1111, 430.601,
2 430.703, 435.03, 435.04, 440.13, 465.0235,
3 468.1685, 468.505, 477.025, 509.032, 509.241,
4 627.732, 651.011, 651.022, 651.023, 651.055,
5 651.095, 651.118, 765.1103, 765.205, 768.735,
6 893.13, 943.0585, and 943.059, F.S., to conform
7 references to changes made by the act;
8 requesting the Division of Statutory Revision
9 to make necessary conforming changes to the
10 Florida Statutes; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Chapter 429, Florida Statutes, is created,
15 to be entitled "Assisted Care Communities."

16 Section 2. Sections 400.401, 400.402, 400.404,
17 400.407, 400.4071, 400.4075, 400.408, 400.411, 400.412,
18 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4177,
19 400.4178, 400.418, 400.419, 400.4195, 400.42, 400.421,
20 400.422, 400.423, 400.424, 400.4255, 400.4256, 400.426,
21 400.427, 400.4275, 400.428, 400.429, 400.4293, 400.4294,
22 400.4295, 400.4296, 400.4297, 400.4298, 400.431, 400.434,
23 400.435, 400.441, 400.442, 400.444, 400.4445, 400.447,
24 400.449, 400.451, 400.452, 400.453, and 400.454, Florida
25 Statutes, are renumbered as sections 429.01, 429.02, 429.04,
26 429.07, 429.071, 429.075, 429.08, 429.11, 429.12, 429.14,
27 429.15, 429.17, 429.174, 429.176, 429.177, 429.178, 429.18,
28 429.19, 429.195, 429.20, 429.21, 429.22, 429.23, 429.24,
29 429.255, 429.256, 429.26, 429.27, 429.275, 429.28, 429.29,
30 429.293, 429.294, 429.295, 429.296, 429.297, 429.298, 429.31,
31 429.34, 429.35, 429.41, 429.42, 429.44, 429.445, 429.47,

1 429.49, 429.51, 429.52, 429.53, and 429.54, Florida Statutes,
2 respectively, designated as part I of chapter 429, Florida
3 Statutes, and entitled "ASSISTED LIVING FACILITIES."

4 Section 3. Sections 400.616, 400.617, 400.618,
5 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622,
6 400.625, 400.6255, 400.628, 400.629, Florida Statutes, are
7 renumbered as sections 429.60, 429.63, 429.65, 429.67, 429.69,
8 429.71, 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and
9 429.87, Florida Statutes, respectively, designated as part II
10 of chapter 429, Florida Statutes, and entitled "ADULT
11 FAMILY-CARE HOMES."

12 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
13 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
14 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562,
15 400.563, and 400.564, Florida Statutes, are renumbered as
16 sections 429.90, 429.901, 429.903, 429.905, 429.907, 429.909,
17 429.911, 429.913, 429.915, 429.917, 429.919, 429.921, 429.923,
18 429.925, 429.927, 429.929, 429.931, and 429.933, Florida
19 Statutes, designated as part III of chapter 429, Florida
20 Statutes, and entitled "ADULT DAY CARE CENTERS."

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

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

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

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

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

10 189.428 Special districts; oversight review process.--

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

19 Section 7. Paragraph (b) of subsection (2) of section
20 196.1975, Florida Statutes, is amended to read:

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

24 (2) A facility will not qualify as a "home for the
25 aged" unless at least 75 percent of the occupants are over the
26 age of 62 years or totally and permanently disabled. For
27 homes for the aged which are exempt from paying income taxes
28 to the United States as specified in subsection (1), licensing
29 by the Agency for Health Care Administration is required for
30 ad valorem tax exemption hereunder only if the home:
31

1 (b) Qualifies as an assisted living facility under
2 ~~part III of chapter 429 400.~~

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

5 202.125 Sales of communications services; specified
6 exemptions.--

7 (4) The sale of communications services to a home for
8 the aged, religious institution or educational institution
9 that is exempt from federal income tax under s. 501(c)(3) of
10 the Internal Revenue Code, or by a religious institution that
11 is exempt from federal income tax under s. 501(c)(3) of the
12 Internal Revenue Code having an established physical place for
13 worship at which nonprofit religious services and activities
14 are regularly conducted and carried on, is exempt from the
15 taxes imposed or administered pursuant to ss. 202.12 and
16 202.19. As used in this subsection, the term:

17 (c) "Home for the aged" includes any nonprofit
18 corporation:

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

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

27 Section 9. Section 205.1965, Florida Statutes, is
28 amended to read:

29 205.1965 Assisted living facilities.--A county or
30 municipality may not issue an occupational license for the
31 operation of an assisted living facility pursuant to ~~part III~~

1 ~~of~~ chapter 429 ~~400~~ without first ascertaining that the
2 applicant has been licensed by the Agency for Health Care
3 Administration to operate such facility at the specified
4 location or locations. The Agency for Health Care
5 Administration shall furnish to local agencies responsible for
6 issuing occupational licenses sufficient instructions for
7 making the above required determinations.

8 Section 10. Paragraph (b) of subsection (1) of section
9 212.031, Florida Statutes, is amended to read:

10 212.031 Tax on rental or license fee for use of real
11 property.--

12 (1)

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

1 | loan made or insured by the United States Department of
2 | Housing and Urban Development under s. 202, s. 202 with a s. 8
3 | subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the
4 | National Housing Act; or other such similar facility that
5 | provides residences primarily for the elderly.

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

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

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

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

17 Section 12. Subsection (5) of section 296.02, Florida
18 Statutes, is amended to read:

19 296.02 Definitions.--For the purposes of this part,
20 except where the context clearly indicates otherwise:

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

23 Section 13. Subsections (1) and (3) of section
24 381.0035, Florida Statutes, are amended to read:

25 381.0035 Educational course on HIV and AIDS; employees
26 and clients of certain health care facilities.--

27 (1) The Department of Health shall require all
28 employees and clients of facilities licensed under chapters
29 393, 394, and 397 and employees of facilities licensed under
30 chapter 395, ~~and~~ parts II, III, and IV, ~~and~~ VI of chapter 400,
31 and part I of chapter 429 to complete, biennially, a

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

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

17 Section 14. Subsection (9) of section 381.745, Florida
18 Statutes, is amended to read:

19 381.745 Definitions; ss. 381.739-381.79.--As used in
20 ss. 381.739-381.79, the term:

21 (9) "Transitional living facility" means a
22 state-approved facility, as defined and licensed under chapter
23 400 or chapter 429, or a facility approved by the brain and
24 spinal cord injury program in accordance with this chapter.

25 Section 15. Subsection (24) of section 393.063,
26 Florida Statutes, is amended to read:

27 393.063 Definitions.--For the purposes of this
28 chapter:

29 (24) "Intermediate care facility for the
30 developmentally disabled" or "ICF/DD" means a residential
31

1 facility licensed and certified pursuant to part ~~VIII~~ of
2 chapter 400.

3 Section 16. Paragraph (b) of subsection (1) of section
4 393.506, Florida Statutes, is amended to read:

5 393.506 Administration of medication.--

6 (1) Notwithstanding the provisions of part I of
7 chapter 464, the Nurse Practice Act, unlicensed direct care
8 services staff providing services to persons with
9 developmental disabilities may administer oral, transdermal,
10 inhaled, or topical prescription medications as provided in
11 this section.

12 (b) For intermediate care facilities for the
13 developmentally disabled licensed pursuant to part ~~VIII~~ of
14 chapter 400, unlicensed staff designated by the director may
15 provide medication assistance under the general supervision of
16 a registered nurse licensed pursuant to chapter 464.

17 Section 17. Subsection (10) of section 394.455,
18 Florida Statutes, is amended to read:

19 394.455 Definitions.--As used in this part, unless the
20 context clearly requires otherwise, the term:

21 (10) "Facility" means any hospital, community
22 facility, public or private facility, or receiving or
23 treatment facility providing for the evaluation, diagnosis,
24 care, treatment, training, or hospitalization of persons who
25 appear to have a mental illness or have been diagnosed as
26 having a mental illness. "Facility" does not include any
27 program or entity licensed pursuant to chapter 400 or chapter
28 429.

29 Section 18. Paragraphs (b), (c), and (e) of subsection
30 (2) of section 394.4574, Florida Statutes, are amended to
31 read:

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

4 (2) The department must ensure that:

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

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

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

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

4 Section 19. Paragraph (b) of subsection (2) of section
5 394.463, Florida Statutes, is amended to read:

6 394.463 Involuntary examination.--

7 (2) INVOLUNTARY EXAMINATION.--

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

25 Section 20. Paragraph (b) of subsection (3) of section
26 400.0063, Florida Statutes, is amended to read:

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

29 (3)

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

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

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

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

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

14 Section 21. Subsection (3) of section 400.0069,
15 Florida Statutes, is amended to read:

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

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

23 Section 22. Paragraphs (c) and (f) of subsection (5)
24 and subsection (6) of section 400.0073, Florida Statutes, are
25 amended to read:

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

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

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

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

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

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

13 Section 23. Subsection (4) of section 400.0077,
14 Florida Statutes, is amended to read:

15 400.0077 Confidentiality.--

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

21 Section 24. Subsection (1) of section 400.0239,
22 Florida Statutes, is amended to read:

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

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

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

7 | Section 25. Subsections (1) and (4) of section
8 | 400.119, Florida Statutes, are amended to read:

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

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

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

29 | Section 26. Subsections (4) and (7) of section
30 | 400.141, Florida Statutes, are amended to read:

31 |

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

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

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

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

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

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

9 Section 27. Paragraph (a) of subsection (2) of section
10 400.191, Florida Statutes, is amended to read:

11 400.191 Availability, distribution, and posting of
12 reports and records.--

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

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

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

23 2. Whether such nursing home facilities are
24 proprietary or nonproprietary.

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

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

31 5. The total number of beds in each facility.

1 6. The number of private and semiprivate rooms in each
2 facility.

3 7. The religious affiliation, if any, of each
4 facility.

5 8. The languages spoken by the administrator and staff
6 of each facility.

7 9. Whether or not each facility accepts Medicare or
8 Medicaid recipients or insurance, health maintenance
9 organization, Veterans Administration, CHAMPUS program, or
10 workers' compensation coverage.

11 10. Recreational and other programs available at each
12 facility.

13 11. Special care units or programs offered at each
14 facility.

15 12. Whether the facility is a part of a retirement
16 community that offers other services pursuant to part III of
17 this chapter or part I or part III of chapter 429, part IV, or
18 part V.

19 13. Survey and deficiency information contained on the
20 Online Survey Certification and Reporting (OSCAR) system of
21 the federal Health Care Financing Administration, including
22 annual survey, revisit, and complaint survey information, for
23 each facility for the past 45 months. For noncertified
24 nursing homes, state survey and deficiency information,
25 including annual survey, revisit, and complaint survey
26 information for the past 45 months shall be provided.

27 14. A summary of the Online Survey Certification and
28 Reporting (OSCAR) data for each facility over the past 45
29 months. Such summary may include a score, rating, or
30 comparison ranking with respect to other facilities based on
31 the number of citations received by the facility of annual,

1 | revisit, and complaint surveys; the severity and scope of the
2 | citations; and the number of annual recertification surveys
3 | the facility has had during the past 45 months. The score,
4 | rating, or comparison ranking may be presented in either
5 | numeric or symbolic form for the intended consumer audience.

6 | Section 28. Paragraph (b) of subsection (2) of section
7 | 400.215, Florida Statutes, is amended to read:

8 | 400.215 Personnel screening requirement.--

9 | (2) Employers and employees shall comply with the
10 | requirements of s. 435.05.

11 | (b) Employees qualified under the provisions of
12 | paragraph (a) who have not maintained continuous residency
13 | within the state for the 5 years immediately preceding the
14 | date of request for background screening must complete level 2
15 | screening, as provided in chapter 435. Such employees may work
16 | in a conditional status up to 180 days pending the receipt of
17 | written findings evidencing the completion of level 2
18 | screening. Level 2 screening shall not be required of
19 | employees or prospective employees who attest in writing under
20 | penalty of perjury that they meet the residency requirement.
21 | Completion of level 2 screening shall require the employee or
22 | prospective employee to furnish to the nursing facility a full
23 | set of fingerprints to enable a criminal background
24 | investigation to be conducted. The nursing facility shall
25 | submit the completed fingerprint card to the agency. The
26 | agency shall establish a record of the request in the database
27 | provided for in paragraph (c) and forward the request to the
28 | Department of Law Enforcement, which is authorized to submit
29 | the fingerprints to the Federal Bureau of Investigation for a
30 | national criminal history records check. The results of the
31 | national criminal history records check shall be returned to

1 | the agency, which shall maintain the results in the database
2 | provided for in paragraph (c). The agency shall notify the
3 | administrator of the requesting nursing facility or the
4 | administrator of any other facility licensed under chapter
5 | 393, chapter 394, chapter 395, chapter 397, chapter 429, or
6 | this chapter, as requested by such facility, as to whether or
7 | not the employee has qualified under level 1 or level 2
8 | screening. An employee or prospective employee who has
9 | qualified under level 2 screening and has maintained such
10 | continuous residency within the state shall not be required to
11 | complete a subsequent level 2 screening as a condition of
12 | employment at another facility.

13 | Section 29. Section 400.402, Florida Statutes, is
14 | renumbered as section 429.02, Florida Statutes, and amended to
15 | read:

16 | 429.02 ~~400.402~~ Definitions.--When used in this part,
17 | the term:

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

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

24 | (3) "Agency" means the Agency for Health Care
25 | Administration.

26 | (4) "Aging in place" or "age in place" means the
27 | process of providing increased or adjusted services to a
28 | person to compensate for the physical or mental decline that
29 | may occur with the aging process, in order to maximize the
30 | person's dignity and independence and permit them to remain in
31 | a familiar, noninstitutional, residential environment for as

1 long as possible. Such services may be provided by facility
2 staff, volunteers, family, or friends, or through contractual
3 arrangements with a third party.

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

7 (6) "Assisted living facility" means any building or
8 buildings, section or distinct part of a building, private
9 home, boarding home, home for the aged, or other residential
10 facility, whether operated for profit or not, which undertakes
11 through its ownership or management to provide housing, meals,
12 and one or more personal services for a period exceeding 24
13 hours to one or more adults who are not relatives of the owner
14 or administrator.

15 (7) "Chemical restraint" means a pharmacologic drug
16 that physically limits, restricts, or deprives an individual
17 of movement or mobility, and is used for discipline or
18 convenience and not required for the treatment of medical
19 symptoms.

20 (8) "Community living support plan" means a written
21 document prepared by a mental health resident and the
22 resident's mental health case manager in consultation with the
23 administrator of an assisted living facility with a limited
24 mental health license or the administrator's designee. A copy
25 must be provided to the administrator. The plan must include
26 information about the supports, services, and special needs of
27 the resident which enable the resident to live in the assisted
28 living facility and a method by which facility staff can
29 recognize and respond to the signs and symptoms particular to
30 that resident which indicate the need for professional
31 services.

1 (9) "Cooperative agreement" means a written statement
2 of understanding between a mental health care provider and the
3 administrator of the assisted living facility with a limited
4 mental health license in which a mental health resident is
5 living. The agreement must specify directions for accessing
6 emergency and after-hours care for the mental health resident.
7 A single cooperative agreement may service all mental health
8 residents who are clients of the same mental health care
9 provider.

10 (10) "Department" means the Department of Elderly
11 Affairs.

12 (11) "Emergency" means a situation, physical
13 condition, or method of operation which presents imminent
14 danger of death or serious physical or mental harm to facility
15 residents.

16 (12) "Extended congregate care" means acts beyond
17 those authorized in subsection (17) that may be performed
18 pursuant to part I of chapter 464 by persons licensed
19 thereunder while carrying out their professional duties, and
20 other supportive services which may be specified by rule. The
21 purpose of such services is to enable residents to age in
22 place in a residential environment despite mental or physical
23 limitations that might otherwise disqualify them from
24 residency in a facility licensed under this part.

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

29 (14) "Limited nursing services" means acts that may be
30 performed pursuant to part I of chapter 464 by persons
31 licensed thereunder while carrying out their professional

1 duties but limited to those acts which the department
2 specifies by rule. Acts which may be specified by rule as
3 allowable limited nursing services shall be for persons who
4 meet the admission criteria established by the department for
5 assisted living facilities and shall not be complex enough to
6 require 24-hour nursing supervision and may include such
7 services as the application and care of routine dressings, and
8 care of casts, braces, and splints.

9 (15) "Managed risk" means the process by which the
10 facility staff discuss the service plan and the needs of the
11 resident with the resident and, if applicable, the resident's
12 representative or designee or the resident's surrogate,
13 guardian, or attorney in fact, in such a way that the
14 consequences of a decision, including any inherent risk, are
15 explained to all parties and reviewed periodically in
16 conjunction with the service plan, taking into account changes
17 in the resident's status and the ability of the facility to
18 respond accordingly.

19 (16) "Mental health resident" means an individual who
20 receives social security disability income due to a mental
21 disorder as determined by the Social Security Administration
22 or receives supplemental security income due to a mental
23 disorder as determined by the Social Security Administration
24 and receives optional state supplementation.

25 (17) "Personal services" means direct physical
26 assistance with or supervision of the activities of daily
27 living and the self-administration of medication and other
28 similar services which the department may define by
29 rule. "Personal services" shall not be construed to mean the
30 provision of medical, nursing, dental, or mental health
31 services.

1 (18) "Physical restraint" means a device which
2 physically limits, restricts, or deprives an individual of
3 movement or mobility, including, but not limited to, a
4 half-bed rail, a full-bed rail, a geriatric chair, and a posey
5 restraint. The term "physical restraint" shall also include
6 any device which was not specifically manufactured as a
7 restraint but which has been altered, arranged, or otherwise
8 used for this purpose. The term shall not include bandage
9 material used for the purpose of binding a wound or injury.

10 (19) "Relative" means an individual who is the father,
11 mother, stepfather, stepmother, son, daughter, brother,
12 sister, grandmother, grandfather, great-grandmother,
13 great-grandfather, grandson, granddaughter, uncle, aunt, first
14 cousin, nephew, niece, husband, wife, father-in-law,
15 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
16 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
17 half brother, or half sister of an owner or administrator.

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

20 (21) "Resident's representative or designee" means a
21 person other than the owner, or an agent or employee of the
22 facility, designated in writing by the resident, if legally
23 competent, to receive notice of changes in the contract
24 executed pursuant to s. 429.24 ~~s. 400.424~~; to receive notice
25 of and to participate in meetings between the resident and the
26 facility owner, administrator, or staff concerning the rights
27 of the resident; to assist the resident in contacting the
28 ombudsman council if the resident has a complaint against the
29 facility; or to bring legal action on behalf of the resident
30 pursuant to s. 429.29 ~~s. 400.429~~.

31

1 (22) "Service plan" means a written plan, developed
2 and agreed upon by the resident and, if applicable, the
3 resident's representative or designee or the resident's
4 surrogate, guardian, or attorney in fact, if any, and the
5 administrator or designee representing the facility, which
6 addresses the unique physical and psychosocial needs,
7 abilities, and personal preferences of each resident receiving
8 extended congregate care services. The plan shall include a
9 brief written description, in easily understood language, of
10 what services shall be provided, who shall provide the
11 services, when the services shall be rendered, and the
12 purposes and benefits of the services.

13 (23) "Shared responsibility" means exploring the
14 options available to a resident within a facility and the
15 risks involved with each option when making decisions
16 pertaining to the resident's abilities, preferences, and
17 service needs, thereby enabling the resident and, if
18 applicable, the resident's representative or designee, or the
19 resident's surrogate, guardian, or attorney in fact, and the
20 facility to develop a service plan which best meets the
21 resident's needs and seeks to improve the resident's quality
22 of life.

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

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

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

5 (27) "Twenty-four-hour nursing supervision" means
6 services that are ordered by a physician for a resident whose
7 condition requires the supervision of a physician and
8 continued monitoring of vital signs and physical status. Such
9 services shall be: medically complex enough to require
10 constant supervision, assessment, planning, or intervention by
11 a nurse; required to be performed by or under the direct
12 supervision of licensed nursing personnel or other
13 professional personnel for safe and effective performance;
14 required on a daily basis; and consistent with the nature and
15 severity of the resident's condition or the disease state or
16 stage.

17 Section 30. Section 400.404, Florida Statutes, is
18 renumbered as section 429.04, Florida Statutes, and amended to
19 read:

20 429.04 ~~400.404~~ Facilities to be licensed;
21 exemptions.--

22 (1) For the administration of this part, facilities to
23 be licensed by the agency shall include all assisted living
24 facilities as defined in this part.

25 (2) The following are exempt from licensure under this
26 part:

27 (a) Any facility, institution, or other place operated
28 by the Federal Government or any agency of the Federal
29 Government.

30 (b) Any facility or part of a facility licensed under
31 chapter 393 or chapter 394.

1 (c) Any facility licensed as an adult family-care home
2 under part II of chapter 429 VII.

3 (d) Any person who provides housing, meals, and one or
4 more personal services on a 24-hour basis in the person's own
5 home to not more than two adults who do not receive optional
6 state supplementation. The person who provides the housing,
7 meals, and personal services must own or rent the home and
8 reside therein.

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

13 (f) Any facility that has been incorporated in this
14 state for 50 years or more on or before July 1, 1983, and the
15 board of directors of which is nominated or elected by the
16 residents, until the facility is sold or its ownership is
17 transferred; or any facility, with improvements or additions
18 thereto, which has existed and operated continuously in this
19 state for 60 years or more on or before July 1, 1989, is
20 directly or indirectly owned and operated by a nationally
21 recognized fraternal organization, is not open to the public,
22 and accepts only its own members and their spouses as
23 residents.

24 (g) Any facility certified under chapter 651, or a
25 retirement community, may provide services authorized under
26 this part or part III IV of ~~this~~ chapter 400 to its residents
27 who live in single-family homes, duplexes, quadruplexes, or
28 apartments located on the campus without obtaining a license
29 to operate an assisted living facility if residential units
30 within such buildings are used by residents who do not require
31 staff supervision for that portion of the day when personal

1 | services are not being delivered and the owner obtains a home
2 | health license to provide such services. However, any
3 | building or distinct part of a building on the campus that is
4 | designated for persons who receive personal services and
5 | require supervision beyond that which is available while such
6 | services are being rendered must be licensed in accordance
7 | with this part. If a facility provides personal services to
8 | residents who do not otherwise require supervision and the
9 | owner is not licensed as a home health agency, the buildings
10 | or distinct parts of buildings where such services are
11 | rendered must be licensed under this part. A resident of a
12 | facility that obtains a home health license may contract with
13 | a home health agency of his or her choice, provided that the
14 | home health agency provides liability insurance and workers'
15 | compensation coverage for its employees. Facilities covered by
16 | this exemption may establish policies that give residents the
17 | option of contracting for services and care beyond that which
18 | is provided by the facility to enable them to age in
19 | place. For purposes of this section, a retirement community
20 | consists of a facility licensed under this part or under part
21 | II of chapter 400, and apartments designed for independent
22 | living located on the same campus.

23 | (h) Any residential unit for independent living which
24 | is located within a facility certified under chapter 651, or
25 | any residential unit which is colocated with a nursing home
26 | licensed under part II of chapter 400 or colocated with a
27 | facility licensed under this part in which services are
28 | provided through an outpatient clinic or a nursing home on an
29 | outpatient basis.

30 |
31 |

1 Section 31. Section 400.407, Florida Statutes, is
2 renumbered as section 429.07, Florida Statutes, and amended to
3 read:

4 429.07 ~~400.407~~ License required; fee, display.--

5 (1) A license issued by the agency is required for an
6 assisted living facility operating in this state.

