

1                                   A bill to be entitled

2           An act relating to assisted care communities;

3           creating ch. 429, F.S.; transferring part III

4           of ch. 400, F.S., relating to assisted living

5           facilities, to part I of ch. 429, F.S.;

6           transferring part VII of ch. 400, F.S.,

7           relating to adult family-care homes, to part II

8           of ch. 429, F.S.; transferring part V of ch.

9           400, F.S., relating to adult day care centers,

10          to part III of ch. 429, F.S.; amending ss.

11          101.655, 189.428, 196.1975, 202.125, 205.1965,

12          212.031, 212.08, 296.02, 381.0035, 381.745,

13          393.063, 393.506, 394.455, 394.4574, 394.463,

14          400.0063, 400.0069, 400.0073, 400.0077,

15          400.0239, 400.119, 400.141, 400.191, 400.215,

16          400.402, 400.404, 400.407, 400.4071, 400.408,

17          400.411, 400.412, 400.414, 400.415, 400.417,

18          400.4174, 400.4176, 400.4178, 400.418, 400.419,

19          400.42, 400.422, 400.424, 400.4255, 400.4256,

20          400.426, 400.427, 400.428, 400.429, 400.4293,

21          400.431, 400.441, 400.442, 400.444, 400.447,

22          400.452, 400.462, 400.464, 400.497, 400.55,

23          400.551, 400.552, 400.553, 400.554, 400.555,

24          400.556, 400.5565, 400.557, 400.5571, 400.5572,

25          400.5575, 400.558, 400.559, 400.56, 400.562,

26          400.563, 400.564, 400.601, 400.616, 400.617,

27          400.618, 400.619, 400.6194, 400.6196, 400.621,

28          400.6211, 400.622, 400.625, 400.6255, 400.628,

29          400.629, 400.93, 400.962, 400.980, 400.9905,

30          401.23, 402.164, 408.032, 408.033, 408.034,

31          408.831, 409.212, 409.905, 409.906, 409.907,

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 providing that physician assistants are subject  
 9 to certain requirements in the same manner as  
 10 physicians; requesting the Division of  
 11 Statutory Revision to make necessary conforming  
 12 changes to the Florida Statutes; providing an  
 13 effective date.

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

16  
 17 Section 1. Chapter 429, Florida Statutes, is created,  
 18 to be entitled "Assisted Care Communities."

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

1 429.255, 429.256, 429.26, 429.27, 429.275, 429.28, 429.29,  
 2 429.293, 429.294, 429.295, 429.296, 429.297, 429.298, 429.31,  
 3 429.34, 429.35, 429.41, 429.42, 429.44, 429.445, 429.47,  
 4 429.49, 429.51, 429.52, 429.53, and 429.54, Florida Statutes,  
 5 respectively, designated as part I of chapter 429, Florida  
 6 Statutes, and entitled "ASSISTED LIVING FACILITIES."

7 Section 3. Sections 400.616, 400.617, 400.618,  
 8 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622,  
 9 400.625, 400.6255, 400.628, 400.629, Florida Statutes, are  
 10 renumbered as sections 429.60, 429.63, 429.65, 429.67, 429.69,  
 11 429.71, 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and  
 12 429.87, Florida Statutes, respectively, designated as part II  
 13 of chapter 429, Florida Statutes, and entitled "ADULT  
 14 FAMILY-CARE HOMES."

15 Section 4. Sections 400.55, 400.551, 400.552, 400.553,  
 16 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,  
 17 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562,  
 18 400.563, and 400.564, Florida Statutes, are renumbered as  
 19 sections 429.90, 429.901, 429.903, 429.905, 429.907, 429.909,  
 20 429.911, 429.913, 429.915, 429.917, 429.919, 429.921, 429.923,  
 21 429.925, 429.927, 429.929, 429.931, and 429.933, Florida  
 22 Statutes, designated as part III of chapter 429, Florida  
 23 Statutes, and entitled "ADULT DAY CARE CENTERS."

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

26 101.655 Supervised voting by absent electors in  
 27 certain facilities.--

28 (1) The supervisor of elections of a county shall  
 29 provide supervised voting for absent electors residing in any  
 30 assisted living facility, as defined in s. 429.02 ~~s. 400.402~~,  
 31 or nursing home facility, as defined in s. 400.021, within

1 that county at the request of any administrator of such a  
2 facility. Such request for supervised voting in the facility  
3 shall be made by submitting a written request to the  
4 supervisor of elections no later than 21 days prior to the  
5 election for which that request is submitted. The request  
6 shall specify the name and address of the facility and the  
7 name of the electors who wish to vote absentee in that  
8 election. If the request contains the names of fewer than five  
9 voters, the supervisor of elections is not required to provide  
10 supervised voting.