7 (2) Separate licenses shall be required for facilities
8 maintained in separate premises, even though operated under
9 the same management. A separate license shall not be required
10 for separate buildings on the same grounds.

11 (3) Any license granted by the agency must state the
12 maximum resident capacity of the facility, the type of care
13 for which the license is granted, the date the license is
14 issued, the expiration date of the license, and any other
15 information deemed necessary by the agency. Licenses shall be
16 issued for one or more of the following categories of care:
17 standard, extended congregate care, limited nursing services,
18 or limited mental health.

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

25 (b) An extended congregate care license shall be
26 issued to facilities providing, directly or through contract,
27 services beyond those authorized in paragraph (a), including
28 acts performed pursuant to part I of chapter 464 by persons
29 licensed thereunder, and supportive services defined by rule
30 to persons who otherwise would be disqualified from continued
31 residence in a facility licensed under this part.

1 1. In order for extended congregate care services to
2 be provided in a facility licensed under this part, the agency
3 must first determine that all requirements established in law
4 and rule are met and must specifically designate, on the
5 facility's license, that such services may be provided and
6 whether the designation applies to all or part of a facility.
7 Such designation may be made at the time of initial licensure
8 or relicensure, or upon request in writing by a licensee under
9 this part. Notification of approval or denial of such request
10 shall be made within 90 days after receipt of such request and
11 all necessary documentation. Existing facilities qualifying to
12 provide extended congregate care services must have maintained
13 a standard license and may not have been subject to
14 administrative sanctions during the previous 2 years, or since
15 initial licensure if the facility has been licensed for less
16 than 2 years, for any of the following reasons:
17 a. A class I or class II violation;
18 b. Three or more repeat or recurring class III
19 violations of identical or similar resident care standards as
20 specified in rule from which a pattern of noncompliance is
21 found by the agency;
22 c. Three or more class III violations that were not
23 corrected in accordance with the corrective action plan
24 approved by the agency;
25 d. Violation of resident care standards resulting in a
26 requirement to employ the services of a consultant pharmacist
27 or consultant dietitian;
28 e. Denial, suspension, or revocation of a license for
29 another facility under this part in which the applicant for an
30 extended congregate care license has at least 25 percent
31 ownership interest; or

1 f. Imposition of a moratorium on admissions or
2 initiation of injunctive proceedings.

3 2. Facilities that are licensed to provide extended
4 congregate care services shall maintain a written progress
5 report on each person who receives such services, which report
6 describes the type, amount, duration, scope, and outcome of
7 services that are rendered and the general status of the
8 resident's health. A registered nurse, or appropriate
9 designee, representing the agency shall visit such facilities
10 at least quarterly to monitor residents who are receiving
11 extended congregate care services and to determine if the
12 facility is in compliance with this part and with rules that
13 relate to extended congregate care. One of these visits may be
14 in conjunction with the regular survey. The monitoring visits
15 may be provided through contractual arrangements with
16 appropriate community agencies. A registered nurse shall
17 serve as part of the team that inspects such facility. The
18 agency may waive one of the required yearly monitoring visits
19 for a facility that has been licensed for at least 24 months
20 to provide extended congregate care services, if, during the
21 inspection, the registered nurse determines that extended
22 congregate care services are being provided appropriately, and
23 if the facility has no class I or class II violations and no
24 uncorrected class III violations. Before such decision is
25 made, the agency shall consult with the long-term care
26 ombudsman council for the area in which the facility is
27 located to determine if any complaints have been made and
28 substantiated about the quality of services or care. The
29 agency may not waive one of the required yearly monitoring
30 visits if complaints have been made and substantiated.

31

1 3. Facilities that are licensed to provide extended
2 congregate care services shall:

3 a. Demonstrate the capability to meet unanticipated
4 resident service needs.

5 b. Offer a physical environment that promotes a
6 homelike setting, provides for resident privacy, promotes
7 resident independence, and allows sufficient congregate space
8 as defined by rule.

9 c. Have sufficient staff available, taking into
10 account the physical plant and firesafety features of the
11 building, to assist with the evacuation of residents in an
12 emergency, as necessary.

13 d. Adopt and follow policies and procedures that
14 maximize resident independence, dignity, choice, and
15 decisionmaking to permit residents to age in place to the
16 extent possible, so that moves due to changes in functional
17 status are minimized or avoided.

18 e. Allow residents or, if applicable, a resident's
19 representative, designee, surrogate, guardian, or attorney in
20 fact to make a variety of personal choices, participate in
21 developing service plans, and share responsibility in
22 decisionmaking.

23 f. Implement the concept of managed risk.

24 g. Provide, either directly or through contract, the
25 services of a person licensed pursuant to part I of chapter
26 464.

27 h. In addition to the training mandated in s. 429.52
28 ~~s. 400.452~~, provide specialized training as defined by rule
29 for facility staff.

30 4. Facilities licensed to provide extended congregate
31 care services are exempt from the criteria for continued

1 residency as set forth in rules adopted under s. 429.41 ~~s.~~
2 ~~400.441~~. Facilities so licensed shall adopt their own
3 requirements within guidelines for continued residency set
4 forth by the department in rule. However, such facilities may
5 not serve residents who require 24-hour nursing supervision.
6 Facilities licensed to provide extended congregate care
7 services shall provide each resident with a written copy of
8 facility policies governing admission and retention.

9 5. The primary purpose of extended congregate care
10 services is to allow residents, as they become more impaired,
11 the option of remaining in a familiar setting from which they
12 would otherwise be disqualified for continued residency. A
13 facility licensed to provide extended congregate care services
14 may also admit an individual who exceeds the admission
15 criteria for a facility with a standard license, if the
16 individual is determined appropriate for admission to the
17 extended congregate care facility.

18 6. Before admission of an individual to a facility
19 licensed to provide extended congregate care services, the
20 individual must undergo a medical examination as provided in
21 s. 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a
22 preliminary service plan for the individual.

23 7. When a facility can no longer provide or arrange
24 for services in accordance with the resident's service plan
25 and needs and the facility's policy, the facility shall make
26 arrangements for relocating the person in accordance with s.
27 429.28(1)(k) ~~s. 400.428(1)(k)~~.

28 8. Failure to provide extended congregate care
29 services may result in denial of extended congregate care
30 license renewal.

31

1 9. No later than January 1 of each year, the
2 department, in consultation with the agency, shall prepare and
3 submit to the Governor, the President of the Senate, the
4 Speaker of the House of Representatives, and the chairs of
5 appropriate legislative committees, a report on the status of,
6 and recommendations related to, extended congregate care
7 services. The status report must include, but need not be
8 limited to, the following information:

9 a. A description of the facilities licensed to provide
10 such services, including total number of beds licensed under
11 this part.

12 b. The number and characteristics of residents
13 receiving such services.

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

16 d. An analysis of deficiencies cited during licensure
17 inspections.

18 e. The number of residents who required extended
19 congregate care services at admission and the source of
20 admission.

21 f. Recommendations for statutory or regulatory
22 changes.

23 g. The availability of extended congregate care to
24 state clients residing in facilities licensed under this part
25 and in need of additional services, and recommendations for
26 appropriations to subsidize extended congregate care services
27 for such persons.

28 h. Such other information as the department considers
29 appropriate.

30
31

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

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

20 2. Facilities that are licensed to provide limited
21 nursing services shall maintain a written progress report on
22 each person who receives such nursing services, which report
23 describes the type, amount, duration, scope, and outcome of
24 services that are rendered and the general status of the
25 resident's health. A registered nurse representing the agency
26 shall visit such facilities at least twice a year to monitor
27 residents who are receiving limited nursing services and to
28 determine if the facility is in compliance with applicable
29 provisions of this part and with related rules. The monitoring
30 visits may be provided through contractual arrangements with
31

1 appropriate community agencies. A registered nurse shall also
2 serve as part of the team that inspects such facility.

3 3. A person who receives limited nursing services
4 under this part must meet the admission criteria established
5 by the agency for assisted living facilities. When a resident
6 no longer meets the admission criteria for a facility licensed
7 under this part, arrangements for relocating the person shall
8 be made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~,
9 unless the facility is licensed to provide extended congregate
10 care services.

11 (4)(a) The biennial license fee required of a facility
12 is \$300 per license, with an additional fee of \$50 per
13 resident based on the total licensed resident capacity of the
14 facility, except that no additional fee will be assessed for
15 beds designated for recipients of optional state
16 supplementation payments provided for in s. 409.212. The total
17 fee may not exceed \$10,000, no part of which shall be returned
18 to the facility. The agency shall adjust the per bed license
19 fee and the total licensure fee annually by not more than the
20 change in the consumer price index based on the 12 months
21 immediately preceding the increase.

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

1 more than the average rate of inflation for the 12 months
2 immediately preceding the increase.

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

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

16 (6) The license shall be displayed in a conspicuous
17 place inside the facility.

18 (7) A license shall be valid only in the possession of
19 the individual, firm, partnership, association, or corporation
20 to which it is issued and shall not be subject to sale,
21 assignment, or other transfer, voluntary or involuntary; nor
22 shall a license be valid for any premises other than that for
23 which originally issued.

24 (8) A fee may be charged to a facility requesting a
25 duplicate license. The fee shall not exceed the actual cost
26 of duplication and postage.

27 Section 32. Section 400.4071, Florida Statutes, is
28 renumbered as section 429.071, Florida Statutes, and amended
29 to read:

30 429.071 ~~400.4071~~ Intergenerational respite care
31 assisted living facility pilot program.--

1 (1) It is the intent of the Legislature to establish a
2 pilot program to:

3 (a) Facilitate the receipt of in-home, family-based
4 care by minors and adults with disabilities and elderly
5 persons with special needs through respite care for up to 14
6 days.

7 (b) Prevent caregiver "burnout," in which the
8 caregiver's health declines and he or she is unable to
9 continue to provide care so that the only option for the
10 person with disabilities or special needs is to receive
11 institutional care.

12 (c) Foster the development of intergenerational
13 respite care assisted living facilities to temporarily care
14 for minors and adults with disabilities and elderly persons
15 with special needs in the same facility and to give caregivers
16 the time they need for rejuvenation and healing.

17 (2) The Agency for Health Care Administration shall
18 establish a 5-year pilot program, which shall license an
19 intergenerational respite care assisted living facility that
20 will provide temporary personal, respite, and custodial care
21 to minors and adults with disabilities and elderly persons
22 with special needs who do not require 24-hour nursing
23 services. The intergenerational respite care assisted living
24 facility must:

25 (a) Meet all applicable requirements and standards
26 contained in this part ~~III of this chapter~~, except that, for
27 purposes of this section, the term "resident" means a person
28 of any age temporarily residing in and receiving care from the
29 facility.

30 (b) Provide respite care services for minors and
31 adults with disabilities and elderly persons with special

1 needs for a period of at least 24 hours but not for more than
2 14 consecutive days.

3 (c) Provide a facility or facilities in which minors
4 and adults reside in distinct and separate living units.

5 (d) Provide a facility that has a maximum of 48 beds,
6 is located in Miami-Dade County, and is operated by a
7 not-for-profit entity.

8 (3) The agency may establish policies necessary to
9 achieve the objectives specific to the pilot program and may
10 adopt rules necessary to implement the program.

11 (4) After 4 years, the agency shall present its report
12 on the effectiveness of the pilot program to the President of
13 the Senate and the Speaker of the House of Representatives and
14 its recommendation as to whether the Legislature should make
15 the program permanent.

16 Section 33. Section 400.408, Florida Statutes, is
17 renumbered as section 429.08, Florida Statutes, and amended to
18 read:

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

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

25 (b) Except as provided under paragraph (d), any person
26 who owns, operates, or maintains an unlicensed assisted living
27 facility commits a felony of the third degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
29 continued operation is a separate offense.

30 (c) Any person found guilty of violating paragraph (a)
31 a second or subsequent time commits a felony of the second

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

4 (d) Any person who owns, operates, or maintains an
5 unlicensed assisted living facility due to a change in this
6 part or a modification in department rule within 6 months
7 after the effective date of such change and who, within 10
8 working days after receiving notification from the agency,
9 fails to cease operation or apply for a license under this
10 part commits a felony of the third degree, punishable as
11 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
12 continued operation is a separate offense.

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

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

22 (g) If the agency determines that an owner is
23 operating or maintaining an assisted living facility without
24 obtaining a license and determines that a condition exists in
25 the facility that poses a threat to the health, safety, or
26 welfare of a resident of the facility, the owner is subject to
27 the same actions and fines imposed against a licensed facility
28 as specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

29 (h) Any person aware of the operation of an unlicensed
30 assisted living facility must report that facility to the
31 agency. The agency shall provide to the department's elder

1 | information and referral providers a list, by county, of
2 | licensed assisted living facilities, to assist persons who are
3 | considering an assisted living facility placement in locating
4 | a licensed facility.

5 | (i) Each field office of the Agency for Health Care
6 | Administration shall establish a local coordinating workgroup
7 | which includes representatives of local law enforcement
8 | agencies, state attorneys, the Medicaid Fraud Control Unit of
9 | the Department of Legal Affairs, local fire authorities, the
10 | Department of Children and Family Services, the district
11 | long-term care ombudsman council, and the district human
12 | rights advocacy committee to assist in identifying the
13 | operation of unlicensed facilities and to develop and
14 | implement a plan to ensure effective enforcement of state laws
15 | relating to such facilities. The workgroup shall report its
16 | findings, actions, and recommendations semiannually to the
17 | Director of Health Facility Regulation of the agency.

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

26 | (a) Any health care practitioner, as defined in s.
27 | 456.001, who is aware of the operation of an unlicensed
28 | facility shall report that facility to the agency. Failure to
29 | report a facility that the practitioner knows or has
30 | reasonable cause to suspect is unlicensed shall be reported to
31 | the practitioner's licensing board.

1 (b) Any hospital or community mental health center
2 licensed under chapter 395 or chapter 394 which knowingly
3 discharges a patient or client to an unlicensed facility is
4 subject to sanction by the agency.

5 (c) Any employee of the agency or department, or the
6 Department of Children and Family Services, who knowingly
7 refers a person for residency to an unlicensed facility; to a
8 facility the license of which is under denial or has been
9 suspended or revoked; or to a facility that has a moratorium
10 on admissions is subject to disciplinary action by the agency
11 or department, or the Department of Children and Family
12 Services.

13 (d) The employer of any person who is under contract
14 with the agency or department, or the Department of Children
15 and Family Services, and who knowingly refers a person for
16 residency to an unlicensed facility; to a facility the license
17 of which is under denial or has been suspended or revoked; or
18 to a facility that has a moratorium on admissions shall be
19 fined and required to prepare a corrective action plan
20 designed to prevent such referrals.

21 (e) The agency shall provide the department and the
22 Department of Children and Family Services with a list of
23 licensed facilities within each county and shall update the
24 list at least quarterly.

25 (f) At least annually, the agency shall notify, in
26 appropriate trade publications, physicians licensed under
27 chapter 458 or chapter 459, hospitals licensed under chapter
28 395, nursing home facilities licensed under part II of ~~this~~
29 chapter 400, and employees of the agency or the department, or
30 the Department of Children and Family Services, who are
31 responsible for referring persons for residency, that it is

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

13 | Section 34. Section 400.411, Florida Statutes, is
14 | renumbered as section 429.11, Florida Statutes, and amended to
15 | read:

16 | 429.11 ~~400.411~~ Initial application for license;
17 | provisional license.--

18 | (1) Application for a license shall be made to the
19 | agency on forms furnished by it and shall be accompanied by
20 | the appropriate license fee.

21 | (2) The applicant may be an individual owner, a
22 | corporation, a partnership, a firm, an association, or a
23 | governmental entity.

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

26 | (a) The name, address, date of birth, and social
27 | security number of the applicant and the name by which the
28 | facility is to be known. If the applicant is a firm,
29 | partnership, or association, the application shall contain the
30 | name, address, date of birth, and social security number of
31 | every member thereof. If the applicant is a corporation, the

1 application shall contain the corporation's name and address;
2 the name, address, date of birth, and social security number
3 of each of its directors and officers; and the name and
4 address of each person having at least a 5-percent ownership
5 interest in the corporation.

6 (b) The name and address of any professional service,
7 firm, association, partnership, or corporation that is to
8 provide goods, leases, or services to the facility if a
9 5-percent or greater ownership interest in the service, firm,
10 association, partnership, or corporation is owned by a person
11 whose name must be listed on the application under paragraph
12 (a).

13 (c) The name and address of any long-term care
14 facility with which the applicant, administrator, or financial
15 officer has been affiliated through ownership or employment
16 within 5 years of the date of this license application; and a
17 signed affidavit disclosing any financial or ownership
18 interest that the applicant, or any person listed in paragraph
19 (a), holds or has held within the last 5 years in any facility
20 licensed under this part, or in any other entity licensed by
21 this state or another state to provide health or residential
22 care, which facility or entity closed or ceased to operate as
23 a result of financial problems, or has had a receiver
24 appointed or a license denied, suspended or revoked, or was
25 subject to a moratorium on admissions, or has had an
26 injunctive proceeding initiated against it.

27 (d) A description and explanation of any exclusions,
28 permanent suspensions, or terminations of the applicant from
29 the Medicare or Medicaid programs. Proof of compliance with
30 disclosure of ownership and control interest requirements of
31

1 | the Medicaid or Medicare programs shall be accepted in lieu of
2 | this submission.

3 | (e) The names and addresses of persons of whom the
4 | agency may inquire as to the character, reputation, and
5 | financial responsibility of the owner and, if different from
6 | the applicant, the administrator and financial officer.

7 | (f) Identification of all other homes or facilities,
8 | including the addresses and the license or licenses under
9 | which they operate, if applicable, which are currently
10 | operated by the applicant or administrator and which provide
11 | housing, meals, and personal services to residents.

12 | (g) The location of the facility for which a license
13 | is sought and documentation, signed by the appropriate local
14 | government official, which states that the applicant has met
15 | local zoning requirements.

16 | (h) The name, address, date of birth, social security
17 | number, education, and experience of the administrator, if
18 | different from the applicant.

19 | (4) The applicant shall furnish satisfactory proof of
20 | financial ability to operate and conduct the facility in
21 | accordance with the requirements of this part. A certificate
22 | of authority, pursuant to chapter 651, may be provided as
23 | proof of financial ability.

24 | (5) If the applicant is a continuing care facility
25 | certified under chapter 651, a copy of the facility's
26 | certificate of authority must be provided.

27 | (6) The applicant shall provide proof of liability
28 | insurance as defined in s. 624.605.

29 | (7) If the applicant is a community residential home,
30 | the applicant must provide proof that it has met the
31 | requirements specified in chapter 419.

1 (8) The applicant must provide the agency with proof
2 of legal right to occupy the property.

3 (9) The applicant must furnish proof that the facility
4 has received a satisfactory firesafety inspection. The local
5 authority having jurisdiction or the State Fire Marshal must
6 conduct the inspection within 30 days after written request by
7 the applicant.

8 (10) The applicant must furnish documentation of a
9 satisfactory sanitation inspection of the facility by the
10 county health department.

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

14 (12) A provisional license may be issued to an
15 applicant making initial application for licensure or making
16 application for a change of ownership. A provisional license
17 shall be limited in duration to a specific period of time not
18 to exceed 6 months, as determined by the agency.

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

27 Section 35. Section 400.412, Florida Statutes, is
28 renumbered as section 429.12, Florida Statutes, and amended to
29 read:

30 429.12 ~~400.412~~ Sale or transfer of ownership of a
31 facility.--It is the intent of the Legislature to protect the

1 | rights of the residents of an assisted living facility when
2 | the facility is sold or the ownership thereof is transferred.
3 | Therefore, whenever a facility is sold or the ownership
4 | thereof is transferred, including leasing:

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

9 | (2)(a) The transferor shall notify the agency in
10 | writing at least 60 days before the date of transfer of
11 | ownership.

12 | (b) The new owner shall notify the residents, in
13 | writing, of the transfer of ownership within 7 days of his or
14 | her receipt of the license.

15 | (3) The transferor shall be responsible and liable
16 | for:

17 | (a) The lawful operation of the facility and the
18 | welfare of the residents domiciled in the facility until the
19 | date the transferee is licensed by the agency.

20 | (b) Any and all penalties imposed against the facility
21 | for violations occurring before the date of transfer of
22 | ownership unless the penalty imposed is a moratorium on
23 | admissions or denial of licensure. The moratorium on
24 | admissions or denial of licensure remains in effect after the
25 | transfer of ownership, unless the agency has approved the
26 | transferee's corrective action plan or the conditions which
27 | created the moratorium or denial have been corrected, and may
28 | be grounds for denial of license to the transferee in
29 | accordance with chapter 120.

30 | (c) Any outstanding liability to the state, unless the
31 | transferee has agreed, as a condition of sale or transfer, to

1 | accept the outstanding liabilities and to guarantee payment
2 | therefor; except that, if the transferee fails to meet these
3 | obligations, the transferor shall remain liable for the
4 | outstanding liability.

5 | (4) The transferor of a facility the license of which
6 | is denied pending an administrative hearing shall, as a part
7 | of the written transfer-of-ownership contract, advise the
8 | transferee that a plan of correction must be submitted by the
9 | transferee and approved by the agency at least 7 days before
10 | the transfer of ownership and that failure to correct the
11 | condition which resulted in the moratorium on admissions or
12 | denial of licensure is grounds for denial of the transferee's
13 | license.

14 | (5) The transferee must provide the agency with proof
15 | of legal right to occupy the property before a license may be
16 | issued. Proof may include, but is not limited to, copies of
17 | warranty deeds, or copies of lease or rental agreements,
18 | contracts for deeds, quitclaim deeds, or other such
19 | documentation.

20 | Section 36. Section 400.414, Florida Statutes, is
21 | renumbered as section 429.14, Florida Statutes, and amended to
22 | read:

23 | 429.14 ~~400.414~~ Denial, revocation, or suspension of
24 | license; imposition of administrative fine; grounds.--

25 | (1) The agency may deny, revoke, or suspend any
26 | license issued under this part, or impose an administrative
27 | fine in the manner provided in chapter 120, for any of the
28 | following actions by an assisted living facility, for the
29 | actions of any person subject to level 2 background screening
30 | under s. 429.174 ~~s. 400.4174~~, or for the actions of any
31 | facility employee:

1 (a) An intentional or negligent act seriously
2 affecting the health, safety, or welfare of a resident of the
3 facility.

4 (b) The determination by the agency that the owner
5 lacks the financial ability to provide continuing adequate
6 care to residents.

7 (c) Misappropriation or conversion of the property of
8 a resident of the facility.

9 (d) Failure to follow the criteria and procedures
10 provided under part I of chapter 394 relating to the
11 transportation, voluntary admission, and involuntary
12 examination of a facility resident.

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

- 15 1. One or more cited class I deficiencies.
- 16 2. Three or more cited class II deficiencies.
- 17 3. Five or more cited class III deficiencies that have
18 been cited on a single survey and have not been corrected
19 within the times specified.

20 (f) A determination that a person subject to level 2
21 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does
22 not meet the screening standards of s. 435.04 or that the
23 facility is retaining an employee subject to level 1
24 background screening standards under s. 429.174(2) ~~s.~~
25 ~~400.4174(2)~~ who does not meet the screening standards of s.
26 435.03 and for whom exemptions from disqualification have not
27 been provided by the agency.

28 (g) A determination that an employee, volunteer,
29 administrator, or owner, or person who otherwise has access to
30 the residents of a facility does not meet the criteria
31 specified in s. 435.03(2), and the owner or administrator has

1 not taken action to remove the person. Exemptions from
2 disqualification may be granted as set forth in s. 435.07. No
3 administrative action may be taken against the facility if the
4 person is granted an exemption.

5 (h) Violation of a moratorium.

6 (i) Failure of the license applicant, the licensee
7 during relicensure, or a licensee that holds a provisional
8 license to meet the minimum license requirements of this part,
9 or related rules, at the time of license application or
10 renewal.

11 (j) A fraudulent statement or omission of any material
12 fact on an application for a license or any other document
13 required by the agency, including the submission of a license
14 application that conceals the fact that any board member,
15 officer, or person owning 5 percent or more of the facility
16 may not meet the background screening requirements of s.
17 429.174 ~~s. 400.4174~~, or that the applicant has been excluded,
18 permanently suspended, or terminated from the Medicaid or
19 Medicare programs.

20 (k) An intentional or negligent life-threatening act
21 in violation of the uniform firesafety standards for assisted
22 living facilities or other firesafety standards that threatens
23 the health, safety, or welfare of a resident of a facility, as
24 communicated to the agency by the local authority having
25 jurisdiction or the State Fire Marshal.

26 (l) Exclusion, permanent suspension, or termination
27 from the Medicare or Medicaid programs.

28 (m) Knowingly operating any unlicensed facility or
29 providing without a license any service that must be licensed
30 under this chapter or chapter 400.

31

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

3
4 Administrative proceedings challenging agency action under
5 this subsection shall be reviewed on the basis of the facts
6 and conditions that resulted in the agency action.

7 (2) Upon notification by the local authority having
8 jurisdiction or by the State Fire Marshal, the agency may deny
9 or revoke the license of an assisted living facility that
10 fails to correct cited fire code violations that affect or
11 threaten the health, safety, or welfare of a resident of a
12 facility.

13 (3) The agency may deny a license to any applicant or
14 to any officer or board member of an applicant who is a firm,
15 corporation, partnership, or association or who owns 5 percent
16 or more of the facility, if the applicant, officer, or board
17 member has or had a 25-percent or greater financial or
18 ownership interest in any other facility licensed under this
19 part, or in any entity licensed by this state or another state
20 to provide health or residential care, which facility or
21 entity during the 5 years prior to the application for a
22 license closed due to financial inability to operate; had a
23 receiver appointed or a license denied, suspended, or revoked;
24 was subject to a moratorium on admissions; had an injunctive
25 proceeding initiated against it; or has an outstanding fine
26 assessed under this chapter or chapter 400.

27 (4) The agency shall deny or revoke the license of an
28 assisted living facility that has two or more class I
29 violations that are similar or identical to violations
30 identified by the agency during a survey, inspection,
31

1 monitoring visit, or complaint investigation occurring within
2 the previous 2 years.

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

14 (6) The agency shall provide to the Division of Hotels
15 and Restaurants of the Department of Business and Professional
16 Regulation, on a monthly basis, a list of those assisted
17 living facilities that have had their licenses denied,
18 suspended, or revoked or that are involved in an appellate
19 proceeding pursuant to s. 120.60 related to the denial,
20 suspension, or revocation of a license.

21 (7) Agency notification of a license suspension or
22 revocation, or denial of a license renewal, shall be posted
23 and visible to the public at the facility.

24 (8) The agency may issue a temporary license pending
25 final disposition of a proceeding involving the suspension or
26 revocation of an assisted living facility license.

27 Section 37. Section 400.415, Florida Statutes, is
28 renumbered as section 429.15, Florida Statutes, and amended to
29 read:

30 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
31 agency may impose an immediate moratorium on admissions to any

1 assisted living facility if the agency determines that any
2 condition in the facility presents a threat to the health,
3 safety, or welfare of the residents in the facility.

4 (1) A facility the license of which is denied,
5 revoked, or suspended pursuant to s. 429.14 ~~s. 400.414~~ may be
6 subject to immediate imposition of a moratorium on admissions
7 to run concurrently with licensure denial, revocation, or
8 suspension.

9 (2) When a moratorium is placed on a facility, notice
10 of the moratorium shall be posted and visible to the public at
11 the facility until the moratorium is lifted.

12 (3) The department may by rule establish conditions
13 that constitute grounds for imposing a moratorium on a
14 facility and procedures for imposing and lifting a moratorium,
15 as necessary to administer this section.

16 Section 38. Section 400.417, Florida Statutes, is
17 renumbered as section 429.17, Florida Statutes, and amended to
18 read:

19 429.17 ~~400.417~~ Expiration of license; renewal;
20 conditional license.--

21 (1) Biennial licenses, unless sooner suspended or
22 revoked, shall expire 2 years from the date of issuance.
23 Limited nursing, extended congregate care, and limited mental
24 health licenses shall expire at the same time as the
25 facility's standard license, regardless of when issued. The
26 agency shall notify the facility at least 120 days prior to
27 expiration that a renewal license is necessary to continue
28 operation. The notification must be provided electronically or
29 by mail delivery. Ninety days prior to the expiration date, an
30 application for renewal shall be submitted to the agency. Fees
31 must be prorated. The failure to file a timely renewal

1 application shall result in a late fee charged to the facility
2 in an amount equal to 50 percent of the current fee.

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

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

1 (4) A licensee against whom a revocation or suspension
2 proceeding is pending at the time of license renewal may be
3 issued a conditional license effective until final disposition
4 by the agency. If judicial relief is sought from the final
5 disposition, the court having jurisdiction may issue a
6 conditional license for the duration of the judicial
7 proceeding.

8 (5) A conditional license may be issued to an
9 applicant for license renewal if the applicant fails to meet
10 all standards and requirements for licensure. A conditional
11 license issued under this subsection shall be limited in
12 duration to a specific period of time not to exceed 6 months,
13 as determined by the agency, and shall be accompanied by an
14 agency-approved plan of correction.

15 (6) When an extended care or limited nursing license
16 is requested during a facility's biennial license period, the
17 fee shall be prorated in order to permit the additional
18 license to expire at the end of the biennial license period.
19 The fee shall be calculated as of the date the additional
20 license application is received by the agency.

21 (7) The department may by rule establish renewal
22 procedures, identify forms, and specify documentation
23 necessary to administer this section.

24 Section 39. Section 400.4174, Florida Statutes, is
25 renumbered as section 429.174, Florida Statutes, and amended
26 to read:

27 429.174 ~~400.4174~~ Background screening; exemptions.--

28 (1)(a) Level 2 background screening must be conducted
29 on each of the following persons, who shall be considered
30 employees for the purposes of conducting screening under
31 chapter 435:

1 1. The facility owner if an individual, the
2 administrator, and the financial officer.

3 2. An officer or board member if the facility owner is
4 a firm, corporation, partnership, or association, or any
5 person owning 5 percent or more of the facility if the agency
6 has probable cause to believe that such person has been
7 convicted of any offense prohibited by s. 435.04. For each
8 officer, board member, or person owning 5 percent or more who
9 has been convicted of any such offense, the facility shall
10 submit to the agency a description and explanation of the
11 conviction at the time of license application. This
12 subparagraph does not apply to a board member of a
13 not-for-profit corporation or organization if the board member
14 serves solely in a voluntary capacity, does not regularly take
15 part in the day-to-day operational decisions of the
16 corporation or organization, receives no remuneration for his
17 or her services, and has no financial interest and has no
18 family members with a financial interest in the corporation or
19 organization, provided that the board member and facility
20 submit a statement affirming that the board member's
21 relationship to the facility satisfies the requirements of
22 this subparagraph.

23 (b) Proof of compliance with level 2 screening
24 standards which has been submitted within the previous 5 years
25 to meet any facility or professional licensure requirements of
26 the agency or the Department of Health satisfies the
27 requirements of this subsection, provided that such proof is
28 accompanied, under penalty of perjury, by an affidavit of
29 compliance with the provisions of chapter 435. Proof of
30 compliance with the background screening requirements of the
31 Financial Services Commission and the Office of Insurance

1 Regulation for applicants for a certificate of authority to
2 operate a continuing care retirement community under chapter
3 651, submitted within the last 5 years, satisfies the
4 Department of Law Enforcement and Federal Bureau of
5 Investigation portions of a level 2 background check.

6 (c) The agency may grant a provisional license to a
7 facility applying for an initial license when each individual
8 required by this subsection to undergo screening has completed
9 the Department of Law Enforcement background checks, but has
10 not yet received results from the Federal Bureau of
11 Investigation, or when a request for an exemption from
12 disqualification has been submitted to the agency pursuant to
13 s. 435.07, but a response has not been issued.

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

22 (a) Proof of compliance with level 1 screening
23 requirements obtained to meet any professional license
24 requirements in this state is provided and accompanied, under
25 penalty of perjury, by a copy of the person's current
26 professional license and an affidavit of current compliance
27 with the background screening requirements.

28 (b) The person required to be screened has been
29 continuously employed in the same type of occupation for which
30 the person is seeking employment without a breach in service
31 which exceeds 180 days, and proof of compliance with the level

1 | 1 screening requirement which is no more than 2 years old is
2 | provided. Proof of compliance shall be provided directly from
3 | one employer or contractor to another, and not from the person
4 | screened. Upon request, a copy of screening results shall be
5 | provided by the employer retaining documentation of the
6 | screening to the person screened.

7 | (c) The person required to be screened is employed by
8 | a corporation or business entity or related corporation or
9 | business entity that owns, operates, or manages more than one
10 | facility or agency licensed under this chapter, and for whom a
11 | level 1 screening was conducted by the corporation or business
12 | entity as a condition of initial or continued employment.

13 | Section 40. Section 400.4176, Florida Statutes, is
14 | renumbered as section 429.176, Florida Statutes, and amended
15 | to read:

16 | 429.176 ~~400.4176~~ Notice of change of
17 | administrator.--If, during the period for which a license is
18 | issued, the owner changes administrators, the owner must
19 | notify the agency of the change within 10 days and provide
20 | documentation within 90 days that the new administrator has
21 | completed the applicable core educational requirements under
22 | s. 429.52 ~~s. 400.452~~. Background screening shall be completed
23 | on any new administrator as specified in s. 429.174 ~~s.~~
24 | ~~400.4174~~.

25 | Section 41. Section 400.4178, Florida Statutes, is
26 | renumbered as section 429.178, Florida Statutes, and amended
27 | to read:

28 | 429.178 ~~400.4178~~ Special care for persons with
29 | Alzheimer's disease or other related disorders.--

30 | (1) A facility which advertises that it provides
31 | special care for persons with Alzheimer's disease or other

1 related disorders must meet the following standards of
2 operation:

3 (a)1. If the facility has 17 or more residents, have
4 an awake staff member on duty at all hours of the day and
5 night; or

6 2. If the facility has fewer than 17 residents, have
7 an awake staff member on duty at all hours of the day and
8 night or have mechanisms in place to monitor and ensure the
9 safety of the facility's residents.

10 (b) Offer activities specifically designed for persons
11 who are cognitively impaired.

12 (c) Have a physical environment that provides for the
13 safety and welfare of the facility's residents.

14 (d) Employ staff who have completed the training and
15 continuing education required in subsection (2).

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

24 (b) A direct caregiver who is employed by a facility
25 that provides special care for residents with Alzheimer's
26 disease or other related disorders, and who provides direct
27 care to such residents, must complete the required initial
28 training and 4 additional hours of training developed or
29 approved by the department. The training shall be completed
30 within 9 months after beginning employment and shall satisfy
31

1 the core training requirements of s. 429.52(2)(g) ~~s.~~
2 ~~400.452(2)(g)~~.

3 (c) An individual who is employed by a facility that
4 provides special care for residents with Alzheimer's disease
5 or other related disorders, but who only has incidental
6 contact with such residents, must be given, at a minimum,
7 general information on interacting with individuals with
8 Alzheimer's disease or other related disorders, within 3
9 months after beginning employment.

10 (3) In addition to the training required under
11 subsection (2), a direct caregiver must participate in a
12 minimum of 4 contact hours of continuing education each
13 calendar year. The continuing education must include one or
14 more topics included in the dementia-specific training
15 developed or approved by the department, in which the
16 caregiver has not received previous training.

17 (4) Upon completing any training listed in subsection
18 (2), the employee or direct caregiver shall be issued a
19 certificate that includes the name of the training provider,
20 the topic covered, and the date and signature of the training
21 provider. The certificate is evidence of completion of
22 training in the identified topic, and the employee or direct
23 caregiver is not required to repeat training in that topic if
24 the employee or direct caregiver changes employment to a
25 different facility. The employee or direct caregiver must
26 comply with other applicable continuing education
27 requirements.

28 (5) The department, or its designee, shall approve the
29 initial and continuing education courses and providers.

30 (6) The department shall keep a current list of
31 providers who are approved to provide initial and continuing

1 education for staff of facilities that provide special care
2 for persons with Alzheimer's disease or other related
3 disorders.

4 (7) Any facility more than 90 percent of whose
5 residents receive monthly optional supplementation payments is
6 not required to pay for the training and education programs
7 required under this section. A facility that has one or more
8 such residents shall pay a reduced fee that is proportional to
9 the percentage of such residents in the facility. A facility
10 that does not have any residents who receive monthly optional
11 supplementation payments must pay a reasonable fee, as
12 established by the department, for such training and education
13 programs.

14 (8) The department shall adopt rules to establish
15 standards for trainers and training and to implement this
16 section.

17 Section 42. Section 400.418, Florida Statutes, is
18 renumbered as section 429.18, Florida Statutes, and amended to
19 read:

20 429.18 ~~400.418~~ Disposition of fees and administrative
21 fines.--

22 (1) Income from license fees, inspection fees, late
23 fees, and administrative fines generated pursuant to ss.
24 429.07, 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407,~~
25 ~~400.408, 400.417, 400.419, and 400.431~~ shall be deposited in
26 the Health Care Trust Fund administered by the agency. Such
27 funds shall be directed to and used by the agency for the
28 following purposes:

29 (a) Up to 50 percent of the trust funds accrued each
30 fiscal year under this part may be used to offset the expenses
31 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the

1 | court determines that the income and assets of the facility
2 | are insufficient to provide for adequate management and
3 | operation.

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

14 | (c) Any trust funds accrued each year under this part
15 | and not used for the purposes specified in paragraphs (a) and
16 | (b) shall be used to offset the costs of the licensure
17 | program, including the costs of conducting background
18 | investigations, verifying information submitted, defraying the
19 | costs of processing the names of applicants, and conducting
20 | inspections and monitoring visits pursuant to this part.

21 | (2) Income from fees generated pursuant to s.
22 | 429.41(5) ~~s. 400.441(5)~~ shall be deposited in the Health Care
23 | Trust Fund and used to offset the costs of printing and
24 | postage.

25 | Section 43. Section 400.419, Florida Statutes, is
26 | renumbered as section 429.19, Florida Statutes, and amended to
27 | read:

28 | 429.19 ~~400.419~~ Violations; imposition of
29 | administrative fines; grounds.--

30 | (1) The agency shall impose an administrative fine in
31 | the manner provided in chapter 120 for any of the actions or

1 | violations as set forth within this section by an assisted
2 | living facility, for the actions of any person subject to
3 | level 2 background screening under s. 429.174 ~~s. 400.4174~~, for
4 | the actions of any facility employee, or for an intentional or
5 | negligent act seriously affecting the health, safety, or
6 | welfare of a resident of the facility.

7 | (2) Each violation of this part and adopted rules
8 | shall be classified according to the nature of the violation
9 | and the gravity of its probable effect on facility residents.
10 | The agency shall indicate the classification on the written
11 | notice of the violation as follows:

12 | (a) Class "I" violations are those conditions or
13 | occurrences related to the operation and maintenance of a
14 | facility or to the personal care of residents which the agency
15 | determines present an imminent danger to the residents or
16 | guests of the facility or a substantial probability that death
17 | or serious physical or emotional harm would result therefrom.
18 | The condition or practice constituting a class I violation
19 | shall be abated or eliminated within 24 hours, unless a fixed
20 | period, as determined by the agency, is required for
21 | correction. The agency shall impose an administrative fine for
22 | a cited class I violation in an amount not less than \$5,000
23 | and not exceeding \$10,000 for each violation. A fine may be
24 | levied notwithstanding the correction of the violation.

25 | (b) Class "II" violations are those conditions or
26 | occurrences related to the operation and maintenance of a
27 | facility or to the personal care of residents which the agency
28 | determines directly threaten the physical or emotional health,
29 | safety, or security of the facility residents, other than
30 | class I violations. The agency shall impose an administrative
31 | fine for a cited class II violation in an amount not less than

1 | \$1,000 and not exceeding \$5,000 for each violation. A fine
2 | shall be levied notwithstanding the correction of the
3 | violation.

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

17 | (d) Class "IV" violations are those conditions or
18 | occurrences related to the operation and maintenance of a
19 | building or to required reports, forms, or documents that do
20 | not have the potential of negatively affecting residents.
21 | These violations are of a type that the agency determines do
22 | not threaten the health, safety, or security of residents of
23 | the facility. The agency shall impose an administrative fine
24 | for a cited class IV violation in an amount not less than \$100
25 | and not exceeding \$200 for each violation. A citation for a
26 | class IV violation must specify the time within which the
27 | violation is required to be corrected. If a class IV violation
28 | is corrected within the time specified, no fine shall be
29 | imposed. Any class IV violation that is corrected during the
30 | time an agency survey is being conducted will be identified as
31 | an agency finding and not as a violation.

1 (3) In determining if a penalty is to be imposed and
2 in fixing the amount of the fine, the agency shall consider
3 the following factors:

4 (a) The gravity of the violation, including the
5 probability that death or serious physical or emotional harm
6 to a resident will result or has resulted, the severity of the
7 action or potential harm, and the extent to which the
8 provisions of the applicable laws or rules were violated.

9 (b) Actions taken by the owner or administrator to
10 correct violations.

11 (c) Any previous violations.

12 (d) The financial benefit to the facility of
13 committing or continuing the violation.

14 (e) The licensed capacity of the facility.

15 (4) Each day of continuing violation after the date
16 fixed for termination of the violation, as ordered by the
17 agency, constitutes an additional, separate, and distinct
18 violation.

19 (5) Any action taken to correct a violation shall be
20 documented in writing by the owner or administrator of the
21 facility and verified through followup visits by agency
22 personnel. The agency may impose a fine and, in the case of an
23 owner-operated facility, revoke or deny a facility's license
24 when a facility administrator fraudulently misrepresents
25 action taken to correct a violation.

26 (6) For fines that are upheld following administrative
27 or judicial review, the violator shall pay the fine, plus
28 interest at the rate as specified in s. 55.03, for each day
29 beyond the date set by the agency for payment of the fine.

30 (7) Any unlicensed facility that continues to operate
31 after agency notification is subject to a \$1,000 fine per day.

1 (8) Any licensed facility whose owner or administrator
2 concurrently operates an unlicensed facility shall be subject
3 to an administrative fine of \$5,000 per day.

4 (9) Any facility whose owner fails to apply for a
5 change-of-ownership license in accordance with s. 429.12 ~~s.~~
6 ~~400.412~~ and operates the facility under the new ownership is
7 subject to a fine of \$5,000.

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

16 (11) The agency, as an alternative to or in
17 conjunction with an administrative action against a facility
18 for violations of this part and adopted rules, shall make a
19 reasonable attempt to discuss each violation and recommended
20 corrective action with the owner or administrator of the
21 facility, prior to written notification. The agency, instead
22 of fixing a period within which the facility shall enter into
23 compliance with standards, may request a plan of corrective
24 action from the facility which demonstrates a good faith
25 effort to remedy each violation by a specific date, subject to
26 the approval of the agency.

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

30 (13) The agency shall develop and disseminate an
31 annual list of all facilities sanctioned or fined \$5,000 or

1 | more for violations of state standards, the number and class
2 | of violations involved, the penalties imposed, and the current
3 | status of cases. The list shall be disseminated, at no charge,
4 | to the Department of Elderly Affairs, the Department of
5 | Health, the Department of Children and Family Services, the
6 | area agencies on aging, the Florida Statewide Advocacy
7 | Council, and the state and local ombudsman councils. The
8 | Department of Children and Family Services shall disseminate
9 | the list to service providers under contract to the department
10 | who are responsible for referring persons to a facility for
11 | residency. The agency may charge a fee commensurate with the
12 | cost of printing and postage to other interested parties
13 | requesting a copy of this list.

14 | Section 44. Section 400.42, Florida Statutes, is
15 | renumbered as section 429.20, Florida Statutes, and amended to
16 | read:

17 | 429.20 ~~400.42~~ Certain solicitation prohibited;
18 | third-party supplementation.--

19 | (1) A person may not, in connection with the
20 | solicitation of contributions by or on behalf of an assisted
21 | living facility or facilities, misrepresent or mislead any
22 | person, by any manner, means, practice, or device whatsoever,
23 | to believe that the receipts of such solicitation will be used
24 | for charitable purposes, if that is not the fact.

25 | (2) Solicitation of contributions of any kind in a
26 | threatening, coercive, or unduly forceful manner by or on
27 | behalf of an assisted living facility or facilities by any
28 | agent, employee, owner, or representative of any assisted
29 | living facility or facilities is grounds for denial,
30 | suspension, or revocation of the license of the assisted
31 |

1 living facility or facilities by or on behalf of which such
2 contributions were solicited.

3 (3) The admission or maintenance of assisted living
4 facility residents whose care is supported, in whole or in
5 part, by state funds may not be conditioned upon the receipt
6 of any manner of contribution or donation from any person. The
7 solicitation or receipt of contributions in violation of this
8 subsection is grounds for denial, suspension, or revocation of
9 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
10 living facility by or on behalf of which such contributions
11 were solicited.

12 (4) An assisted living facility may accept additional
13 supplementation from third parties on behalf of residents
14 receiving optional state supplementation in accordance with s.
15 409.212.

16 Section 45. Section 400.422, Florida Statutes, is
17 renumbered as section 429.22, Florida Statutes, and amended to
18 read:

19 429.22 ~~400.422~~ Receivership proceedings.--

20 (1) As an alternative to or in conjunction with an
21 injunctive proceeding, the agency may petition a court of
22 competent jurisdiction for the appointment of a receiver, if
23 suitable alternate placements are not available, when any of
24 the following conditions exist:

25 (a) The facility is operating without a license and
26 refuses to make application for a license as required by ss.
27 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

28 (b) The facility is closing or has informed the agency
29 that it intends to close and adequate arrangements have not
30 been made for relocation of the residents within 7 days,
31

1 exclusive of weekends and holidays, of the closing of the
2 facility.

3 (c) The agency determines there exist in the facility
4 conditions which present an imminent danger to the health,
5 safety, or welfare of the residents of the facility or a
6 substantial probability that death or serious physical harm
7 would result therefrom.

8 (d) The facility cannot meet its financial obligation
9 for providing food, shelter, care, and utilities.