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

13 189.428 Special districts; oversight review process.--

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

22 Section 7. Paragraph (b) of subsection (2) of section  
23 196.1975, Florida Statutes, is amended to read:

24 196.1975 Exemption for property used by nonprofit  
25 homes for the aged.--Nonprofit homes for the aged are exempt  
26 to the extent that they meet the following criteria:

27 (2) A facility will not qualify as a "home for the  
28 aged" unless at least 75 percent of the occupants are over the  
29 age of 62 years or totally and permanently disabled. For  
30 homes for the aged which are exempt from paying income taxes  
31 to the United States as specified in subsection (1), licensing

1 by the Agency for Health Care Administration is required for  
2 ad valorem tax exemption hereunder only if the home:

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

5 Section 8. Paragraph (c) of subsection (4) of section  
6 202.125, Florida Statutes, is amended to read:

7 202.125 Sales of communications services; specified  
8 exemptions.--

9 (4) The sale of communications services to a home for  
10 the aged, religious institution or educational institution  
11 that is exempt from federal income tax under s. 501(c)(3) of  
12 the Internal Revenue Code, or by a religious institution that  
13 is exempt from federal income tax under s. 501(c)(3) of the  
14 Internal Revenue Code having an established physical place for  
15 worship at which nonprofit religious services and activities  
16 are regularly conducted and carried on, is exempt from the  
17 taxes imposed or administered pursuant to ss. 202.12 and  
18 202.19. As used in this subsection, the term:

19 (c) "Home for the aged" includes any nonprofit  
20 corporation:

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

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

29 Section 9. Section 205.1965, Florida Statutes, is  
30 amended to read:

31

1           205.1965 Assisted living facilities.--A county or  
 2 municipality may not issue an occupational license for the  
 3 operation of an assisted living facility pursuant to ~~part III~~  
 4 ~~of~~ chapter 429 ~~400~~ without first ascertaining that the  
 5 applicant has been licensed by the Agency for Health Care  
 6 Administration to operate such facility at the specified  
 7 location or locations. The Agency for Health Care  
 8 Administration shall furnish to local agencies responsible for  
 9 issuing occupational licenses sufficient instructions for  
 10 making the above required determinations.

11           Section 10. Paragraph (b) of subsection (1) of section  
 12 212.031, Florida Statutes, is amended to read:

13           212.031 Tax on rental or license fee for use of real  
 14 property.--

15           (1)

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

1 that is licensed or certified in whole or in part under  
2 chapter 400, chapter 429, or chapter 651; or that provides  
3 residences to the elderly and is financed by a mortgage or  
4 loan made or insured by the United States Department of  
5 Housing and Urban Development under s. 202, s. 202 with a s. 8  
6 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the  
7 National Housing Act; or other such similar facility that  
8 provides residences primarily for the elderly.

9 Section 11. Paragraph (i) of subsection (7) of section  
10 212.08, Florida Statutes, is amended to read:

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

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

1 certificate that is not in strict compliance with this  
 2 subsection and the rules is liable for and shall pay the tax.  
 3 The department may adopt rules to administer this subsection.

4 (i) Hospital meals and rooms.--Also exempt from  
 5 payment of the tax imposed by this chapter on rentals and  
 6 meals are patients and inmates of any hospital or other  
 7 physical plant or facility designed and operated primarily for  
 8 the care of persons who are ill, aged, infirm, mentally or  
 9 physically incapacitated, or otherwise dependent on special  
 10 care or attention. Residents of a home for the aged are exempt  
 11 from payment of taxes on meals provided through the facility.  
 12 A home for the aged is defined as a facility that is licensed  
 13 or certified in part or in whole under chapter 400, chapter  
 14 429, or chapter 651, or that is financed by a mortgage loan  
 15 made or insured by the United States Department of Housing and  
 16 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.  
 17 221(d)(3) or (4), s. 232, or s. 236 of the National Housing  
 18 Act, or other such similar facility designed and operated  
 19 primarily for the care of the aged.

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

22 296.02 Definitions.--For the purposes of this part,  
 23 except where the context clearly indicates otherwise:

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

26 Section 13. Subsections (1) and (3) of section  
 27 381.0035, Florida Statutes, are amended to read:

28 381.0035 Educational course on HIV and AIDS; employees  
 29 and clients of certain health care facilities.--

30 (1) The Department of Health shall require all  
 31 employees and clients of facilities licensed under chapters



1 393, 394, and 397 and employees of facilities licensed under  
 2 chapter 395, ~~and~~ parts II, III, and IV, ~~and VI~~ of chapter 400,  
 3 and part I of chapter 429 to complete, biennially, a  
 4 continuing educational course on the modes of transmission,  
 5 infection control procedures, clinical management, and  
 6 prevention of human immunodeficiency virus and acquired immune  
 7 deficiency syndrome with an emphasis on appropriate behavior  
 8 and attitude change. Such instruction shall include  
 9 information on current Florida law and its impact on testing,  
 10 confidentiality of test results, and treatment of patients and  
 11 any protocols and procedures applicable to human  
 12 immunodeficiency counseling and testing, reporting, the  
 13 offering of HIV testing to pregnant women, and partner  
 14 notification issues pursuant to ss. 381.004 and 384.25.

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

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

22 381.745 Definitions; ss. 381.739-381.79.--As used in  
 23 ss. 381.739-381.79, the term:

24 (9) "Transitional living facility" means a  
 25 state-approved facility, as defined and licensed under chapter  
 26 400 or chapter 429, or a facility approved by the brain and  
 27 spinal cord injury program in accordance with this chapter.