10 (2) Petitions for receivership shall take precedence
11 over other court business unless the court determines that
12 some other pending proceeding, having similar statutory
13 precedence, shall have priority. A hearing shall be conducted
14 within 5 days of the filing of the petition, at which time all
15 interested parties shall have the opportunity to present
16 evidence pertaining to the petition. The agency shall notify,
17 by certified mail, the owner or administrator of the facility
18 named in the petition and the facility resident or, if
19 applicable, the resident's representative or designee, or the
20 resident's surrogate, guardian, or attorney in fact, of its
21 filing, the substance of the violation, and the date and place
22 set for the hearing. The court shall grant the petition only
23 upon finding that the health, safety, or welfare of facility
24 residents would be threatened if a condition existing at the
25 time the petition was filed is permitted to continue. A
26 receiver shall not be appointed ex parte unless the court
27 determines that one or more of the conditions in subsection
28 (1) exist; that the facility owner or administrator cannot be
29 found; that all reasonable means of locating the owner or
30 administrator and notifying him or her of the petition and
31 hearing have been exhausted; or that the owner or

1 administrator after notification of the hearing chooses not to
2 attend. After such findings, the court may appoint any
3 qualified person as a receiver, except it may not appoint any
4 owner or affiliate of the facility which is in receivership.
5 The receiver may be selected from a list of persons qualified
6 to act as receivers developed by the agency and presented to
7 the court with each petition for receivership. Under no
8 circumstances may the agency or designated agency employee be
9 appointed as a receiver for more than 60 days; however, the
10 receiver may petition the court, one time only, for a 30-day
11 extension. The court shall grant the extension upon a showing
12 of good cause.

13 (3) The receiver must make provisions for the
14 continued health, safety, and welfare of all residents of the
15 facility and:

16 (a) Shall exercise those powers and perform those
17 duties set out by the court.

18 (b) Shall operate the facility in such a manner as to
19 assure safety and adequate health care for the residents.

20 (c) Shall take such action as is reasonably necessary
21 to protect or conserve the assets or property of the facility
22 for which the receiver is appointed, or the proceeds from any
23 transfer thereof, and may use them only in the performance of
24 the powers and duties set forth in this section and by order
25 of the court.

26 (d) May use the building, fixtures, furnishings, and
27 any accompanying consumable goods in the provision of care and
28 services to residents and to any other persons receiving
29 services from the facility at the time the petition for
30 receivership was filed. The receiver shall collect payments
31 for all goods and services provided to residents or others

1 during the period of the receivership at the same rate of
2 payment charged by the owners at the time the petition for
3 receivership was filed, or at a fair and reasonable rate
4 otherwise approved by the court.

5 (e) May correct or eliminate any deficiency in the
6 structure or furnishings of the facility which endangers the
7 safety or health of residents while they remain in the
8 facility, if the total cost of correction does not exceed
9 \$10,000. The court may order expenditures for this purpose in
10 excess of \$10,000 on application from the receiver after
11 notice to the owner and a hearing.

12 (f) May let contracts and hire agents and employees to
13 carry out the powers and duties of the receiver.

14 (g) Shall honor all leases, mortgages, and secured
15 transactions governing the building in which the facility is
16 located and all goods and fixtures in the building of which
17 the receiver has taken possession, but only to the extent of
18 payments which, in the case of a rental agreement, are for the
19 use of the property during the period of the receivership, or
20 which, in the case of a purchase agreement, become due during
21 the period of the receivership.

22 (h) Shall have full power to direct and manage and to
23 discharge employees of the facility, subject to any contract
24 rights they may have. The receiver shall pay employees at the
25 rate of compensation, including benefits, approved by the
26 court. A receivership does not relieve the owner of any
27 obligation to employees made prior to the appointment of a
28 receiver and not carried out by the receiver.

29 (i) Shall be entitled to and take possession of all
30 property or assets of residents which are in the possession of
31 a facility or its owner. The receiver shall preserve all

1 | property, assets, and records of residents of which the
2 | receiver takes possession and shall provide for the prompt
3 | transfer of the property, assets, and records to the new
4 | placement of any transferred resident. An inventory list
5 | certified by the owner and receiver shall be made immediately
6 | at the time the receiver takes possession of the facility.

7 | (4)(a) A person who is served with notice of an order
8 | of the court appointing a receiver and of the receiver's name
9 | and address shall be liable to pay the receiver for any goods
10 | or services provided by the receiver after the date of the
11 | order if the person would have been liable for the goods or
12 | services as supplied by the owner. The receiver shall give a
13 | receipt for each payment and shall keep a copy of each receipt
14 | on file. The receiver shall deposit accounts received in a
15 | separate account and shall use this account for all
16 | disbursements.

17 | (b) The receiver may bring an action to enforce the
18 | liability created by paragraph (a).

19 | (c) A payment to the receiver of any sum owing to the
20 | facility or its owner shall discharge any obligation to the
21 | facility to the extent of the payment.

22 | (5)(a) A receiver may petition the court that he or
23 | she not be required to honor any lease, mortgage, secured
24 | transaction, or other wholly or partially executory contract
25 | entered into by the owner of the facility if the rent, price,
26 | or rate of interest required to be paid under the agreement
27 | was substantially in excess of a reasonable rent, price, or
28 | rate of interest at the time the contract was entered into, or
29 | if any material provision of the agreement was unreasonable,
30 | when compared to contracts negotiated under similar
31 | conditions. Any relief in this form provided by the court

1 shall be limited to the life of the receivership, unless
2 otherwise determined by the court.

3 (b) If the receiver is in possession of real estate or
4 goods subject to a lease, mortgage, or security interest which
5 the receiver has obtained a court order to avoid under
6 paragraph (a), and if the real estate or goods are necessary
7 for the continued operation of the facility under this
8 section, the receiver may apply to the court to set a
9 reasonable rental, price, or rate of interest to be paid by
10 the receiver during the duration of the receivership. The
11 court shall hold a hearing on the application within 15 days.
12 The receiver shall send notice of the application to any known
13 persons who own the property involved at least 10 days prior
14 to the hearing. Payment by the receiver of the amount
15 determined by the court to be reasonable is a defense to any
16 action against the receiver for payment or for possession of
17 the goods or real estate subject to the lease, security
18 interest, or mortgage involved by any person who received such
19 notice, but the payment does not relieve the owner of the
20 facility of any liability for the difference between the
21 amount paid by the receiver and the amount due under the
22 original lease, security interest, or mortgage involved.

23 (6) The court shall set the compensation of the
24 receiver, which will be considered a necessary expense of a
25 receivership.

26 (7) A receiver may be held liable in a personal
27 capacity only for the receiver's own gross negligence,
28 intentional acts, or breach of fiduciary duty.

29 (8) The court may require a receiver to post a bond.
30
31

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

4 (10) The court may terminate a receivership when:

5 (a) The court determines that the receivership is no
6 longer necessary because the conditions which gave rise to the
7 receivership no longer exist or the agency grants the facility
8 a new license; or

9 (b) All of the residents in the facility have been
10 transferred or discharged.

11 (11) Within 30 days after termination, the receiver
12 shall give the court a complete accounting of all property of
13 which the receiver has taken possession, of all funds
14 collected, and of the expenses of the receivership.

15 (12) Nothing in this section shall be deemed to
16 relieve any owner, administrator, or employee of a facility
17 placed in receivership of any civil or criminal liability
18 incurred, or any duty imposed by law, by reason of acts or
19 omissions of the owner, administrator, or employee prior to
20 the appointment of a receiver; nor shall anything contained in
21 this section be construed to suspend during the receivership
22 any obligation of the owner, administrator, or employee for
23 payment of taxes or other operating and maintenance expenses
24 of the facility or of the owner, administrator, employee, or
25 any other person for the payment of mortgages or liens. The
26 owner shall retain the right to sell or mortgage any facility
27 under receivership, subject to approval of the court which
28 ordered the receivership.

29 Section 46. Section 400.424, Florida Statutes, is
30 renumbered as section 429.24, Florida Statutes, and amended to
31 read:

1 429.24 ~~400.424~~ Contracts.--

2 (1) The presence of each resident in a facility shall
3 be covered by a contract, executed at the time of admission or
4 prior thereto, between the licensee and the resident or his or
5 her designee or legal representative. Each party to the
6 contract shall be provided with a duplicate original thereof,
7 and the licensee shall keep on file in the facility all such
8 contracts. The licensee may not destroy or otherwise dispose
9 of any such contract until 5 years after its expiration.

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

20 (a) Such funds shall be deposited in a banking
21 institution in this state that is located, if possible, in the
22 same community in which the facility is located; shall be kept
23 separate from the funds and property of the facility; may not
24 be represented as part of the assets of the facility on
25 financial statements; and shall be used, or otherwise
26 expended, only for the account of the resident.

27 (b) The licensee shall, within 30 days of receipt of
28 advance rent or a security deposit, notify the resident or
29 residents in writing of the manner in which the licensee is
30 holding the advance rent or security deposit and state the
31 name and address of the depository where the moneys are being

1 held. The licensee shall notify residents of the facility's
2 policy on advance deposits.

3 (3)(a) The contract shall include a refund policy to
4 be implemented at the time of a resident's transfer,
5 discharge, or death. The refund policy shall provide that the
6 resident or responsible party is entitled to a prorated refund
7 based on the daily rate for any unused portion of payment
8 beyond the termination date after all charges, including the
9 cost of damages to the residential unit resulting from
10 circumstances other than normal use, have been paid to the
11 licensee. For the purpose of this paragraph, the termination
12 date shall be the date the unit is vacated by the resident and
13 cleared of all personal belongings. If the amount of
14 belongings does not preclude renting the unit, the facility
15 may clear the unit and charge the resident or his or her
16 estate for moving and storing the items at a rate equal to the
17 actual cost to the facility, not to exceed 20 percent of the
18 regular rate for the unit, provided that 14 days' advance
19 written notification is given. If the resident's possessions
20 are not claimed within 45 days after notification, the
21 facility may dispose of them. The contract shall also specify
22 any other conditions under which claims will be made against
23 the refund due the resident. Except in the case of death or a
24 discharge due to medical reasons, the refunds shall be
25 computed in accordance with the notice of relocation
26 requirements specified in the contract. However, a resident
27 may not be required to provide the licensee with more than 30
28 days' notice of termination. If after a contract is
29 terminated, the facility intends to make a claim against a
30 refund due the resident, the facility shall notify the
31 resident or responsible party in writing of the claim and

1 shall provide said party with a reasonable time period of no
2 less than 14 calendar days to respond. The facility shall
3 provide a refund to the resident or responsible party within
4 45 days after the transfer, discharge, or death of the
5 resident. The agency shall impose a fine upon a facility that
6 fails to comply with the refund provisions of the paragraph,
7 which fine shall be equal to three times the amount due to the
8 resident. One-half of the fine shall be remitted to the
9 resident or his or her estate, and the other half to the
10 Health Care Trust Fund to be used for the purpose specified in
11 s. 429.18 ~~s. 400.418~~.

12 (b) If a licensee agrees to reserve a bed for a
13 resident who is admitted to a medical facility, including, but
14 not limited to, a nursing home, health care facility, or
15 psychiatric facility, the resident or his or her responsible
16 party shall notify the licensee of any change in status that
17 would prevent the resident from returning to the facility.
18 Until such notice is received, the agreed-upon daily rate may
19 be charged by the licensee.

20 (c) The purpose of any advance payment and a refund
21 policy for such payment, including any advance payment for
22 housing, meals, or personal services, shall be covered in the
23 contract.

24 (4) The contract shall state whether or not the
25 facility is affiliated with any religious organization and, if
26 so, which organization and its general responsibility to the
27 facility.

28 (5) Neither the contract nor any provision thereof
29 relieves any licensee of any requirement or obligation imposed
30 upon it by this part or rules adopted under this part.
31

1 (6) In lieu of the provisions of this section,
2 facilities certified under chapter 651 shall comply with the
3 requirements of s. 651.055.

4 (7) Notwithstanding the provisions of this section,
5 facilities which consist of 60 or more apartments may require
6 refund policies and termination notices in accordance with the
7 provisions of part II of chapter 83, provided that the lease
8 is terminated automatically without financial penalty in the
9 event of a resident's death or relocation due to psychiatric
10 hospitalization or to medical reasons which necessitate
11 services or care beyond which the facility is licensed to
12 provide. The date of termination in such instances shall be
13 the date the unit is fully vacated. A lease may be
14 substituted for the contract if it meets the disclosure
15 requirements of this section. For the purpose of this
16 section, the term "apartment" means a room or set of rooms
17 with a kitchen or kitchenette and lavatory located within one
18 or more buildings containing other similar or like residential
19 units.

20 (8) The department may by rule clarify terms,
21 establish procedures, clarify refund policies and contract
22 provisions, and specify documentation as necessary to
23 administer this section.

24 Section 47. Section 400.4255, Florida Statutes, is
25 renumbered as section 429.255, Florida Statutes, and are
26 amended to read:

27 429.255 ~~400.4255~~ Use of personnel; emergency care.--

28 (1)(a) Persons under contract to the facility,
29 facility staff, or volunteers, who are licensed according to
30 part I of chapter 464, or those persons exempt under s.
31 464.022(1), and others as defined by rule, may administer

1 medications to residents, take residents' vital signs, manage
2 individual weekly pill organizers for residents who
3 self-administer medication, give prepackaged enemas ordered by
4 a physician, observe residents, document observations on the
5 appropriate resident's record, report observations to the
6 resident's physician, and contract or allow residents or a
7 resident's representative, designee, surrogate, guardian, or
8 attorney in fact to contract with a third party, provided
9 residents meet the criteria for appropriate placement as
10 defined in s. 429.26 ~~s. 400.426~~. Nursing assistants certified
11 pursuant to part II of chapter 464 may take residents' vital
12 signs as directed by a licensed nurse or physician.

13 (b) All staff in facilities licensed under this part
14 shall exercise their professional responsibility to observe
15 residents, to document observations on the appropriate
16 resident's record, and to report the observations to the
17 resident's physician. However, the owner or administrator of
18 the facility shall be responsible for determining that the
19 resident receiving services is appropriate for residence in
20 the facility.

21 (c) In an emergency situation, licensed personnel may
22 carry out their professional duties pursuant to part I of
23 chapter 464 until emergency medical personnel assume
24 responsibility for care.

25 (2) In facilities licensed to provide extended
26 congregate care, persons under contract to the facility,
27 facility staff, or volunteers, who are licensed according to
28 part I of chapter 464, or those persons exempt under s.
29 464.022(1), or those persons certified as nursing assistants
30 pursuant to part II of chapter 464, may also perform all
31 duties within the scope of their license or certification, as

1 approved by the facility administrator and pursuant to this
2 part.

3 (3) Facility staff may withhold or withdraw
4 cardiopulmonary resuscitation if presented with an order not
5 to resuscitate executed pursuant to s. 401.45. The department
6 shall adopt rules providing for the implementation of such
7 orders. Facility staff and facilities shall not be subject to
8 criminal prosecution or civil liability, nor be considered to
9 have engaged in negligent or unprofessional conduct, for
10 withholding or withdrawing cardiopulmonary resuscitation
11 pursuant to such an order and rules adopted by the department.
12 The absence of an order to resuscitate executed pursuant to s.
13 401.45 does not preclude a physician from withholding or
14 withdrawing cardiopulmonary resuscitation as otherwise
15 permitted by law.

16 Section 48. Section 400.4256, Florida Statutes, is
17 renumbered as section 429.256, Florida Statutes, and is
18 amended to read:

19 429.256 ~~400.4256~~ Assistance with self-administration
20 of medication.--

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

22 (a) "Informed consent" means advising the resident, or
23 the resident's surrogate, guardian, or attorney in fact, that
24 an assisted living facility is not required to have a licensed
25 nurse on staff, that the resident may be receiving assistance
26 with self-administration of medication from an unlicensed
27 person, and that such assistance, if provided by an unlicensed
28 person, will or will not be overseen by a licensed nurse.

29 (b) "Unlicensed person" means an individual not
30 currently licensed to practice nursing or medicine who is
31 employed by or under contract to an assisted living facility

1 and who has received training with respect to assisting with
2 the self-administration of medication in an assisted living
3 facility as provided under s. 429.52 ~~s. 400.452~~ prior to
4 providing such assistance as described in this section.

5 (2) Residents who are capable of self-administering
6 their own medications without assistance shall be encouraged
7 and allowed to do so. However, an unlicensed person may,
8 consistent with a dispensed prescription's label or the
9 package directions of an over-the-counter medication, assist a
10 resident whose condition is medically stable with the
11 self-administration of routine, regularly scheduled
12 medications that are intended to be self-administered.
13 Assistance with self-medication by an unlicensed person may
14 occur only upon a documented request by, and the written
15 informed consent of, a resident or the resident's surrogate,
16 guardian, or attorney in fact. For the purposes of this
17 section, self-administered medications include both legend and
18 over-the-counter oral dosage forms, topical dosage forms and
19 topical ophthalmic, otic, and nasal dosage forms including
20 solutions, suspensions, sprays, and inhalers.

21 (3) Assistance with self-administration of medication
22 includes:

23 (a) Taking the medication, in its previously
24 dispensed, properly labeled container, from where it is
25 stored, and bringing it to the resident.

26 (b) In the presence of the resident, reading the
27 label, opening the container, removing a prescribed amount of
28 medication from the container, and closing the container.

29 (c) Placing an oral dosage in the resident's hand or
30 placing the dosage in another container and helping the
31 resident by lifting the container to his or her mouth.

- 1 (d) Applying topical medications.
- 2 (e) Returning the medication container to proper
3 storage.
- 4 (f) Keeping a record of when a resident receives
5 assistance with self-administration under this section.
- 6 (4) Assistance with self-administration does not
7 include:
- 8 (a) Mixing, compounding, converting, or calculating
9 medication doses, except for measuring a prescribed amount of
10 liquid medication or breaking a scored tablet or crushing a
11 tablet as prescribed.
- 12 (b) The preparation of syringes for injection or the
13 administration of medications by any injectable route.
- 14 (c) Administration of medications through intermittent
15 positive pressure breathing machines or a nebulizer.
- 16 (d) Administration of medications by way of a tube
17 inserted in a cavity of the body.
- 18 (e) Administration of parenteral preparations.
- 19 (f) Irrigations or debriding agents used in the
20 treatment of a skin condition.
- 21 (g) Rectal, urethral, or vaginal preparations.
- 22 (h) Medications ordered by the physician or health
23 care professional with prescriptive authority to be given "as
24 needed," unless the order is written with specific parameters
25 that preclude independent judgment on the part of the
26 unlicensed person, and at the request of a competent resident.
- 27 (i) Medications for which the time of administration,
28 the amount, the strength of dosage, the method of
29 administration, or the reason for administration requires
30 judgment or discretion on the part of the unlicensed person.
- 31

1 (5) Assistance with the self-administration of
2 medication by an unlicensed person as described in this
3 section shall not be considered administration as defined in
4 s. 465.003.

5 (6) The department may by rule establish facility
6 procedures and interpret terms as necessary to implement this
7 section.

8 Section 49. Section 400.426, Florida Statutes, is
9 renumbered as section 429.26, Florida Statutes, and amended to
10 read:

11 429.26 ~~400.426~~ Appropriateness of placements;
12 examinations of residents.--

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

31

1 (2) A physician or nurse practitioner who is employed
2 by an assisted living facility to provide an initial
3 examination for admission purposes may not have financial
4 interest in the facility.

5 (3) Persons licensed under part I of chapter 464 who
6 are employed by or under contract with a facility shall, on a
7 routine basis or at least monthly, perform a nursing
8 assessment of the residents for whom they are providing
9 nursing services ordered by a physician, except administration
10 of medication, and shall document such assessment, including
11 any substantial changes in a resident's status which may
12 necessitate relocation to a nursing home, hospital, or
13 specialized health care facility. Such records shall be
14 maintained in the facility for inspection by the agency and
15 shall be forwarded to the resident's case manager, if
16 applicable.

17 (4) If possible, each resident shall have been
18 examined by a licensed physician or a licensed nurse
19 practitioner within 60 days before admission to the facility.
20 The signed and completed medical examination report shall be
21 submitted to the owner or administrator of the facility who
22 shall use the information contained therein to assist in the
23 determination of the appropriateness of the resident's
24 admission and continued stay in the facility. The medical
25 examination report shall become a permanent part of the record
26 of the resident at the facility and shall be made available to
27 the agency during inspection or upon request. An assessment
28 that has been completed through the Comprehensive Assessment
29 and Review for Long-Term Care Services (CARES) Program
30 fulfills the requirements for a medical examination under this
31 subsection and s. 429.07(3)(b)6. ~~s. 400.407(3)(b)6.~~

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

12 (6) Any resident accepted in a facility and placed by
13 the department or the Department of Children and Family
14 Services shall have been examined by medical personnel within
15 30 days before placement in the facility. The examination
16 shall include an assessment of the appropriateness of
17 placement in a facility. The findings of this examination
18 shall be recorded on the examination form provided by the
19 agency. The completed form shall accompany the resident and
20 shall be submitted to the facility owner or administrator.
21 Additionally, in the case of a mental health resident, the
22 Department of Children and Family Services must provide
23 documentation that the individual has been assessed by a
24 psychiatrist, clinical psychologist, clinical social worker,
25 or psychiatric nurse, or an individual who is supervised by
26 one of these professionals, and determined to be appropriate
27 to reside in an assisted living facility. The documentation
28 must be in the facility within 30 days after the mental health
29 resident has been admitted to the facility. An evaluation
30 completed upon discharge from a state mental hospital meets
31 the requirements of this subsection related to appropriateness

1 | for placement as a mental health resident providing it was
2 | completed within 90 days prior to admission to the facility.
3 | The applicable department shall provide to the facility
4 | administrator any information about the resident that would
5 | help the administrator meet his or her responsibilities under
6 | subsection (1). Further, department personnel shall explain
7 | to the facility operator any special needs of the resident and
8 | advise the operator whom to call should problems arise. The
9 | applicable department shall advise and assist the facility
10 | administrator where the special needs of residents who are
11 | recipients of optional state supplementation require such
12 | assistance.

13 | (7) The facility must notify a licensed physician when
14 | a resident exhibits signs of dementia or cognitive impairment
15 | or has a change of condition in order to rule out the presence
16 | of an underlying physiological condition that may be
17 | contributing to such dementia or impairment. The notification
18 | must occur within 30 days after the acknowledgment of such
19 | signs by facility staff. If an underlying condition is
20 | determined to exist, the facility shall arrange, with the
21 | appropriate health care provider, the necessary care and
22 | services to treat the condition.

23 | (8) The Department of Children and Family Services may
24 | require an examination for supplemental security income and
25 | optional state supplementation recipients residing in
26 | facilities at any time and shall provide the examination
27 | whenever a resident's condition requires it. Any facility
28 | administrator; personnel of the agency, the department, or the
29 | Department of Children and Family Services; or long-term care
30 | ombudsman council member who believes a resident needs to be
31 | evaluated shall notify the resident's case manager, who shall

1 take appropriate action. A report of the examination findings
2 shall be provided to the resident's case manager and the
3 facility administrator to help the administrator meet his or
4 her responsibilities under subsection (1).

5 (9) If, at any time after admission to a facility, a
6 resident appears to need care beyond that which the facility
7 is licensed to provide, the agency shall require the resident
8 to be physically examined by a licensed physician or licensed
9 nurse practitioner. This examination shall, to the extent
10 possible, be performed by the resident's preferred physician
11 or nurse practitioner and shall be paid for by the resident
12 with personal funds, except as provided in s. 429.18(1)(b) ~~s.~~
13 ~~400.418(1)(b)~~. Following this examination, the examining
14 physician or licensed nurse practitioner shall complete and
15 sign a medical form provided by the agency. The completed
16 medical form shall be submitted to the agency within 30 days
17 after the date the facility owner or administrator is notified
18 by the agency that the physical examination is required.
19 After consultation with the physician or licensed nurse
20 practitioner who performed the examination, a medical review
21 team designated by the agency shall then determine whether the
22 resident is appropriately residing in the facility. The
23 medical review team shall base its decision on a comprehensive
24 review of the resident's physical and functional status,
25 including the resident's preferences, and not on an isolated
26 health-related problem. In the case of a mental health
27 resident, if the resident appears to have needs in addition to
28 those identified in the community living support plan, the
29 agency may require an evaluation by a mental health
30 professional, as determined by the Department of Children and
31 Family Services. A facility may not be required to retain a

1 resident who requires more services or care than the facility
2 is able to provide in accordance with its policies and
3 criteria for admission and continued residency. Members of the
4 medical review team making the final determination may not
5 include the agency personnel who initially questioned the
6 appropriateness of a resident's placement. Such determination
7 is final and binding upon the facility and the resident. Any
8 resident who is determined by the medical review team to be
9 inappropriately residing in a facility shall be given 30 days'
10 written notice to relocate by the owner or administrator,
11 unless the resident's continued residence in the facility
12 presents an imminent danger to the health, safety, or welfare
13 of the resident or a substantial probability exists that death
14 or serious physical harm would result to the resident if
15 allowed to remain in the facility.

16 (10) A terminally ill resident who no longer meets the
17 criteria for continued residency may remain in the facility if
18 the arrangement is mutually agreeable to the resident and the
19 facility; additional care is rendered through a licensed
20 hospice, and the resident is under the care of a physician who
21 agrees that the physical needs of the resident are being met.

22 (11) Facilities licensed to provide extended
23 congregate care services shall promote aging in place by
24 determining appropriateness of continued residency based on a
25 comprehensive review of the resident's physical and functional
26 status; the ability of the facility, family members, friends,
27 or any other pertinent individuals or agencies to provide the
28 care and services required; and documentation that a written
29 service plan consistent with facility policy has been
30 developed and implemented to ensure that the resident's needs
31 and preferences are addressed.

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

5 Section 50. Section 400.427, Florida Statutes, is
6 renumbered as section 429.27, Florida Statutes, is amended to
7 read:

8 429.27 ~~400.427~~ Property and personal affairs of
9 residents.--

10 (1)(a) A resident shall be given the option of using
11 his or her own belongings, as space permits; choosing his or
12 her roommate; and, whenever possible, unless the resident is
13 adjudicated incompetent or incapacitated under state law,
14 managing his or her own affairs.

15 (b) The admission of a resident to a facility and his
16 or her presence therein shall not confer on the facility or
17 its owner, administrator, employees, or representatives any
18 authority to manage, use, or dispose of any property of the
19 resident; nor shall such admission or presence confer on any
20 of such persons any authority or responsibility for the
21 personal affairs of the resident, except that which may be
22 necessary for the safe management of the facility or for the
23 safety of the resident.

24 (2) A facility, or an owner, administrator, employee,
25 or representative thereof, may not act as the guardian,
26 trustee, or conservator for any resident of the assisted
27 living facility or any of such resident's property. An owner,
28 administrator, or staff member, or representative thereof, may
29 not act as a competent resident's payee for social security,
30 veteran's, or railroad benefits without the consent of the
31 resident. Any facility whose owner, administrator, or staff,

1 or representative thereof, serves as representative payee for
2 any resident of the facility shall file a surety bond with the
3 agency in an amount equal to twice the average monthly
4 aggregate income or personal funds due to residents, or
5 expendable for their account, which are received by a
6 facility. Any facility whose owner, administrator, or staff,
7 or a representative thereof, is granted power of attorney for
8 any resident of the facility shall file a surety bond with the
9 agency for each resident for whom such power of attorney is
10 granted. The surety bond shall be in an amount equal to twice
11 the average monthly income of the resident, plus the value of
12 any resident's property under the control of the attorney in
13 fact. The bond shall be executed by the facility as principal
14 and a licensed surety company. The bond shall be conditioned
15 upon the faithful compliance of the facility with this section
16 and shall run to the agency for the benefit of any resident
17 who suffers a financial loss as a result of the misuse or
18 misappropriation by a facility of funds held pursuant to this
19 subsection. Any surety company that cancels or does not renew
20 the bond of any licensee shall notify the agency in writing
21 not less than 30 days in advance of such action, giving the
22 reason for the cancellation or nonrenewal. Any facility
23 owner, administrator, or staff, or representative thereof, who
24 is granted power of attorney for any resident of the facility
25 shall, on a monthly basis, be required to provide the resident
26 a written statement of any transaction made on behalf of the
27 resident pursuant to this subsection, and a copy of such
28 statement given to the resident shall be retained in each
29 resident's file and available for agency inspection.

30 (3) A facility, upon mutual consent with the resident,
31 shall provide for the safekeeping in the facility of personal

1 effects not in excess of \$500 and funds of the resident not in
2 excess of \$200 cash, and shall keep complete and accurate
3 records of all such funds and personal effects received. If a
4 resident is absent from a facility for 24 hours or more, the
5 facility may provide for the safekeeping of the resident's
6 personal effects in excess of \$500.

7 (4) Any funds or other property belonging to or due to
8 a resident, or expendable for his or her account, which is
9 received by a facility shall be trust funds which shall be
10 kept separate from the funds and property of the facility and
11 other residents or shall be specifically credited to such
12 resident. Such trust funds shall be used or otherwise
13 expended only for the account of the resident. At least once
14 every 3 months, unless upon order of a court of competent
15 jurisdiction, the facility shall furnish the resident and his
16 or her guardian, trustee, or conservator, if any, a complete
17 and verified statement of all funds and other property to
18 which this subsection applies, detailing the amount and items
19 received, together with their sources and disposition. In any
20 event, the facility shall furnish such statement annually and
21 upon the discharge or transfer of a resident. Any
22 governmental agency or private charitable agency contributing
23 funds or other property to the account of a resident shall
24 also be entitled to receive such statement annually and upon
25 the discharge or transfer of the resident.

26 (5) Any personal funds available to facility residents
27 may be used by residents as they choose to obtain clothing,
28 personal items, leisure activities, and other supplies and
29 services for their personal use. A facility may not demand,
30 require, or contract for payment of all or any part of the
31 personal funds in satisfaction of the facility rate for

1 supplies and services beyond that amount agreed to in writing
2 and may not levy an additional charge to the individual or the
3 account for any supplies or services that the facility has
4 agreed by contract to provide as part of the standard monthly
5 rate. Any service or supplies provided by the facility which
6 are charged separately to the individual or the account may be
7 provided only with the specific written consent of the
8 individual, who shall be furnished in advance of the provision
9 of the services or supplies with an itemized written statement
10 to be attached to the contract setting forth the charges for
11 the services or supplies.

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

14 1. Intentionally withholds a resident's personal
15 funds, personal property, or personal needs allowance, or who
16 demands, beneficially receives, or contracts for payment of
17 all or any part of a resident's personal property or personal
18 needs allowance in satisfaction of the facility rate for
19 supplies and services; or

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

23
24 commits a misdemeanor of the first degree, punishable as
25 provided in s. 775.082 or s. 775.083.

26 (b) Any facility owner, administrator, or staff, or
27 representative thereof, who is granted power of attorney for
28 any resident of the facility and who misuses or
29 misappropriates funds obtained through this power commits a
30 felony of the third degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 (7) In the event of the death of a resident, a
2 licensee shall return all refunds, funds, and property held in
3 trust to the resident's personal representative, if one has
4 been appointed at the time the facility disburses such funds,
5 and, if not, to the resident's spouse or adult next of kin
6 named in a beneficiary designation form provided by the
7 facility to the resident. If the resident has no spouse or
8 adult next of kin or such person cannot be located, funds due
9 the resident shall be placed in an interest-bearing account,
10 and all property held in trust by the facility shall be
11 safeguarded until such time as the funds and property are
12 disbursed pursuant to the Florida Probate Code. Such funds
13 shall be kept separate from the funds and property of the
14 facility and other residents of the facility. If the funds of
15 the deceased resident are not disbursed pursuant to the
16 Florida Probate Code within 2 years after the resident's
17 death, the funds shall be deposited in the Health Care Trust
18 Fund administered by the agency.

19 (8) The department may by rule clarify terms and
20 specify procedures and documentation necessary to administer
21 the provisions of this section relating to the proper
22 management of residents' funds and personal property and the
23 execution of surety bonds.

24 Section 51. Section 400.428, Florida Statutes, is
25 renumbered as section 429.28, Florida Statutes, and amended to
26 read:

27 429.28 ~~400.428~~ Resident bill of rights.--

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

1 Constitution of the United States as a resident of a facility.

2 Every resident of a facility shall have the right to:

3 (a) Live in a safe and decent living environment, free
4 from abuse and neglect.

5 (b) Be treated with consideration and respect and with
6 due recognition of personal dignity, individuality, and the
7 need for privacy.

8 (c) Retain and use his or her own clothes and other
9 personal property in his or her immediate living quarters, so
10 as to maintain individuality and personal dignity, except when
11 the facility can demonstrate that such would be unsafe,
12 impractical, or an infringement upon the rights of other
13 residents.

14 (d) Unrestricted private communication, including
15 receiving and sending unopened correspondence, access to a
16 telephone, and visiting with any person of his or her choice,
17 at any time between the hours of 9 a.m. and 9 p.m. at a
18 minimum. Upon request, the facility shall make provisions to
19 extend visiting hours for caregivers and out-of-town guests,
20 and in other similar situations.

21 (e) Freedom to participate in and benefit from
22 community services and activities and to achieve the highest
23 possible level of independence, autonomy, and interaction
24 within the community.

25 (f) Manage his or her financial affairs unless the
26 resident or, if applicable, the resident's representative,
27 designee, surrogate, guardian, or attorney in fact authorizes
28 the administrator of the facility to provide safekeeping for
29 funds as provided in s. 429.27 ~~s. 400.427~~.

30 (g) Share a room with his or her spouse if both are
31 residents of the facility.

1 (h) Reasonable opportunity for regular exercise
2 several times a week and to be outdoors at regular and
3 frequent intervals except when prevented by inclement weather.

4 (i) Exercise civil and religious liberties, including
5 the right to independent personal decisions. No religious
6 beliefs or practices, nor any attendance at religious
7 services, shall be imposed upon any resident.

8 (j) Access to adequate and appropriate health care
9 consistent with established and recognized standards within
10 the community.

11 (k) At least 45 days' notice of relocation or
12 termination of residency from the facility unless, for medical
13 reasons, the resident is certified by a physician to require
14 an emergency relocation to a facility providing a more skilled
15 level of care or the resident engages in a pattern of conduct
16 that is harmful or offensive to other residents. In the case
17 of a resident who has been adjudicated mentally incapacitated,
18 the guardian shall be given at least 45 days' notice of a
19 nonemergency relocation or residency termination. Reasons for
20 relocation shall be set forth in writing. In order for a
21 facility to terminate the residency of an individual without
22 notice as provided herein, the facility shall show good cause
23 in a court of competent jurisdiction.

24 (l) Present grievances and recommend changes in
25 policies, procedures, and services to the staff of the
26 facility, governing officials, or any other person without
27 restraint, interference, coercion, discrimination, or
28 reprisal. Each facility shall establish a grievance procedure
29 to facilitate the residents' exercise of this right. This
30 right includes access to ombudsman volunteers and advocates
31

1 and the right to be a member of, to be active in, and to
2 associate with advocacy or special interest groups.

3 (2) The administrator of a facility shall ensure that
4 a written notice of the rights, obligations, and prohibitions
5 set forth in this part is posted in a prominent place in each
6 facility and read or explained to residents who cannot read.
7 This notice shall include the name, address, and telephone
8 numbers of the local ombudsman council and central abuse
9 hotline and, when applicable, the Advocacy Center for Persons
10 with Disabilities, Inc., and the Florida local advocacy
11 council, where complaints may be lodged. The facility must
12 ensure a resident's access to a telephone to call the local
13 ombudsman council, central abuse hotline, Advocacy Center for
14 Persons with Disabilities, Inc., and the Florida local
15 advocacy council.

16 (3)(a) The agency shall conduct a survey to determine
17 general compliance with facility standards and compliance with
18 residents' rights as a prerequisite to initial licensure or
19 licensure renewal.

20 (b) In order to determine whether the facility is
21 adequately protecting residents' rights, the biennial survey
22 shall include private informal conversations with a sample of
23 residents and consultation with the ombudsman council in the
24 planning and service area in which the facility is located to
25 discuss residents' experiences within the facility.

26 (c) During any calendar year in which no survey is
27 conducted, the agency shall conduct at least one monitoring
28 visit of each facility cited in the previous year for a class
29 I or class II violation, or more than three uncorrected class
30 III violations.

31

1 (d) The agency may conduct periodic followup
2 inspections as necessary to monitor the compliance of
3 facilities with a history of any class I, class II, or class
4 III violations that threaten the health, safety, or security
5 of residents.

6 (e) The agency may conduct complaint investigations as
7 warranted to investigate any allegations of noncompliance with
8 requirements required under this part or rules adopted under
9 this part.

10 (4) The facility shall not hamper or prevent residents
11 from exercising their rights as specified in this section.

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

15 (a) Exercises any right set forth in this section.

16 (b) Appears as a witness in any hearing, inside or
17 outside the facility.

18 (c) Files a civil action alleging a violation of the
19 provisions of this part or notifies a state attorney or the
20 Attorney General of a possible violation of such provisions.

21 (6) Any facility which terminates the residency of an
22 individual who participated in activities specified in
23 subsection (5) shall show good cause in a court of competent
24 jurisdiction.

25 (7) Any person who submits or reports a complaint
26 concerning a suspected violation of the provisions of this
27 part or concerning services and conditions in facilities, or
28 who testifies in any administrative or judicial proceeding
29 arising from such a complaint, shall have immunity from any
30 civil or criminal liability therefor, unless such person has
31 acted in bad faith or with malicious purpose or the court

1 finds that there was a complete absence of a justiciable issue
2 of either law or fact raised by the losing party.

3 Section 52. Section 400.429, Florida Statutes, is
4 renumbered as section 429.29, Florida Statutes, and amended to
5 read:

6 429.29 ~~400.429~~ Civil actions to enforce rights.--

7 (1) Any person or resident whose rights as specified
8 in this part are violated shall have a cause of action. The
9 action may be brought by the resident or his or her guardian,
10 or by a person or organization acting on behalf of a resident
11 with the consent of the resident or his or her guardian, or by
12 the personal representative of the estate of a deceased
13 resident regardless of the cause of death. If the action
14 alleges a claim for the resident's rights or for negligence
15 that caused the death of the resident, the claimant shall be
16 required to elect either survival damages pursuant to s.
17 46.021 or wrongful death damages pursuant to s. 768.21. If the
18 action alleges a claim for the resident's rights or for
19 negligence that did not cause the death of the resident, the
20 personal representative of the estate may recover damages for
21 the negligence that caused injury to the resident. The action
22 may be brought in any court of competent jurisdiction to
23 enforce such rights and to recover actual damages, and
24 punitive damages for violation of the rights of a resident or
25 negligence. Any resident who prevails in seeking injunctive
26 relief or a claim for an administrative remedy is entitled to
27 recover the costs of the action and a reasonable attorney's
28 fee assessed against the defendant not to exceed \$25,000. Fees
29 shall be awarded solely for the injunctive or administrative
30 relief and not for any claim or action for damages whether
31 such claim or action is brought together with a request for an

1 injunction or administrative relief or as a separate action,
2 except as provided under s. 768.79 or the Florida Rules of
3 Civil Procedure. Sections 429.29-429.298 ~~400.429-400.4303~~
4 provide the exclusive remedy for a cause of action for
5 recovery of damages for the personal injury or death of a
6 resident arising out of negligence or a violation of rights
7 specified in s. 429.28 ~~s. 400.428~~. This section does not
8 preclude theories of recovery not arising out of negligence or
9 s. 429.28 ~~s. 400.428~~ which are available to a resident or to
10 the agency. The provisions of chapter 766 do not apply to any
11 cause of action brought under ss. 429.29-429.298 ~~ss.~~
12 ~~400.429-400.4303~~.

13 (2) In any claim brought pursuant to this part
14 alleging a violation of resident's rights or negligence
15 causing injury to or the death of a resident, the claimant
16 shall have the burden of proving, by a preponderance of the
17 evidence, that:

- 18 (a) The defendant owed a duty to the resident;
19 (b) The defendant breached the duty to the resident;
20 (c) The breach of the duty is a legal cause of loss,
21 injury, death, or damage to the resident; and
22 (d) The resident sustained loss, injury, death, or
23 damage as a result of the breach.

24
25 Nothing in this part shall be interpreted to create strict
26 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
27 ~~400.428~~ or in any other standard or guidelines specified in
28 this part or in any applicable administrative standard or
29 guidelines of this state or a federal regulatory agency shall
30 be evidence of negligence but shall not be considered
31 negligence per se.

1 (3) In any claim brought pursuant to this section, a
2 licensee, person, or entity shall have a duty to exercise
3 reasonable care. Reasonable care is that degree of care which
4 a reasonably careful licensee, person, or entity would use
5 under like circumstances.

6 (4) In any claim for resident's rights violation or
7 negligence by a nurse licensed under part I of chapter 464,
8 such nurse shall have the duty to exercise care consistent
9 with the prevailing professional standard of care for a nurse.
10 The prevailing professional standard of care for a nurse shall
11 be that level of care, skill, and treatment which, in light of
12 all relevant surrounding circumstances, is recognized as
13 acceptable and appropriate by reasonably prudent similar
14 nurses.

15 (5) Discovery of financial information for the purpose
16 of determining the value of punitive damages may not be had
17 unless the plaintiff shows the court by proffer or evidence in
18 the record that a reasonable basis exists to support a claim
19 for punitive damages.

20 (6) In addition to any other standards for punitive
21 damages, any award of punitive damages must be reasonable in
22 light of the actual harm suffered by the resident and the
23 egregiousness of the conduct that caused the actual harm to
24 the resident.

25 (7) The resident or the resident's legal
26 representative shall serve a copy of any complaint alleging in
27 whole or in part a violation of any rights specified in this
28 part to the Agency for Health Care Administration at the time
29 of filing the initial complaint with the clerk of the court
30 for the county in which the action is pursued. The requirement
31 of providing a copy of the complaint to the agency does not

1 | impair the resident's legal rights or ability to seek relief
2 | for his or her claim.

3 | Section 53. Section 400.4293, Florida Statutes, is
4 | renumbered as section 429.293, Florida Statutes, and amended
5 | to read:

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

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

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

16 | (b) "Insurer" means any self-insurer authorized under
17 | s. 627.357, liability insurance carrier, joint underwriting
18 | association, or uninsured prospective defendant.

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

1 good faith belief that grounds exist for an action against
2 each prospective defendant.

3 (3)(a) No suit may be filed for a period of 75 days
4 after notice is mailed to any prospective defendant. During
5 the 75-day period, the prospective defendants or their
6 insurers shall conduct an evaluation of the claim to determine
7 the liability of each defendant and to evaluate the damages of
8 the claimants. Each defendant or insurer of the defendant
9 shall have a procedure for the prompt evaluation of claims
10 during the 75-day period. The procedure shall include one or
11 more of the following:

12 1. Internal review by a duly qualified facility risk
13 manager or claims adjuster;

14 2. Internal review by counsel for each prospective
15 defendant;

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

18 4. Any other similar procedure that fairly and
19 promptly evaluates the claims.

20
21 Each defendant or insurer of the defendant shall evaluate the
22 claim in good faith.

23 (b) At or before the end of the 75 days, the defendant
24 or insurer of the defendant shall provide the claimant with a
25 written response:

26 1. Rejecting the claim; or

27 2. Making a settlement offer.

28 (c) The response shall be delivered to the claimant if
29 not represented by counsel or to the claimant's attorney, by
30 certified mail, return receipt requested. Failure of the
31 prospective defendant or insurer of the defendant to reply to

1 | the notice within 75 days after receipt shall be deemed a
2 | rejection of the claim for purposes of this section.

3 | (4) The notification of a violation of a resident's
4 | rights or alleged negligence shall be served within the
5 | applicable statute of limitations period; however, during the
6 | 75-day period, the statute of limitations is tolled as to all
7 | prospective defendants. Upon stipulation by the parties, the
8 | 75-day period may be extended and the statute of limitations
9 | is tolled during any such extension. Upon receiving written
10 | notice by certified mail, return receipt requested, of
11 | termination of negotiations in an extended period, the
12 | claimant shall have 60 days or the remainder of the period of
13 | the statute of limitations, whichever is greater, within which
14 | to file suit.

15 | (5) No statement, discussion, written document,
16 | report, or other work product generated by presuit claims
17 | evaluation procedures under this section is discoverable or
18 | admissible in any civil action for any purpose by the opposing
19 | party. All participants, including, but not limited to,
20 | physicians, investigators, witnesses, and employees or
21 | associates of the defendant, are immune from civil liability
22 | arising from participation in the presuit claims evaluation
23 | procedure. Any licensed physician or registered nurse may be
24 | retained by either party to provide an opinion regarding the
25 | reasonable basis of the claim. The presuit opinions of the
26 | expert are not discoverable or admissible in any civil action
27 | for any purpose by the opposing party.

28 | (6) Upon receipt by a prospective defendant of a
29 | notice of claim, the parties shall make discoverable
30 | information available without formal discovery as provided in
31 | subsection (7).

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

4 (a) Unsworn statements.--Any party may require other
5 parties to appear for the taking of an unsworn statement. Such
6 statements may be used only for the purpose of claims
7 evaluation and are not discoverable or admissible in any civil
8 action for any purpose by any party. A party seeking to take
9 the unsworn statement of any party must give reasonable notice
10 in writing to all parties. The notice must state the time and
11 place for taking the statement and the name and address of the
12 party to be examined. Unless otherwise impractical, the
13 examination of any party must be done at the same time by all
14 other parties. Any party may be represented by counsel at the
15 taking of an unsworn statement. An unsworn statement may be
16 recorded electronically, stenographically, or on videotape.
17 The taking of unsworn statements is subject to the provisions
18 of the Florida Rules of Civil Procedure and may be terminated
19 for abuses.

20 (b) Documents or things.--Any party may request
21 discovery of relevant documents or things. The documents or
22 things must be produced, at the expense of the requesting
23 party, within 20 days after the date of receipt of the
24 request. A party is required to produce relevant and
25 discoverable documents or things within that party's
26 possession or control, if in good faith it can reasonably be
27 done within the timeframe of the claims evaluation process.

28 (8) Each request for and notice concerning informal
29 discovery pursuant to this section must be in writing, and a
30 copy thereof must be sent to all parties. Such a request or
31 notice must bear a certificate of service identifying the name

1 and address of the person to whom the request or notice is
2 served, the date of the request or notice, and the manner of
3 service thereof.

4 (9) If a prospective defendant makes a written
5 settlement offer, the claimant shall have 15 days from the
6 date of receipt to accept the offer. An offer shall be deemed
7 rejected unless accepted by delivery of a written notice of
8 acceptance.

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

12 (11) Within 30 days after the claimant's receipt of
13 defendant's response to the claim, the parties or their
14 designated representatives shall meet in mediation to discuss
15 the issues of liability and damages in accordance with the
16 mediation rules of practice and procedures adopted by the
17 Supreme Court. Upon stipulation of the parties, this 30-day
18 period may be extended and the statute of limitations is
19 tolled during the mediation and any such extension. At the
20 conclusion of mediation, the claimant shall have 60 days or
21 the remainder of the period of the statute of limitations,
22 whichever is greater, within which to file suit.

23 Section 54. Section 400.431, Florida Statutes, is
24 renumbered as section 429.31, Florida Statutes, and amended to
25 read:

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

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

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

7 | (2) Immediately upon the notice by the agency of the
8 | voluntary or involuntary termination of such operation, the
9 | agency shall monitor the transfer of residents to other
10 | facilities and ensure that residents' rights are being
11 | protected. The department, in consultation with the
12 | Department of Children and Family Services, shall specify
13 | procedures for ensuring that all residents who receive
14 | services are appropriately relocated.