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

30 393.063 Definitions.--For the purposes of this  
 31 chapter:

1           (24) "Intermediate care facility for the  
2 developmentally disabled" or "ICF/DD" means a residential  
3 facility licensed and certified pursuant to part VIII ~~VI~~ of  
4 chapter 400.

5           Section 16. Paragraph (b) of subsection (1) of section  
6 393.506, Florida Statutes, is amended to read:

7           393.506 Administration of medication.--

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

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

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

21           394.455 Definitions.--As used in this part, unless the  
22 context clearly requires otherwise, the term:

23           (10) "Facility" means any hospital, community  
24 facility, public or private facility, or receiving or  
25 treatment facility providing for the evaluation, diagnosis,  
26 care, treatment, training, or hospitalization of persons who  
27 appear to have a mental illness or have been diagnosed as  
28 having a mental illness. "Facility" does not include any  
29 program or entity licensed pursuant to chapter 400 or chapter  
30 429.

31

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

4           394.4574 Department responsibilities for a mental  
5 health resident who resides in an assisted living facility  
6 that holds a limited mental health license.--

7           (2) The department must ensure that:

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

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

31

1           (e) The mental health services provider assigns a case  
2 manager to each mental health resident who lives in an  
3 assisted living facility with a limited mental health license.  
4 The case manager is responsible for coordinating the  
5 development of and implementation of the community living  
6 support plan defined in s. 429.02 ~~s. 400.402~~. The plan must be  
7 updated at least annually.

8           Section 19. Paragraph (b) of subsection (2) of section  
9 394.463, Florida Statutes, is amended to read:

10           394.463 Involuntary examination.--

11           (2) INVOLUNTARY EXAMINATION.--

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

29           Section 20. Paragraph (b) of subsection (3) of section  
30 400.0063, Florida Statutes, is amended to read:

31

1           400.0063 Establishment of Office of State Long-Term  
2 Care Ombudsman; designation of ombudsman and legal advocate.--  
3           (3)  
4           (b) The duties of the legal advocate shall include,  
5 but not be limited to:  
6           1. Assisting the ombudsman in carrying out the duties  
7 of the office with respect to the abuse, neglect, or violation  
8 of rights of residents of long-term care facilities.  
9           2. Assisting the state and local ombudsman councils in  
10 carrying out their responsibilities under this part.  
11           3. Initiating and prosecuting legal and equitable  
12 actions to enforce the rights of long-term care facility  
13 residents as defined in this chapter or chapter 429.  
14           4. Serving as legal counsel to the state and local  
15 ombudsman councils, or individual members thereof, against  
16 whom any suit or other legal action is initiated in connection  
17 with the performance of the official duties of the councils or  
18 an individual member.  
19           Section 21. Subsection (3) of section 400.0069,  
20 Florida Statutes, is amended to read:  
21           400.0069 Local long-term care ombudsman councils;  
22 duties; membership.--  
23           (3) In order to carry out the duties specified in  
24 subsection (2), the local ombudsman council is authorized,  
25 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any  
26 long-term care facility without notice or first obtaining a  
27 warrant, subject to the provisions of s. 400.0073(5).  
28           Section 22. Paragraphs (c) and (f) of subsection (5)  
29 and subsection (6) of section 400.0073, Florida Statutes, are  
30 amended to read:  
31

1           400.0073 State and local ombudsman council

2 investigations.--

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

5           (c) Inspections shall be conducted in a manner which  
6 will impose no unreasonable burden on nursing homes or  
7 long-term care facilities, consistent with the underlying  
8 purposes of this part and chapter 429. Unnecessary duplication  
9 of efforts among council members or the councils shall be  
10 reduced to the extent possible.

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

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

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

21           400.0077 Confidentiality.--

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

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

29           400.0239 Quality of Long-Term Care Facility  
30 Improvement Trust Fund.--

31

1           (1) There is created within the Agency for Health Care  
2 Administration a Quality of Long-Term Care Facility  
3 Improvement Trust Fund to support activities and programs  
4 directly related to improvement of the care of nursing home  
5 and assisted living facility residents. The trust fund shall  
6 be funded through proceeds generated pursuant to ss. 400.0238  
7 and 429.298 ~~400.4298~~, through funds specifically appropriated  
8 by the Legislature, through gifts, endowments, and other  
9 charitable contributions allowed under federal and state law,  
10 and through federal nursing home civil monetary penalties  
11 collected by the Centers for Medicare and Medicaid Services  
12 and returned to the state. These funds must be utilized in  
13 accordance with federal requirements.

14           Section 25. Subsections (1) and (4) of section  
15 400.119, Florida Statutes, are amended to read:

16           400.119 Confidentiality of records and meetings of  
17 risk management and quality assurance committees.--

18           (1) Records of meetings of the risk management and  
19 quality assurance committee of a long-term care facility  
20 licensed under this part or part I III of ~~this~~ chapter 429, as  
21 well as incident reports filed with the facility's risk  
22 manager and administrator, notifications of the occurrence of  
23 an adverse incident, and adverse incident reports from the  
24 facility are confidential and exempt from s. 119.07(1) and s.  
25 24(a), Art. I of the State Constitution. However, if the  
26 Agency for Health Care Administration has a reasonable belief  
27 that conduct by a staff member or employee of a facility is  
28 criminal activity or grounds for disciplinary action by a  
29 regulatory board, the agency may disclose such records to the  
30 appropriate law enforcement agency or regulatory board.