15 | (3) All charges shall be prorated as of the date on
16 | which the facility discontinues operation, and if any payments
17 | have been made in advance, the payments for services not
18 | received shall be refunded to the resident or the resident's
19 | guardian within 10 working days of voluntary or involuntary
20 | closure of the facility, whether or not such refund is
21 | requested by the resident or guardian.

22 | (4) Immediately upon discontinuance of the operation
23 | of a facility, the owner shall surrender the license therefor
24 | to the agency, and the license shall be canceled.

25 | (5) The agency may levy a fine in an amount no greater
26 | than \$5,000 upon each person or business entity that owns any
27 | interest in a facility that terminates operation without
28 | providing notice to the agency and the residents of the
29 | facility at least 30 days before operation ceases. This fine
30 | shall not be levied against any facility involuntarily closed
31 | at the initiation of the agency. The agency shall use the

1 | proceeds of the fines to operate the facility until all
2 | residents of the facility are relocated and shall deposit any
3 | balance of the proceeds into the Health Care Trust Fund
4 | established pursuant to s. 429.18 ~~s. 400.418~~.

5 | Section 55. Section 400.441, Florida Statutes, is
6 | renumbered as section 429.41, Florida Statutes, and amended to
7 | read:

8 | 429.41 ~~400.441~~ Rules establishing standards.--

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

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

1 fire alarm and other fire protection suitable to the size of
2 the structure. Uniform firesafety standards shall be
3 established and enforced by the State Fire Marshal in
4 cooperation with the agency, the department, and the
5 Department of Health.

6 1. Evacuation capability determination.--

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

30 (I) Three minutes or less: prompt.

31

1 (II) More than 3 minutes, but not more than 13
2 minutes: slow.

3 (III) More than 13 minutes: impractical.

4 b. The Office of the State Fire Marshal shall provide
5 or cause the provision of training and education on the proper
6 application of Chapter 5, NFPA 101A, 1995 edition, to its
7 employees, to staff of the Agency for Health Care
8 Administration who are responsible for regulating facilities
9 under this part, and to local governmental inspectors. The
10 Office of the State Fire Marshal shall provide or cause the
11 provision of this training within its existing budget, but may
12 charge a fee for this training to offset its costs. The
13 initial training must be delivered within 6 months after July
14 1, 1995, and as needed thereafter.

15 c. The Office of the State Fire Marshal, in
16 cooperation with provider associations, shall provide or cause
17 the provision of a training program designed to inform
18 facility operators on how to properly review bid documents
19 relating to the installation of automatic fire sprinklers. The
20 Office of the State Fire Marshal shall provide or cause the
21 provision of this training within its existing budget, but may
22 charge a fee for this training to offset its costs. The
23 initial training must be delivered within 6 months after July
24 1, 1995, and as needed thereafter.

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

28 2. Firesafety requirements.--

29 a. Except for the special applications provided
30 herein, effective January 1, 1996, the provisions of the
31 National Fire Protection Association, Life Safety Code, NFPA

1 101, 1994 edition, Chapter 22 for new facilities and Chapter
2 23 for existing facilities shall be the uniform fire code
3 applied by the State Fire Marshal for assisted living
4 facilities, pursuant to s. 633.022.

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

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

30 d. Any existing facility that is required to install
31 an automatic fire sprinkler system under this paragraph need

1 not meet other firesafety requirements of Chapter 23, NFPA
2 101, 1994 edition, which exceed the provisions of NFPA 101,
3 1988 edition. The mandate contained in this paragraph which
4 requires certain facilities to install an automatic fire
5 sprinkler system supersedes any other requirement.

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

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

11 g. A local government may charge fees only in an
12 amount not to exceed the actual expenses incurred by local
13 government relating to the installation and maintenance of an
14 automatic fire sprinkler system in an existing and properly
15 licensed assisted living facility structure as of January 1,
16 1996.

17 h. If a licensed facility undergoes major
18 reconstruction or addition to an existing building on or after
19 January 1, 1996, the entire building must be equipped with an
20 automatic fire sprinkler system. Major reconstruction of a
21 building means repair or restoration that costs in excess of
22 50 percent of the value of the building as reported on the tax
23 rolls, excluding land, before reconstruction. Multiple
24 reconstruction projects within a 5-year period the total costs
25 of which exceed 50 percent of the initial value of the
26 building at the time the first reconstruction project was
27 permitted are to be considered as major reconstruction.
28 Application for a permit for an automatic fire sprinkler
29 system is required upon application for a permit for a
30 reconstruction project that creates costs that go over the
31 50-percent threshold.

1 i. Any facility licensed before January 1, 1996, that
2 is required to install an automatic fire sprinkler system
3 shall ensure that the installation is completed within the
4 following timeframes based upon evacuation capability of the
5 facility as determined under subparagraph 1.:

6 (I) Impractical evacuation capability, 24 months.

7 (II) Slow evacuation capability, 48 months.

8 (III) Prompt evacuation capability, 60 months.

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

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

30 k. A facility owner whose facility is required to be
31 equipped with an automatic fire sprinkler system under Chapter

1 23, NFPA 101, 1994 edition, as adopted herein, must disclose
2 to any potential buyer of the facility that an installation of
3 an automatic fire sprinkler requirement exists. The sale of
4 the facility does not alter the timeframe for the installation
5 of the automatic fire sprinkler system.

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

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

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

1 final administrative authority for firesafety standards
2 established and enforced pursuant to this section. All
3 licensed facilities must have an annual fire inspection
4 conducted by the local fire marshal or authority having
5 jurisdiction.

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

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

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

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

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

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

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

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

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

- 3 1. The supervision of residents;
- 4 2. The provision of personal services;
- 5 3. The provision of, or arrangement for, social and
6 leisure activities;
- 7 4. The arrangement for appointments and transportation
8 to appropriate medical, dental, nursing, or mental health
9 services, as needed by residents;
- 10 5. The management of medication;
- 11 6. The nutritional needs of residents;
- 12 7. Resident records; and
- 13 8. Internal risk management and quality assurance.

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

16 (j) The establishment of specific criteria to define
17 appropriateness of resident admission and continued residency
18 in a facility holding a standard, limited nursing, extended
19 congregate care, and limited mental health license.

20 (k) The use of physical or chemical restraints. The
21 use of physical restraints is limited to half-bed rails as
22 prescribed and documented by the resident's physician with the
23 consent of the resident or, if applicable, the resident's
24 representative or designee or the resident's surrogate,
25 guardian, or attorney in fact. The use of chemical restraints
26 is limited to prescribed dosages of medications authorized by
27 the resident's physician and must be consistent with the
28 resident's diagnosis. Residents who are receiving medications
29 that can serve as chemical restraints must be evaluated by
30 their physician at least annually to assess:

- 31 1. The continued need for the medication.

1 2. The level of the medication in the resident's
2 blood.

3 3. The need for adjustments in the prescription.

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

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

1 | distinctions made by the department and the agency relative to
2 | the physical characteristics of facilities and the types of
3 | care offered therein.

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

9 | (a) Rules promulgated by the department shall
10 | encourage the development of homelike facilities which promote
11 | the dignity, individuality, personal strengths, and
12 | decisionmaking ability of residents.

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

1 | procedures, criteria for reviewing waiver proposals, and
2 | procedures for reporting findings, as necessary to implement
3 | this subsection.

4 | (4) The agency may use an abbreviated biennial
5 | standard licensure inspection that consists of a review of key
6 | quality-of-care standards in lieu of a full inspection in
7 | facilities which have a good record of past performance.
8 | However, a full inspection shall be conducted in facilities
9 | which have had a history of class I or class II violations,
10 | uncorrected class III violations, confirmed ombudsman council
11 | complaints, or confirmed licensure complaints, within the
12 | previous licensure period immediately preceding the inspection
13 | or when a potentially serious problem is identified during the
14 | abbreviated inspection. The agency, in consultation with the
15 | department, shall develop the key quality-of-care standards
16 | with input from the State Long-Term Care Ombudsman Council and
17 | representatives of provider groups for incorporation into its
18 | rules. The department, in consultation with the agency, shall
19 | report annually to the Legislature concerning its
20 | implementation of this subsection. The report shall include,
21 | at a minimum, the key quality-of-care standards which have
22 | been developed; the number of facilities identified as being
23 | eligible for the abbreviated inspection; the number of
24 | facilities which have received the abbreviated inspection and,
25 | of those, the number that were converted to full inspection;
26 | the number and type of subsequent complaints received by the
27 | agency or department on facilities which have had abbreviated
28 | inspections; any recommendations for modification to this
29 | subsection; any plans by the agency to modify its
30 | implementation of this subsection; and any other information
31 | which the department believes should be reported.

1 (5) A fee shall be charged by the department to any
2 person requesting a copy of this part or rules promulgated
3 under this part. Such fees shall not exceed the actual cost
4 of duplication and postage.

5 Section 56. Section 400.442, Florida Statutes, is
6 renumbered as section 429.42, Florida Statutes, and amended to
7 read:

8 429.42 ~~400.442~~ Pharmacy and dietary services.--

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

24 (2) A corrective action plan for deficiencies related
25 to assistance with the self-administration of medication or
26 the administration of medication must be developed and
27 implemented by the facility within 48 hours after notification
28 of such deficiency, or sooner if the deficiency is determined
29 by the agency to be life-threatening.

30 (3) The agency shall employ at least two pharmacists
31 licensed pursuant to chapter 465 among its personnel who

1 biennially inspect assisted living facilities licensed under
2 this part, to participate in biennial inspections or consult
3 with the agency regarding deficiencies relating to medicinal
4 drugs or over-the-counter preparations.

5 (4) The department may by rule establish procedures
6 and specify documentation as necessary to implement this
7 section.

8 Section 57. Section 400.444, Florida Statutes, is
9 renumbered as section 429.44, Florida Statutes, and amended to
10 read:

11 429.44 ~~400.444~~ Construction and renovation;
12 requirements.--

13 (1) The requirements for the construction and
14 renovation of a facility shall comply with the provisions of
15 chapter 553 which pertain to building construction standards,
16 including plumbing, electrical code, glass, manufactured
17 buildings, accessibility for persons with disabilities, and
18 the state minimum building code and with the provisions of s.
19 633.022, which pertain to uniform firesafety standards.

20 (2) Upon notification by the local authority having
21 jurisdiction over life-threatening violations which seriously
22 threaten the health, safety, or welfare of a resident of a
23 facility, the agency shall take action as specified in s.
24 429.14 ~~s. 400.414~~.

25 (3) The department may adopt rules to establish
26 procedures and specify the documentation necessary to
27 implement this section.

28 Section 58. Section 400.447, Florida Statutes, is
29 renumbered as section 429.47, Florida Statutes, and amended to
30 read:

31

1 429.47 ~~400.447~~ Prohibited acts; penalties for
2 violation.--

3 (1) It is unlawful for any person or public body to
4 offer or advertise to the public, in any way by any medium
5 whatever, personal services as defined in this act, without
6 obtaining a valid current license. It is unlawful for any
7 holder of a license issued pursuant to the provisions of this
8 act to advertise or hold out to the public that it holds a
9 license for a facility other than that for which it actually
10 holds a license.

11 (2) It is unlawful for any holder of a license issued
12 pursuant to the provisions of this act to withhold from the
13 agency any evidence of financial instability, including, but
14 not limited to, bad checks, delinquent accounts, nonpayment of
15 withholding taxes, unpaid utility expenses, nonpayment for
16 essential services, or adverse court action concerning the
17 financial viability of the facility or any other facility
18 licensed under part II of chapter 400 or under part I ~~III~~ of
19 this chapter which is owned by the licensee.

20 (3) Any person found guilty of violating subsection
21 (1) or subsection (2) commits a misdemeanor of the second
22 degree, punishable as provided in s. 775.083. Each day of
23 continuing violation shall be considered a separate offense.

24 (4) While a facility is under construction, the owner
25 may advertise to the public prior to obtaining a license.
26 Facilities that are certified under chapter 651 shall comply
27 with the advertising provisions of s. 651.095 rather than
28 those provided for in this subsection.

29 (5) A freestanding facility shall not advertise or
30 imply that any part of it is a nursing home. For the purpose
31 of this subsection, "freestanding facility" means a facility

1 that is not operated in conjunction with a nursing home to
2 which residents of the facility are given priority when
3 nursing care is required. A person who violates this
4 subsection is subject to fine as specified in s. 429.19 ~~s.~~
5 ~~400.419~~.

6 (6) Any facility which is affiliated with any
7 religious organization or which has a name implying religious
8 affiliation shall include in its advertising whether or not it
9 is affiliated with any religious organization and, if so,
10 which organization.

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

18 Section 59. Section 400.452, Florida Statutes, is
19 renumbered as section 429.52, Florida Statutes, and amended to
20 read:

21 429.52 ~~400.452~~ Staff training and educational
22 programs; core educational requirement.--

23 (1) Administrators and other assisted living facility
24 staff must meet minimum training and education requirements
25 established by the Department of Elderly Affairs by rule. This
26 training and education is intended to assist facilities to
27 appropriately respond to the needs of residents, to maintain
28 resident care and facility standards, and to meet licensure
29 requirements.

30 (2) The department shall establish a competency test
31 and a minimum required score to indicate successful completion

1 of the training and educational requirements. The competency
2 test must be developed by the department in conjunction with
3 the agency and providers. The required training and education
4 must cover at least the following topics:

5 (a) State law and rules relating to assisted living
6 facilities.

7 (b) Resident rights and identifying and reporting
8 abuse, neglect, and exploitation.

9 (c) Special needs of elderly persons, persons with
10 mental illness, and persons with developmental disabilities
11 and how to meet those needs.

12 (d) Nutrition and food service, including acceptable
13 sanitation practices for preparing, storing, and serving food.

14 (e) Medication management, recordkeeping, and proper
15 techniques for assisting residents with self-administered
16 medication.

17 (f) Firesafety requirements, including fire evacuation
18 drill procedures and other emergency procedures.

19 (g) Care of persons with Alzheimer's disease and
20 related disorders.

21 (3) Effective January 1, 2004, a new facility
22 administrator must complete the required training and
23 education, including the competency test, within a reasonable
24 time after being employed as an administrator, as determined
25 by the department. Failure to do so is a violation of this
26 part and subjects the violator to an administrative fine as
27 prescribed in s. 429.19 ~~s. 400.419~~. Administrators licensed in
28 accordance with chapter 468, part II, are exempt from this
29 requirement. Other licensed professionals may be exempted, as
30 determined by the department by rule.

31

1 (4) Administrators are required to participate in
2 continuing education for a minimum of 12 contact hours every 2
3 years.

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

11 (6) Other facility staff shall participate in training
12 relevant to their job duties as specified by rule of the
13 department.

14 (7) If the department or the agency determines that
15 there are problems in a facility that could be reduced through
16 specific staff training or education beyond that already
17 required under this section, the department or the agency may
18 require, and provide, or cause to be provided, the training or
19 education of any personal care staff in the facility.

20 (8) The department shall adopt rules related to these
21 training requirements, the competency test, necessary
22 procedures, and competency test fees.

23 Section 60. Subsections (1), (10), and (18) of section
24 400.462, Florida Statutes, are amended to read:

25 400.462 Definitions.--As used in this part, the term:

26 (1) "Administrator" means a direct employee, as
27 defined in subsection (9). The administrator must be a
28 licensed physician, physician assistant, or registered nurse
29 licensed to practice in this state or an individual having at
30 least 1 year of supervisory or administrative experience in
31 home health care or in a facility licensed under chapter 395.

1 ~~or~~ under part II ~~or part III~~ of this chapter, or under part I
2 of chapter 429. An administrator may manage a maximum of five
3 licensed home health agencies located within one agency
4 service district or within an immediately contiguous county.
5 If the home health agency is licensed under this chapter and
6 is part of a retirement community that provides multiple
7 levels of care, an employee of the retirement community may
8 administer the home health agency and up to a maximum of four
9 entities licensed under this chapter or chapter 429 that are
10 owned, operated, or managed by the same corporate entity. An
11 administrator shall designate, in writing, for each licensed
12 entity, a qualified alternate administrator to serve during
13 absences.

14 (10) "Director of nursing" means a registered nurse
15 who is a direct employee, as defined in subsection (9), of the
16 agency and who is a graduate of an approved school of nursing
17 and is licensed in this state; who has at least 1 year of
18 supervisory experience as a registered nurse; and who is
19 responsible for overseeing the professional nursing and home
20 health aid delivery of services of the agency. A director of
21 nursing may be the director of a maximum of five licensed home
22 health agencies operated by a related business entity and
23 located within one agency service district or within an
24 immediately contiguous county. If the home health agency is
25 licensed under this chapter and is part of a retirement
26 community that provides multiple levels of care, an employee
27 of the retirement community may serve as the director of
28 nursing of the home health agency and of up to four entities
29 licensed under this chapter or chapter 429 which are owned,
30 operated, or managed by the same corporate entity.

31

1 (18) "Nurse registry" means any person that procures,
2 offers, promises, or attempts to secure health-care-related
3 contracts for registered nurses, licensed practical nurses,
4 certified nursing assistants, home health aides, companions,
5 or homemakers, who are compensated by fees as independent
6 contractors, including, but not limited to, contracts for the
7 provision of services to patients and contracts to provide
8 private duty or staffing services to health care facilities
9 licensed under chapter 395, ~~or this chapter,~~ or chapter 429 or
10 other business entities.

11 Section 61. Paragraphs (h), (i), and (n) of subsection
12 (5) of section 400.464, Florida Statutes, are amended to read:

13 400.464 Home health agencies to be licensed;
14 expiration of license; exemptions; unlawful acts; penalties.--

15 (5) The following are exempt from the licensure
16 requirements of this part:

17 (h) The delivery of assisted living facility services
18 for which the assisted living facility is licensed under part
19 I ~~III~~ of ~~this~~ chapter 429, to serve its residents in its
20 facility.

21 (i) The delivery of hospice services for which the
22 hospice is licensed under part IV ~~VI~~ of this chapter, to serve
23 hospice patients admitted to its service.

24 (n) The delivery of adult family care home services
25 for which the adult family care home is licensed under part II
26 ~~VII~~ of ~~this~~ chapter 429, to serve the residents in its
27 facility.

28 Section 62. Subsection (2) of section 400.497, Florida
29 Statutes, is amended to read:

30 400.497 Rules establishing minimum standards.--The
31 agency shall adopt, publish, and enforce rules to implement

1 | this part, including, as applicable, ss. 400.506 and 400.509,
2 | which must provide reasonable and fair minimum standards
3 | relating to:

4 | (2) Shared staffing. The agency shall allow shared
5 | staffing if the home health agency is part of a retirement
6 | community that provides multiple levels of care, is located on
7 | one campus, is licensed under this chapter or chapter 429, and
8 | otherwise meets the requirements of law and rule.

9 | Section 63. Paragraph (c) of subsection (2) of section
10 | 400.556, Florida Statutes, is amended to read:

11 | 400.556 Denial, suspension, revocation of license;
12 | administrative fines; investigations and inspections.--

13 | (2) Each of the following actions by the owner of an
14 | adult day care center or by its operator or employee is a
15 | ground for action by the agency against the owner of the
16 | center or its operator or employee:

17 | (c) A failure of persons subject to level 2 background
18 | screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
19 | screening standards of s. 435.04, or the retention by the
20 | center of an employee subject to level 1 background screening
21 | standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
22 | the screening standards of s. 435.03 and for whom exemptions
23 | from disqualification have not been provided by the agency.

24 | Section 64. Paragraph (c) of subsection (2) of section
25 | 400.5572, Florida Statutes, is amended to read:

26 | 400.5572 Background screening.--

27 | (2) The owner or administrator of an adult day care
28 | center must conduct level 1 background screening as set forth
29 | in chapter 435 on all employees hired on or after October 1,
30 | 1998, who provide basic services or supportive and optional
31 |

1 services to the participants. Such persons satisfy this
2 requirement if:

3 (c) The person required to be screened is employed by
4 a corporation or business entity or related corporation or
5 business entity that owns, operates, or manages more than one
6 facility or agency licensed under this chapter or chapter 429,
7 and for whom a level 1 screening was conducted by the
8 corporation or business entity as a condition of initial or
9 continued employment.

10 Section 65. Subsection (5) of section 400.601, Florida
11 Statutes, is amended to read:

12 400.601 Definitions.--As used in this part, the term:

13 (5) "Hospice residential unit" means a homelike living
14 facility, other than a facility licensed under other parts of
15 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
16 is operated by a hospice for the benefit of its patients and
17 is considered by a patient who lives there to be his or her
18 primary residence.

19 Section 66. Paragraph (c) of subsection (2) of section
20 400.618, Florida Statutes, is amended to read:

21 400.618 Definitions.--As used in this part, the term:

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

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

31

1 Section 67. Paragraph (f) of subsection (1) of section
2 400.628, Florida Statutes, is amended to read:

3 400.628 Residents' bill of rights.--

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

9 (f) Manage the resident's own financial affairs unless
10 the resident or the resident's guardian authorizes the
11 provider to provide safekeeping for funds in accordance with
12 procedures equivalent to those provided in s. 429.27 ~~s.~~
13 ~~400.427~~.

14 Section 68. Paragraphs (c), (d), (e), and (f) of
15 subsection (5) of section 400.93, Florida Statutes, are
16 amended to read:

17 400.93 Licensure required; exemptions; unlawful acts;
18 penalties.--

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

25 (c) Assisted living facilities licensed under chapter
26 429 ~~part III~~, when serving their residents.

27 (d) Home health agencies licensed under part III ~~IV~~.

28 (e) Hospices licensed under part IV ~~V~~.

29 (f) Intermediate care facilities, homes for special
30 services, and transitional living facilities licensed under
31 part V ~~VIII~~.

1 Section 69. Paragraph (c) of subsection (10) of
2 section 400.962, Florida Statutes, is amended to read:

3 400.962 License required; license application.--

4 (10)

5 (c) Proof of compliance with the level 2 background
6 screening requirements of chapter 435 which has been submitted
7 within the previous 5 years in compliance with any other
8 licensure requirements under this chapter or chapter 429
9 satisfies the requirements of paragraph (a). Proof of
10 compliance with background screening which has been submitted
11 within the previous 5 years to fulfill the requirements of the
12 Financial Services Commission and the Office of Insurance
13 Regulation under chapter 651 as part of an application for a
14 certificate of authority to operate a continuing care
15 retirement community satisfies the requirements for the
16 Department of Law Enforcement and Federal Bureau of
17 Investigation background checks.

18 Section 70. Paragraph (b) of subsection (1) of section
19 400.980, Florida Statutes, is amended to read:

20 400.980 Health care services pools.--

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

22 (b) "Health care services pool" means any person,
23 firm, corporation, partnership, or association engaged for
24 hire in the business of providing temporary employment in
25 health care facilities, residential facilities, and agencies
26 for licensed, certified, or trained health care personnel
27 including, without limitation, nursing assistants, nurses'
28 aides, and orderlies. However, the term does not include
29 nursing registries, a facility licensed under this chapter or
30 chapter 429 ~~400~~, a health care services pool established
31 within a health care facility to provide services only within

1 | the confines of such facility, or any individual contractor
2 | directly providing temporary services to a health care
3 | facility without use or benefit of a contracting agent.

4 | Section 71. Paragraphs (a), (b), (c), and (d) of
5 | subsection (4) of section 400.9905, Florida Statutes, are
6 | amended to read:

7 | 400.9905 Definitions.--

8 | (4) "Clinic" means an entity at which health care
9 | services are provided to individuals and which tenders charges
10 | for reimbursement for such services, including a mobile clinic
11 | and a portable equipment provider. For purposes of this part,
12 | the term does not include and the licensure requirements of
13 | this part do not apply to:

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

27 | (b) Entities that own, directly or indirectly,
28 | entities licensed or registered by the state pursuant to
29 | chapter 395; or entities that own, directly or indirectly,
30 | entities licensed or registered by the state and providing
31 | only health care services within the scope of services

1 authorized pursuant to their respective licenses granted under
2 ss. 383.30-383.335, chapter 390, chapter 394, chapter 397,
3 this chapter except part ~~X XIII~~, chapter 429, chapter 463,
4 chapter 465, chapter 466, chapter 478, part I of chapter 483,
5 chapter 484, chapter 651; end-stage renal disease providers
6 authorized under 42 C.F.R. part 405, subpart U; or providers
7 certified under 42 C.F.R. part 485, subpart B or subpart H; or
8 any entity that provides neonatal or pediatric hospital-based
9 health care services by licensed practitioners solely within a
10 hospital licensed under chapter 395.

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

26 (d) Entities that are under common ownership, directly
27 or indirectly, with an entity licensed or registered by the
28 state pursuant to chapter 395; or entities that are under
29 common ownership, directly or indirectly, with an entity
30 licensed or registered by the state and providing only health
31 care services within the scope of services authorized pursuant

1 | to their respective licenses granted under ss. 383.30-383.335,
2 | chapter 390, chapter 394, chapter 397, this chapter except
3 | part ~~X~~ ~~XXX~~, chapter 429, chapter 463, chapter 465, chapter
4 | 466, chapter 478, part I of chapter 483, chapter 484, or
5 | chapter 651; end-stage renal disease providers authorized
6 | under 42 C.F.R. part 405, subpart U; or providers certified
7 | under 42 C.F.R. part 485, subpart B or subpart H; or any
8 | entity that provides neonatal or pediatric hospital-based
9 | health care services by licensed practitioners solely within a
10 | hospital licensed under chapter 395.

11 | Section 72. Subsection (12) of section 401.23, Florida
12 | Statutes, is amended to read:

13 | 401.23 Definitions.--As used in this part, the term:

14 | (12) "Interfacility transfer" means the transportation
15 | by ambulance of a patient between two facilities licensed
16 | under chapter 393, chapter 395, ~~or~~ chapter 400, or chapter
17 | 429, pursuant to this part.

18 | Section 73. Paragraph (b) of subsection (2) of section
19 | 402.164, Florida Statutes, is amended to read:

20 | 402.164 Legislative intent; definitions.--

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

22 | (b) "Client" means a client as defined in s. 393.063,
23 | s. 394.67, s. 397.311, or s. 400.960, a forensic client or
24 | client as defined in s. 916.106, a child or youth as defined
25 | in s. 39.01, a child as defined in s. 827.01, a family as
26 | defined in s. 414.0252, a participant as defined in s.
27 | 400.551, a resident as defined in s. 429.02 ~~s. 400.402~~, a
28 | Medicaid recipient or recipient as defined in s. 409.901, a
29 | child receiving child care as defined in s. 402.302, a
30 | disabled adult as defined in s. 410.032 or s. 410.603, or a
31 |

1 victim as defined in s. 39.01 or s. 415.102 as each definition
2 applies within its respective chapter.

3 Section 74. Subsection (10) of section 408.032,
4 Florida Statutes, is amended to read:

5 408.032 Definitions relating to Health Facility and
6 Services Development Act.--As used in ss. 408.031-408.045, the
7 term:

8 (10) "Hospice" or "hospice program" means a hospice as
9 defined in part IV ~~VI~~ of chapter 400.

10 Section 75. Paragraph (b) of subsection (2) of section
11 408.033, Florida Statutes, is amended to read:

12 408.033 Local and state health planning.--

13 (2) FUNDING.--

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

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

20 3. Facilities operated by the Department of Children
21 and Family Services, the Department of Health, or the
22 Department of Corrections and any hospital which meets the
23 definition of rural hospital pursuant to s. 395.602 are exempt
24 from the assessment required in this subsection.

25 Section 76. Subsection (2) of section 408.034, Florida
26 Statutes, is amended to read:

27 408.034 Duties and responsibilities of agency;
28 rules.--

29 (2) In the exercise of its authority to issue licenses
30 to health care facilities and health service providers, as
31 provided under chapters 393 and ~~7~~ 395~~7~~ and parts II and IV ~~VI~~

1 of chapter 400, the agency may not issue a license to any
2 health care facility or health service provider that fails to
3 receive a certificate of need or an exemption for the licensed
4 facility or service.

5 Section 77. Subsections (28) and (29) of section
6 408.07, Florida Statutes, are amended to read:

7 408.07 Definitions.--As used in this chapter, with the
8 exception of ss. 408.031-408.045, the term:

9 (28) "Home health agency" means an organization
10 licensed under part III ~~IV~~ of chapter 400.

11 (29) "Hospice" means an organization licensed under
12 part IV ~~V~~ of chapter 400.

13 Section 78. Subsection (3) of section 408.831, Florida
14 Statutes, is amended to read:

15 408.831 Denial, suspension, or revocation of a
16 license, registration, certificate, or application.--

17 (3) This section provides standards of enforcement
18 applicable to all entities licensed or regulated by the Agency
19 for Health Care Administration. This section controls over any
20 conflicting provisions of chapters 39, 381, 383, 390, 391,
21 393, 394, 395, 400, 408, 429, 468, 483, and 641 or rules
22 adopted pursuant to those chapters.

23 Section 79. Subsection (2) of section 409.212, Florida
24 Statutes, is amended to read:

25 409.212 Optional supplementation.--

26 (2) The base rate of payment for optional state
27 supplementation shall be established by the department within
28 funds appropriated. Additional amounts may be provided for
29 mental health residents in facilities designed to provide
30 limited mental health services as provided for in s. 429.075

31

1 ~~s. 400.4075~~. The base rate of payment does not include the
2 personal needs allowance.

3 Section 80. Subsection (4) of section 409.905, Florida
4 Statutes, is amended to read:

5 409.905 Mandatory Medicaid services.--The agency may
6 make payments for the following services, which are required
7 of the state by Title XIX of the Social Security Act,
8 furnished by Medicaid providers to recipients who are
9 determined to be eligible on the dates on which the services
10 were provided. Any service under this section shall be
11 provided only when medically necessary and in accordance with
12 state and federal law. Mandatory services rendered by
13 providers in mobile units to Medicaid recipients may be
14 restricted by the agency. Nothing in this section shall be
15 construed to prevent or limit the agency from adjusting fees,
16 reimbursement rates, lengths of stay, number of visits, number
17 of services, or any other adjustments necessary to comply with
18 the availability of moneys and any limitations or directions
19 provided for in the General Appropriations Act or chapter 216.

20 (4) HOME HEALTH CARE SERVICES.--The agency shall pay
21 for nursing and home health aide services, supplies,
22 appliances, and durable medical equipment, necessary to assist
23 a recipient living at home. An entity that provides services
24 pursuant to this subsection shall be licensed under part III
25 ~~IV~~ of chapter 400. These services, equipment, and supplies, or
26 reimbursement therefor, may be limited as provided in the
27 General Appropriations Act and do not include services,
28 equipment, or supplies provided to a person residing in a
29 hospital or nursing facility.

30 (a) In providing home health care services, the agency
31 may require prior authorization of care based on diagnosis.

1 (b) The agency shall implement a comprehensive
2 utilization management program that requires prior
3 authorization of all private duty nursing services, an
4 individualized treatment plan that includes information about
5 medication and treatment orders, treatment goals, methods of
6 care to be used, and plans for care coordination by nurses and
7 other health professionals. The utilization management program
8 shall also include a process for periodically reviewing the
9 ongoing use of private duty nursing services. The assessment
10 of need shall be based on a child's condition, family support
11 and care supplements, a family's ability to provide care, and
12 a family's and child's schedule regarding work, school, sleep,
13 and care for other family dependents. When implemented, the
14 private duty nursing utilization management program shall
15 replace the current authorization program used by the Agency
16 for Health Care Administration and the Children's Medical
17 Services program of the Department of Health. The agency may
18 competitively bid on a contract to select a qualified
19 organization to provide utilization management of private duty
20 nursing services. The agency is authorized to seek federal
21 waivers to implement this initiative.

22 Section 81. Subsection (14) of section 409.906,
23 Florida Statutes, is amended to read:

24 409.906 Optional Medicaid services.--Subject to
25 specific appropriations, the agency may make payments for
26 services which are optional to the state under Title XIX of
27 the Social Security Act and are furnished by Medicaid
28 providers to recipients who are determined to be eligible on
29 the dates on which the services were provided. Any optional
30 service that is provided shall be provided only when medically
31 necessary and in accordance with state and federal law.

1 Optional services rendered by providers in mobile units to
2 Medicaid recipients may be restricted or prohibited by the
3 agency. Nothing in this section shall be construed to prevent
4 or limit the agency from adjusting fees, reimbursement rates,
5 lengths of stay, number of visits, or number of services, or
6 making any other adjustments necessary to comply with the
7 availability of moneys and any limitations or directions
8 provided for in the General Appropriations Act or chapter 216.
9 If necessary to safeguard the state's systems of providing
10 services to elderly and disabled persons and subject to the
11 notice and review provisions of s. 216.177, the Governor may
12 direct the Agency for Health Care Administration to amend the
13 Medicaid state plan to delete the optional Medicaid service
14 known as "Intermediate Care Facilities for the Developmentally
15 Disabled." Optional services may include:

16 (14) HOSPICE CARE SERVICES.--The agency may pay for
17 all reasonable and necessary services for the palliation or
18 management of a recipient's terminal illness, if the services
19 are provided by a hospice that is licensed under part IV ~~VI~~ of
20 chapter 400 and meets Medicare certification requirements.

21 Section 82. Subsection (7) and paragraph (a) of
22 subsection (8) of section 409.907, Florida Statutes, are
23 amended to read:

24 409.907 Medicaid provider agreements.--The agency may
25 make payments for medical assistance and related services
26 rendered to Medicaid recipients only to an individual or
27 entity who has a provider agreement in effect with the agency,
28 who is performing services or supplying goods in accordance
29 with federal, state, and local law, and who agrees that no
30 person shall, on the grounds of handicap, race, color, or
31 national origin, or for any other reason, be subjected to

1 discrimination under any program or activity for which the
2 provider receives payment from the agency.

3 (7) The agency may require, as a condition of
4 participating in the Medicaid program and before entering into
5 the provider agreement, that the provider submit information,
6 in an initial and any required renewal applications,
7 concerning the professional, business, and personal background
8 of the provider and permit an onsite inspection of the
9 provider's service location by agency staff or other personnel
10 designated by the agency to perform this function. The agency
11 shall perform a random onsite inspection, within 60 days after
12 receipt of a fully complete new provider's application, of the
13 provider's service location prior to making its first payment
14 to the provider for Medicaid services to determine the
15 applicant's ability to provide the services that the applicant
16 is proposing to provide for Medicaid reimbursement. The agency
17 is not required to perform an onsite inspection of a provider
18 or program that is licensed by the agency, that provides
19 services under waiver programs for home and community-based
20 services, or that is licensed as a medical foster home by the
21 Department of Children and Family Services. As a continuing
22 condition of participation in the Medicaid program, a provider
23 shall immediately notify the agency of any current or pending
24 bankruptcy filing. Before entering into the provider
25 agreement, or as a condition of continuing participation in
26 the Medicaid program, the agency may also require that
27 Medicaid providers reimbursed on a fee-for-services basis or
28 fee schedule basis which is not cost-based, post a surety bond
29 not to exceed \$50,000 or the total amount billed by the
30 provider to the program during the current or most recent
31 calendar year, whichever is greater. For new providers, the

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

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

25 (b) Information concerning any prior violation, fine,
26 suspension, termination, or other administrative action taken
27 under the Medicaid laws, rules, or regulations of this state
28 or of any other state or the Federal Government; any prior
29 violation of the laws, rules, or regulations relating to the
30 Medicare program; any prior violation of the rules or
31 regulations of any other public or private insurer; and any

1 prior violation of the laws, rules, or regulations of any
2 regulatory body of this or any other state.

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

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

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

1 corporation or organization; and if the director submits an
2 affidavit, under penalty of perjury, to this effect to the
3 agency and the not-for-profit corporation or organization
4 submits an affidavit, under penalty of perjury, to this effect
5 to the agency as part of the corporation's or organization's
6 Medicaid provider agreement application. Notwithstanding the
7 above, the agency may require a background check for any
8 person reasonably suspected by the agency to have been
9 convicted of a crime. This subsection shall not apply to:

- 10 1. A hospital licensed under chapter 395;
- 11 2. A nursing home licensed under chapter 400;
- 12 3. A hospice licensed under chapter 400;
- 13 4. An assisted living facility licensed under chapter
14 429; ~~400~~.

15 5. A unit of local government, except that
16 requirements of this subsection apply to nongovernmental
17 providers and entities when contracting with the local
18 government to provide Medicaid services. The actual cost of
19 the state and national criminal history record checks must be
20 borne by the nongovernmental provider or entity; or

21 6. Any business that derives more than 50 percent of
22 its revenue from the sale of goods to the final consumer, and
23 the business or its controlling parent either is required to
24 file a form 10-K or other similar statement with the
25 Securities and Exchange Commission or has a net worth of \$50
26 million or more.

27 Section 83. Paragraph (c) of subsection (5) of section
28 409.912, Florida Statutes, is amended to read:

29 409.912 Cost-effective purchasing of health care.--The
30 agency shall purchase goods and services for Medicaid
31 recipients in the most cost-effective manner consistent with

1 | the delivery of quality medical care. To ensure that medical
2 | services are effectively utilized, the agency may, in any
3 | case, require a confirmation or second physician's opinion of
4 | the correct diagnosis for purposes of authorizing future
5 | services under the Medicaid program. This section does not
6 | restrict access to emergency services or poststabilization
7 | care services as defined in 42 C.F.R. part 438.114. Such
8 | confirmation or second opinion shall be rendered in a manner
9 | approved by the agency. The agency shall maximize the use of
10 | prepaid per capita and prepaid aggregate fixed-sum basis
11 | services when appropriate and other alternative service
12 | delivery and reimbursement methodologies, including
13 | competitive bidding pursuant to s. 287.057, designed to
14 | facilitate the cost-effective purchase of a case-managed
15 | continuum of care. The agency shall also require providers to
16 | minimize the exposure of recipients to the need for acute
17 | inpatient, custodial, and other institutional care and the
18 | inappropriate or unnecessary use of high-cost services. The
19 | agency shall contract with a vendor to monitor and evaluate
20 | the clinical practice patterns of providers in order to
21 | identify trends that are outside the normal practice patterns
22 | of a provider's professional peers or the national guidelines
23 | of a provider's professional association. The vendor must be
24 | able to provide information and counseling to a provider whose
25 | practice patterns are outside the norms, in consultation with
26 | the agency, to improve patient care and reduce inappropriate
27 | utilization. The agency may mandate prior authorization, drug
28 | therapy management, or disease management participation for
29 | certain populations of Medicaid beneficiaries, certain drug
30 | classes, or particular drugs to prevent fraud, abuse, overuse,
31 | and possible dangerous drug interactions. The Pharmaceutical

1 and Therapeutics Committee shall make recommendations to the
2 agency on drugs for which prior authorization is required. The
3 agency shall inform the Pharmaceutical and Therapeutics
4 Committee of its decisions regarding drugs subject to prior
5 authorization. The agency is authorized to limit the entities
6 it contracts with or enrolls as Medicaid providers by
7 developing a provider network through provider credentialing.
8 The agency may competitively bid single-source-provider
9 contracts if procurement of goods or services results in
10 demonstrated cost savings to the state without limiting access
11 to care. The agency may limit its network based on the
12 assessment of beneficiary access to care, provider
13 availability, provider quality standards, time and distance
14 standards for access to care, the cultural competence of the
15 provider network, demographic characteristics of Medicaid
16 beneficiaries, practice and provider-to-beneficiary standards,
17 appointment wait times, beneficiary use of services, provider
18 turnover, provider profiling, provider licensure history,
19 previous program integrity investigations and findings, peer
20 review, provider Medicaid policy and billing compliance
21 records, clinical and medical record audits, and other
22 factors. Providers shall not be entitled to enrollment in the
23 Medicaid provider network. The agency shall determine
24 instances in which allowing Medicaid beneficiaries to purchase
25 durable medical equipment and other goods is less expensive to
26 the Medicaid program than long-term rental of the equipment or
27 goods. The agency may establish rules to facilitate purchases
28 in lieu of long-term rentals in order to protect against fraud
29 and abuse in the Medicaid program as defined in s. 409.913.
30 The agency may seek federal waivers necessary to administer
31 these policies.

1 (5) By December 1, 2005, the Agency for Health Care
2 Administration, in partnership with the Department of Elderly
3 Affairs, shall create an integrated, fixed-payment delivery
4 system for Medicaid recipients who are 60 years of age or
5 older. The Agency for Health Care Administration shall
6 implement the integrated system initially on a pilot basis in
7 two areas of the state. In one of the areas enrollment shall
8 be on a voluntary basis. The program must transfer all
9 Medicaid services for eligible elderly individuals who choose
10 to participate into an integrated-care management model
11 designed to serve Medicaid recipients in the community. The
12 program must combine all funding for Medicaid services
13 provided to individuals 60 years of age or older into the
14 integrated system, including funds for Medicaid home and
15 community-based waiver services; all Medicaid services
16 authorized in ss. 409.905 and 409.906, excluding funds for
17 Medicaid nursing home services unless the agency is able to
18 demonstrate how the integration of the funds will improve
19 coordinated care for these services in a less costly manner;
20 and Medicare coinsurance and deductibles for persons dually
21 eligible for Medicaid and Medicare as prescribed in s.
22 409.908(13).

23 (c) The agency must ensure that the
24 capitation-rate-setting methodology for the integrated system
25 is actuarially sound and reflects the intent to provide
26 quality care in the least restrictive setting. The agency must
27 also require integrated-system providers to develop a
28 credentialing system for service providers and to contract
29 with all Gold Seal nursing homes, where feasible, and exclude,
30 where feasible, chronically poor-performing facilities and
31 providers as defined by the agency. The integrated system must

1 provide that if the recipient resides in a noncontracted
2 residential facility licensed under chapter 400 or chapter 429
3 at the time the integrated system is initiated, the recipient
4 must be permitted to continue to reside in the noncontracted
5 facility as long as the recipient desires. The integrated
6 system must also provide that, in the absence of a contract
7 between the integrated-system provider and the residential
8 facility licensed under chapter 400 or chapter 429, current
9 Medicaid rates must prevail. The agency and the Department of
10 Elderly Affairs must jointly develop procedures to manage the
11 services provided through the integrated system in order to
12 ensure quality and recipient choice.

13 Section 84. Section 410.031, Florida Statutes, is
14 amended to read:

15 410.031 Legislative intent.--It is the intent of the
16 Legislature to encourage the provision of care for disabled
17 adults in family-type living arrangements in private homes as
18 an alternative to institutional or nursing home care for such
19 persons. The provisions of ss. 410.031-410.036 are intended to
20 be supplemental to the provisions of ~~chapters~~ chapter 400 and
21 429, relating to the licensing and regulation of nursing homes
22 and assisted living facilities, and do not exempt any person
23 who is otherwise subject to regulation under chapter 400 or
24 chapter 429.

25 Section 85. Section 410.034, Florida Statutes, is
26 amended to read:

27 410.034 Department determination of fitness to provide
28 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
29 caring for an adult who is related to such person by blood or
30 marriage is not subject to the Assisted Living Facilities Act.
31 If, however, the person who plans to provide home care under

1 | this act is found by the department to be unable to provide
2 | this care, the department shall notify the person wishing to
3 | provide home care of this determination, and the person shall
4 | not be eligible for subsidy payments under ss.
5 | 410.031-410.036.

6 | Section 86. Section 415.1111, Florida Statutes, is
7 | amended to read:

8 | 415.1111 Civil actions.--A vulnerable adult who has
9 | been abused, neglected, or exploited as specified in this
10 | chapter has a cause of action against any perpetrator and may
11 | recover actual and punitive damages for such abuse, neglect,
12 | or exploitation. The action may be brought by the vulnerable
13 | adult, or that person's guardian, by a person or organization
14 | acting on behalf of the vulnerable adult with the consent of
15 | that person or that person's guardian, or by the personal
16 | representative of the estate of a deceased victim without
17 | regard to whether the cause of death resulted from the abuse,
18 | neglect, or exploitation. The action may be brought in any
19 | court of competent jurisdiction to enforce such action and to
20 | recover actual and punitive damages for any deprivation of or
21 | infringement on the rights of a vulnerable adult. A party who
22 | prevails in any such action may be entitled to recover
23 | reasonable attorney's fees, costs of the action, and damages.
24 | The remedies provided in this section are in addition to and
25 | cumulative with other legal and administrative remedies
26 | available to a vulnerable adult. Notwithstanding the
27 | foregoing, any civil action for damages against any licensee
28 | or entity who establishes, controls, conducts, manages, or
29 | operates a facility licensed under part II of chapter 400
30 | relating to its operation of the licensed facility shall be
31 | brought pursuant to s. 400.023, or against any licensee or

1 | entity who establishes, controls, conducts, manages, or
2 | operates a facility licensed under part I ~~III~~ of chapter 429
3 | ~~400~~ relating to its operation of the licensed facility shall
4 | be brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
5 | entity shall not be vicariously liable for the acts or
6 | omissions of its employees or agents or any other third party
7 | in an action brought under this section.

8 | Section 87. Section 430.601, Florida Statutes, is
9 | amended to read:

10 | 430.601 Home care for the elderly; legislative
11 | intent.--It is the intent of the Legislature to encourage the
12 | provision of care for the elderly in family-type living
13 | arrangements in private homes as an alternative to
14 | institutional or nursing home care for such persons. The
15 | provisions of ss. 430.601-430.606 are intended to be
16 | supplemental to the provisions of chapters ~~chapter~~ 400 and
17 | 429, relating to the licensing and regulation of nursing homes
18 | and assisted living facilities, and do not exempt any person
19 | who is otherwise subject to regulation under those chapters
20 | ~~the provisions of that chapter.~~

21 | Section 88. Subsection (7) of section 430.703, Florida
22 | Statutes, is amended to read:

23 | 430.703 Definitions.--As used in this act, the term:
24 | (7) "Other qualified provider" means an entity
25 | licensed under chapter 400 or chapter 429 that demonstrates a
26 | long-term care continuum and meets all requirements pursuant
27 | to an interagency agreement between the agency and the
28 | department.

29 | Section 89. Paragraph (a) of subsection (3) of section
30 | 435.03, Florida Statutes, is amended to read:

31 | 435.03 Level 1 screening standards.--

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

2 (a) For employees and employers licensed or registered
3 pursuant to chapter 400 or chapter 429, and for employees and
4 employers of developmental services institutions as defined in
5 s. 393.063, intermediate care facilities for the
6 developmentally disabled as defined in s. 393.063, and mental
7 health treatment facilities as defined in s. 394.455, meets
8 the requirements of this chapter.

9 Section 90. Paragraph (a) of subsection (4) of section
10 435.04, Florida Statutes, is amended to read:

11 435.04 Level 2 screening standards.--

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

13 (a) For employees or employers licensed or registered
14 pursuant to chapter 400 or chapter 429, does not have a
15 confirmed report of abuse, neglect, or exploitation as defined
16 in s. 415.102(6), which has been uncontested or upheld under
17 s. 415.103.