31

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

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

8           400.141 Administration and management of nursing home  
9 facilities.--Every licensed facility shall comply with all  
10 applicable standards and rules of the agency and shall:

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



1 In order to be eligible for the repackaging, a nursing  
2 facility resident for whom the medication is to be repackaged  
3 shall sign an informed consent form provided by the facility  
4 which includes an explanation of the repackaging process and  
5 which notifies the resident of the immunities from liability  
6 provided herein. A pharmacist who repackages and relabels  
7 prescription medications, as authorized under this subsection,  
8 may charge a reasonable fee for costs resulting from the  
9 implementation of this provision.

10 (7) If the facility has a standard license or is a  
11 Gold Seal facility, exceeds the minimum required hours of  
12 licensed nursing and certified nursing assistant direct care  
13 per resident per day, and is part of a continuing care  
14 facility licensed under chapter 651 or a retirement community  
15 that offers other services pursuant to part III of this  
16 chapter or part I or part III of chapter 429, part IV, or part  
17 ~~IV~~ on a single campus, be allowed to share programming and  
18 staff. At the time of inspection and in the semiannual report  
19 required pursuant to subsection (15), a continuing care  
20 facility or retirement community that uses this option must  
21 demonstrate through staffing records that minimum staffing  
22 requirements for the facility were met. Licensed nurses and  
23 certified nursing assistants who work in the nursing home  
24 facility may be used to provide services elsewhere on campus  
25 if the facility exceeds the minimum number of direct care  
26 hours required per resident per day and the total number of  
27 residents receiving direct care services from a licensed nurse  
28 or a certified nursing assistant does not cause the facility  
29 to violate the staffing ratios required under s. 400.23(3)(a).  
30 Compliance with the minimum staffing ratios shall be based on  
31 total number of residents receiving direct care services,

1 regardless of where they reside on campus. If the facility  
2 receives a conditional license, it may not share staff until  
3 the conditional license status ends. This subsection does not  
4 restrict the agency's authority under federal or state law to  
5 require additional staff if a facility is cited for  
6 deficiencies in care which are caused by an insufficient  
7 number of certified nursing assistants or licensed nurses. The  
8 agency may adopt rules for the documentation necessary to  
9 determine compliance with this provision.

10

11 Facilities that have been awarded a Gold Seal under the  
12 program established in s. 400.235 may develop a plan to  
13 provide certified nursing assistant training as prescribed by  
14 federal regulations and state rules and may apply to the  
15 agency for approval of their program.

16 Section 27. Paragraph (a) of subsection (2) of section  
17 400.191, Florida Statutes, is amended to read:

18 400.191 Availability, distribution, and posting of  
19 reports and records.--

20 (2) The agency shall provide additional information in  
21 consumer-friendly printed and electronic formats to assist  
22 consumers and their families in comparing and evaluating  
23 nursing home facilities.

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

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

30 2. Whether such nursing home facilities are  
31 proprietary or nonproprietary.

- 1           3. The current owner of the facility's license and the  
2 year that that entity became the owner of the license.
- 3           4. The name of the owner or owners of each facility  
4 and whether the facility is affiliated with a company or other  
5 organization owning or managing more than one nursing facility  
6 in this state.
- 7           5. The total number of beds in each facility.
- 8           6. The number of private and semiprivate rooms in each  
9 facility.
- 10          7. The religious affiliation, if any, of each  
11 facility.
- 12          8. The languages spoken by the administrator and staff  
13 of each facility.
- 14          9. Whether or not each facility accepts Medicare or  
15 Medicaid recipients or insurance, health maintenance  
16 organization, Veterans Administration, CHAMPUS program, or  
17 workers' compensation coverage.
- 18          10. Recreational and other programs available at each  
19 facility.
- 20          11. Special care units or programs offered at each  
21 facility.
- 22          12. Whether the facility is a part of a retirement  
23 community that offers other services pursuant to part III of  
24 this chapter or part I or part III of chapter 429, part IV, or  
25 part V.
- 26          13. Survey and deficiency information contained on the  
27 Online Survey Certification and Reporting (OSCAR) system of  
28 the federal Health Care Financing Administration, including  
29 annual survey, revisit, and complaint survey information, for  
30 each facility for the past 45 months. For noncertified  
31 nursing homes, state survey and deficiency information,

1 including annual survey, revisit, and complaint survey  
2 information for the past 45 months shall be provided.

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

13       Section 28. Paragraph (b) of subsection (2) of section  
14 400.215, Florida Statutes, is amended to read:

15       400.215 Personnel screening requirement.--

16       (2) Employers and employees shall comply with the  
17 requirements of s. 435.05.

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

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

20 Section 29. Section 400.402, Florida Statutes, is  
21 renumbered as section 429.02, Florida Statutes, and amended to  
22 read:

23 429.02 ~~400.402~~ Definitions.--When used in this part,  
24 the term:

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

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

31

1           (3) "Agency" means the Agency for Health Care  
2 Administration.

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

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

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

23           (7) "Chemical restraint" means a pharmacologic drug  
24 that physically limits, restricts, or deprives an individual  
25 of movement or mobility, and is used for discipline or  
26 convenience and not required for the treatment of medical  
27 symptoms.

28           (8) "Community living support plan" means a written  
29 document prepared by a mental health resident and the  
30 resident's mental health case manager in consultation with the  
31 administrator of an assisted living facility with a limited

1 mental health license or the administrator's designee. A copy  
2 must be provided to the administrator. The plan must include  
3 information about the supports, services, and special needs of  
4 the resident which enable the resident to live in the assisted  
5 living facility and a method by which facility staff can  
6 recognize and respond to the signs and symptoms particular to  
7 that resident which indicate the need for professional  
8 services.

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

18 (10) "Department" means the Department of Elderly  
19 Affairs.

20 (11) "Emergency" means a situation, physical  
21 condition, or method of operation which presents imminent  
22 danger of death or serious physical or mental harm to facility  
23 residents.

24 (12) "Extended congregate care" means acts beyond  
25 those authorized in subsection (17) that may be performed  
26 pursuant to part I of chapter 464 by persons licensed  
27 thereunder while carrying out their professional duties, and  
28 other supportive services which may be specified by rule. The  
29 purpose of such services is to enable residents to age in  
30 place in a residential environment despite mental or physical  
31

1 limitations that might otherwise disqualify them from  
2 residency in a facility licensed under this part.

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

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

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

28 (16) "Mental health resident" means an individual who  
29 receives social security disability income due to a mental  
30 disorder as determined by the Social Security Administration  
31 or receives supplemental security income due to a mental



1 disorder as determined by the Social Security Administration  
2 and receives optional state supplementation.

3 (17) "Personal services" means direct physical  
4 assistance with or supervision of the activities of daily  
5 living and the self-administration of medication and other  
6 similar services which the department may define by  
7 rule. "Personal services" shall not be construed to mean the  
8 provision of medical, nursing, dental, or mental health  
9 services.

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

19 (19) "Relative" means an individual who is the father,  
20 mother, stepfather, stepmother, son, daughter, brother,  
21 sister, grandmother, grandfather, great-grandmother,  
22 great-grandfather, grandson, granddaughter, uncle, aunt, first  
23 cousin, nephew, niece, husband, wife, father-in-law,  
24 mother-in-law, son-in-law, daughter-in-law, brother-in-law,  
25 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,  
26 half brother, or half sister of an owner or administrator.

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

29 (21) "Resident's representative or designee" means a  
30 person other than the owner, or an agent or employee of the  
31 facility, designated in writing by the resident, if legally

1 competent, to receive notice of changes in the contract  
2 executed pursuant to s. 429.24 ~~s. 400.424~~; to receive notice  
3 of and to participate in meetings between the resident and the  
4 facility owner, administrator, or staff concerning the rights  
5 of the resident; to assist the resident in contacting the  
6 ombudsman council if the resident has a complaint against the  
7 facility; or to bring legal action on behalf of the resident  
8 pursuant to s. 429.29 ~~s. 400.429~~.

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

21 (23) "Shared responsibility" means exploring the  
22 options available to a resident within a facility and the  
23 risks involved with each option when making decisions  
24 pertaining to the resident's abilities, preferences, and  
25 service needs, thereby enabling the resident and, if  
26 applicable, the resident's representative or designee, or the  
27 resident's surrogate, guardian, or attorney in fact, and the  
28 facility to develop a service plan which best meets the  
29 resident's needs and seeks to improve the resident's quality  
30 of life.

31

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

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

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

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

26          Section 30. Section 400.404, Florida Statutes, is  
27 renumbered as section 429.04, Florida Statutes, and amended to  
28 read:

29           429.04 ~~400.404~~ Facilities to be licensed;  
30 exemptions.--

31

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

4           (2) The following are exempt from licensure under this  
5 part:

6           (a) Any facility, institution, or other place operated  
7 by the Federal Government or any agency of the Federal  
8 Government.

9           (b) Any facility or part of a facility licensed under  
10 chapter 393 or chapter 394.

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

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

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

23           (f) Any facility that has been incorporated in this  
24 state for 50 years or more on or before July 1, 1983, and the  
25 board of directors of which is nominated or elected by the  
26 residents, until the facility is sold or its ownership is  
27 transferred; or any facility, with improvements or additions  
28 thereto, which has existed and operated continuously in this  
29 state for 60 years or more on or before July 1, 1989, is  
30 directly or indirectly owned and operated by a nationally  
31 recognized fraternal organization, is not open to the public,

1 and accepts only its own members and their spouses as  
2 residents.

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

1 II of chapter 400, and apartments designed for independent  
2 living located on the same campus.

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

10 Section 31. Section 400.407, Florida Statutes, is  
11 renumbered as section 429.07, Florida Statutes, and amended to  
12 read:

13 429.07 ~~400.407~~ License required; fee, display.--

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

16 (2) Separate licenses shall be required for facilities  
17 maintained in separate premises, even though operated under  
18 the same management. A separate license shall not be required  
19 for separate buildings on the same grounds.