18 Section 91. Paragraph (g) of subsection (1) of section
19 440.13, Florida Statutes, is amended to read:

20 440.13 Medical services and supplies; penalty for
21 violations; limitations.--

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

23 (g) "Health care facility" means any hospital licensed
24 under chapter 395 and any health care institution licensed
25 under chapter 400 or chapter 429.

26 Section 92. Subsection (1) of section 465.0235,
27 Florida Statutes, is amended to read:

28 465.0235 Automated pharmacy systems used by long-term
29 care facilities, hospices, or state correctional
30 institutions.--

31

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

7 Section 93. Subsection (8) of section 468.1685,
8 Florida Statutes, is amended to read:

9 468.1685 Powers and duties of board and
10 department.--It is the function and duty of the board,
11 together with the department, to:

12 (8) Set up procedures by rule for advising and acting
13 together with the Department of Health and other boards of
14 other health professions in matters affecting procedures and
15 methods for effectively enforcing the purpose of this part and
16 the administration of ~~chapters~~ chapter 400 and 429.

17 Section 94. Paragraph (k) of subsection (1) of section
18 468.505, Florida Statutes, is amended to read:

19 468.505 Exemptions; exceptions.--

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

23 (k) A person employed by a hospital licensed under
24 chapter 395, ~~or~~ by a nursing home ~~or assisted living facility~~
25 licensed under part II ~~or part III~~ of chapter 400, by an
26 assisted living facility licensed under chapter 429, or by a
27 continuing care facility certified under chapter 651, if the
28 person is employed in compliance with the laws and rules
29 adopted thereunder regarding the operation of its dietetic
30 department.

31

1 Section 95. Subsection (11) of section 477.025,
2 Florida Statutes, is amended to read:

3 477.025 Cosmetology salons; specialty salons;
4 requisites; licensure; inspection; mobile cosmetology
5 salons.--

6 (11) Facilities licensed under part II ~~or part III~~ of
7 chapter 400 or under part I of chapter 429 are ~~shall be~~ exempt
8 from ~~the provisions of~~ this section, and a cosmetologist
9 licensed pursuant to s. 477.019 may provide salon services
10 exclusively for facility residents.

11 Section 96. Paragraph (a) of subsection (2) of section
12 509.032, Florida Statutes, is amended to read:

13 509.032 Duties.--

14 (2) INSPECTION OF PREMISES.--

15 (a) The division has responsibility and jurisdiction
16 for all inspections required by this chapter. The division
17 has responsibility for quality assurance. Each licensed
18 establishment shall be inspected at least biannually, except
19 for transient and nontransient apartments, which shall be
20 inspected at least annually, and shall be inspected at such
21 other times as the division determines is necessary to ensure
22 the public's health, safety, and welfare. The division shall
23 establish a system to determine inspection frequency. Public
24 lodging units classified as resort condominiums or resort
25 dwellings are not subject to this requirement, but shall be
26 made available to the division upon request. If, during the
27 inspection of a public lodging establishment classified for
28 renting to transient or nontransient tenants, an inspector
29 identifies vulnerable adults who appear to be victims of
30 neglect, as defined in s. 415.102, or, in the case of a
31 building that is not equipped with automatic sprinkler

1 systems, tenants or clients who may be unable to self-preserve
2 in an emergency, the division shall convene meetings with the
3 following agencies as appropriate to the individual situation:
4 the Department of Health, the Department of Elderly Affairs,
5 the area agency on aging, the local fire marshal, the landlord
6 and affected tenants and clients, and other relevant
7 organizations, to develop a plan which improves the prospects
8 for safety of affected residents and, if necessary, identifies
9 alternative living arrangements such as facilities licensed
10 under part II ~~or part III~~ of chapter 400 or under chapter 429.

11 Section 97. Subsection (1) of section 509.241, Florida
12 Statutes, is amended to read:

13 509.241 Licenses required; exceptions.--

14 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
15 establishment and public food service establishment shall
16 obtain a license from the division. Such license may not be
17 transferred from one place or individual to another. It shall
18 be a misdemeanor of the second degree, punishable as provided
19 in s. 775.082 or s. 775.083, for such an establishment to
20 operate without a license. Local law enforcement shall provide
21 immediate assistance in pursuing an illegally operating
22 establishment. The division may refuse a license, or a renewal
23 thereof, to any establishment that is not constructed and
24 maintained in accordance with law and with the rules of the
25 division. The division may refuse to issue a license, or a
26 renewal thereof, to any establishment an operator of which,
27 within the preceding 5 years, has been adjudicated guilty of,
28 or has forfeited a bond when charged with, any crime
29 reflecting on professional character, including soliciting for
30 prostitution, pandering, letting premises for prostitution,
31 keeping a disorderly place, or illegally dealing in controlled

1 substances as defined in chapter 893, whether in this state or
2 in any other jurisdiction within the United States, or has had
3 a license denied, revoked, or suspended pursuant to s. 429.14
4 ~~s. 400.414~~. Licenses shall be renewed annually, and the
5 division shall adopt a rule establishing a staggered schedule
6 for license renewals. If any license expires while
7 administrative charges are pending against the license, the
8 proceedings against the license shall continue to conclusion
9 as if the license were still in effect.

10 Section 98. Subsection (1) of section 627.732, Florida
11 Statutes, is amended to read:

12 627.732 Definitions.--As used in ss. 627.730-627.7405,
13 the term:

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

1 physician or health care facility and whose compensation is
2 not materially affected by the usage or frequency of usage of
3 medical equipment or an entity that is 100-percent owned by
4 one or more hospitals or physicians. The term "broker" does
5 not include a person or entity that certifies, upon request of
6 an insurer, that:

7 (a) It is a clinic licensed under ss. 400.990-400.995;

8 (b) It is a 100-percent owner of medical equipment;

9 and

10 (c) The owner's only part-time lease of medical
11 equipment for personal injury protection patients is on a
12 temporary basis not to exceed 30 days in a 12-month period,
13 and such lease is solely for the purposes of necessary repair
14 or maintenance of the 100-percent-owned medical equipment or
15 pending the arrival and installation of the newly purchased or
16 a replacement for the 100-percent-owned medical equipment, or
17 for patients for whom, because of physical size or
18 claustrophobia, it is determined by the medical director or
19 clinical director to be medically necessary that the test be
20 performed in medical equipment that is open-style. The leased
21 medical equipment cannot be used by patients who are not
22 patients of the registered clinic for medical treatment of
23 services. Any person or entity making a false certification
24 under this subsection commits insurance fraud as defined in s.
25 817.234. However, the 30-day period provided in this paragraph
26 may be extended for an additional 60 days as applicable to
27 magnetic resonance imaging equipment if the owner certifies
28 that the extension otherwise complies with this paragraph.

29 Section 99. Subsection (2) of section 651.011, Florida
30 Statutes, is amended to read:

31

1 651.011 Definitions.--For the purposes of this
2 chapter, the term:

3 (2) "Continuing care" or "care" means furnishing
4 pursuant to a contract shelter and either nursing care or
5 personal services as defined in s. 429.02 ~~s. 400.402~~, whether
6 such nursing care or personal services are provided in the
7 facility or in another setting designated by the contract for
8 continuing care, to an individual not related by consanguinity
9 or affinity to the provider furnishing such care, upon payment
10 of an entrance fee. Other personal services provided shall be
11 designated in the continuing care contract. Contracts to
12 provide continuing care include agreements to provide care for
13 any duration, including contracts that are terminable by
14 either party.

15 Section 100. Paragraph (c) of subsection (2) of
16 section 651.022, Florida Statutes, is amended to read:

17 651.022 Provisional certificate of authority;
18 application.--

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

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

30 2. Evidence satisfactory to the office of the ability
31 of the applicant to comply with the provisions of this chapter

1 and with rules adopted by the commission pursuant to this
2 chapter.

3 3. A statement of whether a person identified in the
4 application for a provisional certificate of authority or the
5 administrator or manager of the facility, if such person has
6 been designated, or any such person living in the same
7 location:

8 a. Has been convicted of a felony or has pleaded nolo
9 contendere to a felony charge, or has been held liable or has
10 been enjoined in a civil action by final judgment, if the
11 felony or civil action involved fraud, embezzlement,
12 fraudulent conversion, or misappropriation of property.

13 b. Is subject to a currently effective injunctive or
14 restrictive order or federal or state administrative order
15 relating to business activity or health care as a result of an
16 action brought by a public agency or department, including,
17 without limitation, an action affecting a license under
18 chapter 400 or chapter 429.

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

27 Section 101. Subsection (6) of section 651.023,
28 Florida Statutes, is amended to read:

29 651.023 Certificate of authority; application.--

30 (6) The timeframes provided under s. 651.022(5) and
31 (6) apply to applications submitted under s. 651.021(2). The

1 office may not issue a certificate of authority under this
2 chapter to any facility which does not have a component which
3 is to be licensed pursuant to part II ~~or part III~~ of chapter
4 400 or to part I of chapter 429 or which will not offer
5 personal services or nursing services through written
6 contractual agreement. Any written contractual agreement must
7 be disclosed in the continuing care contract and is subject to
8 the provisions of s. 651.1151, relating to administrative,
9 vendor, and management contracts.

10 Section 102. Subsection (8) of section 651.055,
11 Florida Statutes, is amended to read:

12 651.055 Contracts; right to rescind.--

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

16 Section 103. Subsection (5) of section 651.095,
17 Florida Statutes, is amended to read:

18 651.095 Advertisements; requirements; penalties.--

19 (5) The provisions of this section shall control over
20 any conflicting provisions contained in part II ~~or part III~~ of
21 chapter 400 or in part I of chapter 429.

22 Section 104. Subsections (1), (4), (6), (7), and (8)
23 of section 651.118, Florida Statutes, are amended to read:

24 651.118 Agency for Health Care Administration;
25 certificates of need; sheltered beds; community beds.--

26 (1) The provisions of this section shall control in
27 the case of conflict with the provisions of the Health
28 Facility and Services Development Act, ss. 408.031-408.045;
29 the provisions of chapter 395; ~~or~~ the provisions of part II
30 parts II and III of chapter 400; or the provisions of part I
31 of chapter 429.

1 (4) The Agency for Health Care Administration shall
2 approve one sheltered nursing home bed for every four proposed
3 residential units, including those that are licensed under
4 part I of chapter 429 ~~part III of chapter 400~~, in the
5 continuing care facility unless the provider demonstrates the
6 need for a lesser number of sheltered nursing home beds based
7 on proposed utilization by prospective residents or
8 demonstrates the need for additional sheltered nursing home
9 beds based on actual utilization and demand by current
10 residents.

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

22 (7) Notwithstanding the provisions of subsection (2),
23 at the discretion of the continuing care provider, sheltered
24 nursing home beds may be used for persons who are not
25 residents of the continuing care facility and who are not
26 parties to a continuing care contract for a period of up to 5
27 years after the date of issuance of the initial nursing home
28 license. A provider whose 5-year period has expired or is
29 expiring may request the Agency for Health Care Administration
30 for an extension, not to exceed 30 percent of the total
31 sheltered nursing home beds, if the utilization by residents

1 of the nursing home facility in the sheltered beds will not
2 generate sufficient income to cover nursing home facility
3 expenses, as evidenced by one of the following:

4 (a) The nursing home facility has a net loss for the
5 most recent fiscal year as determined under generally accepted
6 accounting principles, excluding the effects of extraordinary
7 or unusual items, as demonstrated in the most recently audited
8 financial statement; or

9 (b) The nursing home facility would have had a pro
10 forma loss for the most recent fiscal year, excluding the
11 effects of extraordinary or unusual items, if revenues were
12 reduced by the amount of revenues from persons in sheltered
13 beds who were not residents, as reported on by a certified
14 public accountant.

15
16 The agency shall be authorized to grant an extension to the
17 provider based on the evidence required in this subsection.
18 The agency may request a continuing care facility to use up to
19 25 percent of the patient days generated by new admissions of
20 nonresidents during the extension period to serve Medicaid
21 recipients for those beds authorized for extended use if there
22 is a demonstrated need in the respective service area and if
23 funds are available. A provider who obtains an extension is
24 prohibited from applying for additional sheltered beds under
25 the provision of subsection (2), unless additional residential
26 units are built or the provider can demonstrate need by
27 continuing care facility residents to the Agency for Health
28 Care Administration. The 5-year limit does not apply to up to
29 five sheltered beds designated for inpatient hospice care as
30 part of a contractual arrangement with a hospice licensed
31 under part IV ~~VI~~ of chapter 400. A continuing care facility

1 that uses such beds after the 5-year period shall report such
2 use to the Agency for Health Care Administration. For purposes
3 of this subsection, "resident" means a person who, upon
4 admission to the continuing care facility, initially resides
5 in a part of the continuing care facility not licensed under
6 part II of chapter 400.

7 (8) A provider may petition the Agency for Health Care
8 Administration to use a designated number of sheltered nursing
9 home beds to provide extended congregate care as defined in s.
10 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
11 nursing home which can be adapted to meet the requirements for
12 extended congregate care. The provider may subsequently use
13 such beds as sheltered beds after notifying the agency of the
14 intended change. Any sheltered beds used to provide extended
15 congregate care pursuant to this subsection may not qualify
16 for funding under the Medicaid waiver. Any sheltered beds used
17 to provide extended congregate care pursuant to this
18 subsection may share common areas, services, and staff with
19 beds designated for nursing home care, provided that all of
20 the beds are under common ownership. For the purposes of this
21 subsection, fire and life safety codes applicable to nursing
22 home facilities shall apply.

23 Section 105. Subsection (2) of section 765.1103,
24 Florida Statutes, is amended to read:

25 765.1103 Pain management and palliative care.--

26 (2) Health care providers and practitioners regulated
27 under chapter 458, chapter 459, or chapter 464 must, as
28 appropriate, comply with a request for pain management or
29 palliative care from a patient under their care or, for an
30 incapacitated patient under their care, from a surrogate,
31 proxy, guardian, or other representative permitted to make

1 health care decisions for the incapacitated patient.
2 Facilities regulated under chapter 395, ~~or~~ chapter 400, or
3 chapter 429 must comply with the pain management or palliative
4 care measures ordered by the patient's physician.

5 Section 106. Subsection (2) of section 765.205,
6 Florida Statutes, is amended to read:

7 765.205 Responsibility of the surrogate.--

8 (2) The surrogate may authorize the release of
9 information and medical records to appropriate persons to
10 ensure the continuity of the principal's health care and may
11 authorize the admission, discharge, or transfer of the
12 principal to or from a health care facility or other facility
13 or program licensed under chapter 400 or chapter 429.

14 Section 107. Subsection (1) of section 768.735,
15 Florida Statutes, is amended to read:

16 768.735 Punitive damages; exceptions; limitation.--

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

23 Section 108. Paragraph (h) of subsection (1) of
24 section 893.13, Florida Statutes, is amended to read:

25 893.13 Prohibited acts; penalties.--

26 (1)

27 (h) Except as authorized by this chapter, it is
28 unlawful for any person to sell, manufacture, or deliver, or
29 possess with intent to sell, manufacture, or deliver, a
30 controlled substance in, on, or within 1,000 feet of the real
31 property comprising an assisted living facility, as that term

1 is used in chapter ~~429~~ 400. Any person who violates this
2 paragraph with respect to:

3 1. A controlled substance named or described in s.
4 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
5 commits a felony of the first degree, punishable as provided
6 in s. 775.082, s. 775.083, or s. 775.084.

7 2. A controlled substance named or described in s.
8 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,
9 (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a
10 felony of the second degree, punishable as provided in s.
11 775.082, s. 775.083, or s. 775.084.

12 Section 109. Paragraph (a) of subsection (4) of
13 section 943.0585, Florida Statutes, is amended to read:

14 943.0585 Court-ordered expunction of criminal history
15 records.--The courts of this state have jurisdiction over
16 their own procedures, including the maintenance, expunction,
17 and correction of judicial records containing criminal history
18 information to the extent such procedures are not inconsistent
19 with the conditions, responsibilities, and duties established
20 by this section. Any court of competent jurisdiction may order
21 a criminal justice agency to expunge the criminal history
22 record of a minor or an adult who complies with the
23 requirements of this section. The court shall not order a
24 criminal justice agency to expunge a criminal history record
25 until the person seeking to expunge a criminal history record
26 has applied for and received a certificate of eligibility for
27 expunction pursuant to subsection (2). A criminal history
28 record that relates to a violation of s. 393.135, s. 394.4593,
29 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
30 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
31 s. 847.0145, s. 893.135, s. 916.1075, or a violation

1 enumerated in s. 907.041 may not be expunged, without regard
2 to whether adjudication was withheld, if the defendant was
3 found guilty of or pled guilty or nolo contendere to the
4 offense, or if the defendant, as a minor, was found to have
5 committed, or pled guilty or nolo contendere to committing,
6 the offense as a delinquent act. The court may only order
7 expunction of a criminal history record pertaining to one
8 arrest or one incident of alleged criminal activity, except as
9 provided in this section. The court may, at its sole
10 discretion, order the expunction of a criminal history record
11 pertaining to more than one arrest if the additional arrests
12 directly relate to the original arrest. If the court intends
13 to order the expunction of records pertaining to such
14 additional arrests, such intent must be specified in the
15 order. A criminal justice agency may not expunge any record
16 pertaining to such additional arrests if the order to expunge
17 does not articulate the intention of the court to expunge a
18 record pertaining to more than one arrest. This section does
19 not prevent the court from ordering the expunction of only a
20 portion of a criminal history record pertaining to one arrest
21 or one incident of alleged criminal activity. Notwithstanding
22 any law to the contrary, a criminal justice agency may comply
23 with laws, court orders, and official requests of other
24 jurisdictions relating to expunction, correction, or
25 confidential handling of criminal history records or
26 information derived therefrom. This section does not confer
27 any right to the expunction of any criminal history record,
28 and any request for expunction of a criminal history record
29 may be denied at the sole discretion of the court.

30 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
31 criminal history record of a minor or an adult which is

1 | ordered expunged by a court of competent jurisdiction pursuant
2 | to this section must be physically destroyed or obliterated by
3 | any criminal justice agency having custody of such record;
4 | except that any criminal history record in the custody of the
5 | department must be retained in all cases. A criminal history
6 | record ordered expunged that is retained by the department is
7 | confidential and exempt from the provisions of s. 119.07(1)
8 | and s. 24(a), Art. I of the State Constitution and not
9 | available to any person or entity except upon order of a court
10 | of competent jurisdiction. A criminal justice agency may
11 | retain a notation indicating compliance with an order to
12 | expunge.

13 | (a) The person who is the subject of a criminal
14 | history record that is expunged under this section or under
15 | other provisions of law, including former s. 893.14, former s.
16 | 901.33, and former s. 943.058, may lawfully deny or fail to
17 | acknowledge the arrests covered by the expunged record, except
18 | when the subject of the record:

- 19 | 1. Is a candidate for employment with a criminal
20 | justice agency;
21 | 2. Is a defendant in a criminal prosecution;
22 | 3. Concurrently or subsequently petitions for relief
23 | under this section or s. 943.059;
24 | 4. Is a candidate for admission to The Florida Bar;
25 | 5. Is seeking to be employed or licensed by or to
26 | contract with the Department of Children and Family Services
27 | or the Department of Juvenile Justice or to be employed or
28 | used by such contractor or licensee in a sensitive position
29 | having direct contact with children, the developmentally
30 | disabled, the aged, or the elderly as provided in s.
31 | 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

1 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
2 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400, or chapter
3 429; or

4 6. Is seeking to be employed or licensed by the
5 Department of Education, any district school board, any
6 university laboratory school, any charter school, any private
7 or parochial school, or any local governmental entity that
8 licenses child care facilities.

9 Section 110. Paragraph (a) of subsection (4) of
10 section 943.059, Florida Statutes, is amended to read:

11 943.059 Court-ordered sealing of criminal history
12 records.--The courts of this state shall continue to have
13 jurisdiction over their own procedures, including the
14 maintenance, sealing, and correction of judicial records
15 containing criminal history information to the extent such
16 procedures are not inconsistent with the conditions,
17 responsibilities, and duties established by this section. Any
18 court of competent jurisdiction may order a criminal justice
19 agency to seal the criminal history record of a minor or an
20 adult who complies with the requirements of this section. The
21 court shall not order a criminal justice agency to seal a
22 criminal history record until the person seeking to seal a
23 criminal history record has applied for and received a
24 certificate of eligibility for sealing pursuant to subsection
25 (2). A criminal history record that relates to a violation of
26 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
27 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
28 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
29 916.1075, or a violation enumerated in s. 907.041 may not be
30 sealed, without regard to whether adjudication was withheld,
31 if the defendant was found guilty of or pled guilty or nolo

1 | contendere to the offense, or if the defendant, as a minor,
2 | was found to have committed or pled guilty or nolo contendere
3 | to committing the offense as a delinquent act. The court may
4 | only order sealing of a criminal history record pertaining to
5 | one arrest or one incident of alleged criminal activity,
6 | except as provided in this section. The court may, at its sole
7 | discretion, order the sealing of a criminal history record
8 | pertaining to more than one arrest if the additional arrests
9 | directly relate to the original arrest. If the court intends
10 | to order the sealing of records pertaining to such additional
11 | arrests, such intent must be specified in the order. A
12 | criminal justice agency may not seal any record pertaining to
13 | such additional arrests if the order to seal does not
14 | articulate the intention of the court to seal records
15 | pertaining to more than one arrest. This section does not
16 | prevent the court from ordering the sealing of only a portion
17 | of a criminal history record pertaining to one arrest or one
18 | incident of alleged criminal activity. Notwithstanding any law
19 | to the contrary, a criminal justice agency may comply with
20 | laws, court orders, and official requests of other
21 | jurisdictions relating to sealing, correction, or confidential
22 | handling of criminal history records or information derived
23 | therefrom. This section does not confer any right to the
24 | sealing of any criminal history record, and any request for
25 | sealing a criminal history record may be denied at the sole
26 | discretion of the court.

27 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
28 | criminal history record of a minor or an adult which is
29 | ordered sealed by a court of competent jurisdiction pursuant
30 | to this section is confidential and exempt from the provisions
31 | of s. 119.07(1) and s. 24(a), Art. I of the State Constitution

1 and is available only to the person who is the subject of the
2 record, to the subject's attorney, to criminal justice
3 agencies for their respective criminal justice purposes, or to
4 those entities set forth in subparagraphs (a)1., 4., 5., and
5 6. for their respective licensing and employment purposes.

6 (a) The subject of a criminal history record sealed
7 under this section or under other provisions of law, including
8 former s. 893.14, former s. 901.33, and former s. 943.058, may
9 lawfully deny or fail to acknowledge the arrests covered by
10 the sealed record, except when the subject of the record:

11 1. Is a candidate for employment with a criminal
12 justice agency;

13 2. Is a defendant in a criminal prosecution;

14 3. Concurrently or subsequently petitions for relief
15 under this section or s. 943.0585;

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

17 5. Is seeking to be employed or licensed by or to
18 contract with the Department of Children and Family Services
19 or the Department of Juvenile Justice or to be employed or
20 used by such contractor or licensee in a sensitive position
21 having direct contact with children, the developmentally
22 disabled, the aged, or the elderly as provided in s.
23 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
24 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
25 415.103, s. 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400,
26 or chapter 429; or

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

1 Section 111. The Division of Statutory Revision of the
2 Office of Legislative Services is requested to prepare a
3 reviser's bill for introduction at a subsequent session of the
4 Legislature to conform the Florida Statutes to changes made by
5 this act.

6 Section 112. This act shall take effect July 1, 2006.

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 388

11 The committee substitute contains numerous technical
12 amendments relating to statutory references.

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