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

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

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

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

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

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

31

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

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

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

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

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



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

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

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

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

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

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

27 |             e. Allow residents or, if applicable, a resident's  
28 | representative, designee, surrogate, guardian, or attorney in  
29 | fact to make a variety of personal choices, participate in  
30 | developing service plans, and share responsibility in  
31 | decisionmaking.

1 f. Implement the concept of managed risk.

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

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

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

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

27 6. Before admission of an individual to a facility  
28 licensed to provide extended congregate care services, the  
29 individual must undergo a medical examination as provided in  
30 s. 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a  
31 preliminary service plan for the individual.

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

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

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

17           a. A description of the facilities licensed to provide  
18 such services, including total number of beds licensed under  
19 this part.

20           b. The number and characteristics of residents  
21 receiving such services.

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

24           d. An analysis of deficiencies cited during licensure  
25 inspections.

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

29           f. Recommendations for statutory or regulatory  
30 changes.

31

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

6           h. Such other information as the department considers  
7 appropriate.

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

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

27           2. Facilities that are licensed to provide limited  
28 nursing services shall maintain a written progress report on  
29 each person who receives such nursing services, which report  
30 describes the type, amount, duration, scope, and outcome of  
31 services that are rendered and the general status of the

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

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

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

28           (b) In addition to the total fee assessed under  
29 paragraph (a), the agency shall require facilities that are  
30 licensed to provide extended congregate care services under  
31 this part to pay an additional fee per licensed facility. The

1 amount of the biennial fee shall be \$400 per license, with an  
2 additional fee of \$10 per resident based on the total licensed  
3 resident capacity of the facility. No part of this fee shall  
4 be returned to the facility. The agency may adjust the per bed  
5 license fee and the annual license fee once each year by not  
6 more than the average rate of inflation for the 12 months  
7 immediately preceding the increase.

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

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

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

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

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

1           Section 32. Section 400.4071, Florida Statutes, is  
2 renumbered as section 429.071, Florida Statutes, and amended  
3 to read:

4           429.071 ~~400.4071~~ Intergenerational respite care  
5 assisted living facility pilot program.--

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

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

12           (b) Prevent caregiver "burnout," in which the  
13 caregiver's health declines and he or she is unable to  
14 continue to provide care so that the only option for the  
15 person with disabilities or special needs is to receive  
16 institutional care.

17           (c) Foster the development of intergenerational  
18 respite care assisted living facilities to temporarily care  
19 for minors and adults with disabilities and elderly persons  
20 with special needs in the same facility and to give caregivers  
21 the time they need for rejuvenation and healing.

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

30           (a) Meet all applicable requirements and standards  
31 contained in this part ~~III of this chapter~~, except that, for

1 purposes of this section, the term "resident" means a person  
 2 of any age temporarily residing in and receiving care from the  
 3 facility.

4 (b) Provide respite care services for minors and  
 5 adults with disabilities and elderly persons with special  
 6 needs for a period of at least 24 hours but not for more than  
 7 14 consecutive days.

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

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

13 (3) The agency may establish policies necessary to  
 14 achieve the objectives specific to the pilot program and may  
 15 adopt rules necessary to implement the program.

16 (4) After 4 years, the agency shall present its report  
 17 on the effectiveness of the pilot program to the President of  
 18 the Senate and the Speaker of the House of Representatives and  
 19 its recommendation as to whether the Legislature should make  
 20 the program permanent.

21 Section 33. Section 400.408, Florida Statutes, is  
 22 renumbered as section 429.08, Florida Statutes, and amended to  
 23 read:

24 429.08 ~~400.408~~ Unlicensed facilities; referral of  
 25 person for residency to unlicensed facility; penalties;  
 26 verification of licensure status.--

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

30 (b) Except as provided under paragraph (d), any person  
 31 who owns, operates, or maintains an unlicensed assisted living



1 facility commits a felony of the third degree, punishable as  
2 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of  
3 continued operation is a separate offense.

4 (c) Any person found guilty of violating paragraph (a)  
5 a second or subsequent time commits a felony of the second  
6 degree, punishable as provided under s. 775.082, s. 775.083,  
7 or s. 775.084. Each day of continued operation is a separate  
8 offense.

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

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

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

27 (g) If the agency determines that an owner is  
28 operating or maintaining an assisted living facility without  
29 obtaining a license and determines that a condition exists in  
30 the facility that poses a threat to the health, safety, or  
31 welfare of a resident of the facility, the owner is subject to

1 the same actions and fines imposed against a licensed facility  
2 as specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

3 (h) Any person aware of the operation of an unlicensed  
4 assisted living facility must report that facility to the  
5 agency. The agency shall provide to the department's elder  
6 information and referral providers a list, by county, of  
7 licensed assisted living facilities, to assist persons who are  
8 considering an assisted living facility placement in locating  
9 a licensed facility.

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

23 (2) It is unlawful to knowingly refer a person for  
24 residency to an unlicensed assisted living facility; to an  
25 assisted living facility the license of which is under denial  
26 or has been suspended or revoked; or to an assisted living  
27 facility that has a moratorium on admissions. Any person who  
28 violates this subsection commits a noncriminal violation,  
29 punishable by a fine not exceeding \$500 as provided in s.  
30 775.083.

31

1           (a) Any health care practitioner, as defined in s.  
2 456.001, who is aware of the operation of an unlicensed  
3 facility shall report that facility to the agency. Failure to  
4 report a facility that the practitioner knows or has  
5 reasonable cause to suspect is unlicensed shall be reported to  
6 the practitioner's licensing board.

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

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

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

27           (e) The agency shall provide the department and the  
28 Department of Children and Family Services with a list of  
29 licensed facilities within each county and shall update the  
30 list at least quarterly.  
31

1 (f) At least annually, the agency shall notify, in  
 2 appropriate trade publications, physicians licensed under  
 3 chapter 458 or chapter 459, hospitals licensed under chapter  
 4 395, nursing home facilities licensed under part II of ~~this~~  
 5 chapter 400, and employees of the agency or the department, or  
 6 the Department of Children and Family Services, who are  
 7 responsible for referring persons for residency, that it is  
 8 unlawful to knowingly refer a person for residency to an  
 9 unlicensed assisted living facility and shall notify them of  
 10 the penalty for violating such prohibition. The department and  
 11 the Department of Children and Family Services shall, in turn,  
 12 notify service providers under contract to the respective  
 13 departments who have responsibility for resident referrals to  
 14 facilities. Further, the notice must direct each noticed  
 15 facility and individual to contact the appropriate agency  
 16 office in order to verify the licensure status of any facility  
 17 prior to referring any person for residency. Each notice must  
 18 include the name, telephone number, and mailing address of the  
 19 appropriate office to contact.

20 Section 34. Section 400.411, Florida Statutes, is  
 21 renumbered as section 429.11, Florida Statutes, and amended to  
 22 read:

23 429.11 ~~400.411~~ Initial application for license;  
 24 provisional license.--

25 (1) Application for a license shall be made to the  
 26 agency on forms furnished by it and shall be accompanied by  
 27 the appropriate license fee.

28 (2) The applicant may be an individual owner, a  
 29 corporation, a partnership, a firm, an association, or a  
 30 governmental entity.

31

1           (3) The application must be signed by the applicant  
2 under oath and must contain the following:

3           (a) The name, address, date of birth, and social  
4 security number of the applicant and the name by which the  
5 facility is to be known. If the applicant is a firm,  
6 partnership, or association, the application shall contain the  
7 name, address, date of birth, and social security number of  
8 every member thereof. If the applicant is a corporation, the  
9 application shall contain the corporation's name and address;  
10 the name, address, date of birth, and social security number  
11 of each of its directors and officers; and the name and  
12 address of each person having at least a 5-percent ownership  
13 interest in the corporation.

14           (b) The name and address of any professional service,  
15 firm, association, partnership, or corporation that is to  
16 provide goods, leases, or services to the facility if a  
17 5-percent or greater ownership interest in the service, firm,  
18 association, partnership, or corporation is owned by a person  
19 whose name must be listed on the application under paragraph  
20 (a).

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

1 appointed or a license denied, suspended or revoked, or was  
2 subject to a moratorium on admissions, or has had an  
3 injunctive proceeding initiated against it.

4 (d) A description and explanation of any exclusions,  
5 permanent suspensions, or terminations of the applicant from  
6 the Medicare or Medicaid programs. Proof of compliance with  
7 disclosure of ownership and control interest requirements of  
8 the Medicaid or Medicare programs shall be accepted in lieu of  
9 this submission.

10 (e) The names and addresses of persons of whom the  
11 agency may inquire as to the character, reputation, and  
12 financial responsibility of the owner and, if different from  
13 the applicant, the administrator and financial officer.

14 (f) Identification of all other homes or facilities,  
15 including the addresses and the license or licenses under  
16 which they operate, if applicable, which are currently  
17 operated by the applicant or administrator and which provide  
18 housing, meals, and personal services to residents.

19 (g) The location of the facility for which a license  
20 is sought and documentation, signed by the appropriate local  
21 government official, which states that the applicant has met  
22 local zoning requirements.

23 (h) The name, address, date of birth, social security  
24 number, education, and experience of the administrator, if  
25 different from the applicant.

26 (4) The applicant shall furnish satisfactory proof of  
27 financial ability to operate and conduct the facility in  
28 accordance with the requirements of this part. A certificate  
29 of authority, pursuant to chapter 651, may be provided as  
30 proof of financial ability.

31

1 (5) If the applicant is a continuing care facility  
2 certified under chapter 651, a copy of the facility's  
3 certificate of authority must be provided.

4 (6) The applicant shall provide proof of liability  
5 insurance as defined in s. 624.605.

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

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

11 (9) The applicant must furnish proof that the facility  
12 has received a satisfactory firesafety inspection. The local  
13 authority having jurisdiction or the State Fire Marshal must  
14 conduct the inspection within 30 days after written request by  
15 the applicant.

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

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

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

27 (13) A county or municipality may not issue an  
28 occupational license that is being obtained for the purpose of  
29 operating a facility regulated under this part without first  
30 ascertaining that the applicant has been licensed to operate  
31 such facility at the specified location or locations by the

1 agency. The agency shall furnish to local agencies  
2 responsible for issuing occupational licenses sufficient  
3 instruction for making such determinations.

4 Section 35. Section 400.412, Florida Statutes, is  
5 renumbered as section 429.12, Florida Statutes, and amended to  
6 read:

7 429.12 ~~400.412~~ Sale or transfer of ownership of a  
8 facility.--It is the intent of the Legislature to protect the  
9 rights of the residents of an assisted living facility when  
10 the facility is sold or the ownership thereof is transferred.  
11 Therefore, whenever a facility is sold or the ownership  
12 thereof is transferred, including leasing:

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

17 (2)(a) The transferor shall notify the agency in  
18 writing at least 60 days before the date of transfer of  
19 ownership.

20 (b) The new owner shall notify the residents, in  
21 writing, of the transfer of ownership within 7 days of his or  
22 her receipt of the license.

23 (3) The transferor shall be responsible and liable  
24 for:

25 (a) The lawful operation of the facility and the  
26 welfare of the residents domiciled in the facility until the  
27 date the transferee is licensed by the agency.

28 (b) Any and all penalties imposed against the facility  
29 for violations occurring before the date of transfer of  
30 ownership unless the penalty imposed is a moratorium on  
31 admissions or denial of licensure. The moratorium on



1 admissions or denial of licensure remains in effect after the  
2 transfer of ownership, unless the agency has approved the  
3 transferee's corrective action plan or the conditions which  
4 created the moratorium or denial have been corrected, and may  
5 be grounds for denial of license to the transferee in  
6 accordance with chapter 120.

7 (c) Any outstanding liability to the state, unless the  
8 transferee has agreed, as a condition of sale or transfer, to  
9 accept the outstanding liabilities and to guarantee payment  
10 therefor; except that, if the transferee fails to meet these  
11 obligations, the transferor shall remain liable for the  
12 outstanding liability.

13 (4) The transferor of a facility the license of which  
14 is denied pending an administrative hearing shall, as a part  
15 of the written transfer-of-ownership contract, advise the  
16 transferee that a plan of correction must be submitted by the  
17 transferee and approved by the agency at least 7 days before  
18 the transfer of ownership and that failure to correct the  
19 condition which resulted in the moratorium on admissions or  
20 denial of licensure is grounds for denial of the transferee's  
21 license.

22 (5) The transferee must provide the agency with proof  
23 of legal right to occupy the property before a license may be  
24 issued. Proof may include, but is not limited to, copies of  
25 warranty deeds, or copies of lease or rental agreements,  
26 contracts for deeds, quitclaim deeds, or other such  
27 documentation.

28 Section 36. Section 400.414, Florida Statutes, is  
29 renumbered as section 429.14, Florida Statutes, and amended to  
30 read:

31

1           429.14 ~~400.414~~ Denial, revocation, or suspension of  
2 license; imposition of administrative fine; grounds.--

3           (1) The agency may deny, revoke, or suspend any  
4 license issued under this part, or impose an administrative  
5 fine in the manner provided in chapter 120, for any of the  
6 following actions by an assisted living facility, for the  
7 actions of any person subject to level 2 background screening  
8 under s. 429.174 ~~s. 400.4174~~, or for the actions of any  
9 facility employee:

10           (a) An intentional or negligent act seriously  
11 affecting the health, safety, or welfare of a resident of the  
12 facility.

13           (b) The determination by the agency that the owner  
14 lacks the financial ability to provide continuing adequate  
15 care to residents.

16           (c) Misappropriation or conversion of the property of  
17 a resident of the facility.

18           (d) Failure to follow the criteria and procedures  
19 provided under part I of chapter 394 relating to the  
20 transportation, voluntary admission, and involuntary  
21 examination of a facility resident.

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

- 24           1. One or more cited class I deficiencies.
- 25           2. Three or more cited class II deficiencies.
- 26           3. Five or more cited class III deficiencies that have  
27 been cited on a single survey and have not been corrected  
28 within the times specified.

29           (f) A determination that a person subject to level 2  
30 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does  
31 not meet the screening standards of s. 435.04 or that the

1 facility is retaining an employee subject to level 1  
2 background screening standards under s. 429.174(2) ~~s.~~  
3 ~~400.4174(2)~~ who does not meet the screening standards of s.  
4 435.03 and for whom exemptions from disqualification have not  
5 been provided by the agency.

6 (g) A determination that an employee, volunteer,  
7 administrator, or owner, or person who otherwise has access to  
8 the residents of a facility does not meet the criteria  
9 specified in s. 435.03(2), and the owner or administrator has  
10 not taken action to remove the person. Exemptions from  
11 disqualification may be granted as set forth in s. 435.07. No  
12 administrative action may be taken against the facility if the  
13 person is granted an exemption.

14 (h) Violation of a moratorium.

15 (i) Failure of the license applicant, the licensee  
16 during relicensure, or a licensee that holds a provisional  
17 license to meet the minimum license requirements of this part,  
18 or related rules, at the time of license application or  
19 renewal.

20 (j) A fraudulent statement or omission of any material  
21 fact on an application for a license or any other document  
22 required by the agency, including the submission of a license  
23 application that conceals the fact that any board member,  
24 officer, or person owning 5 percent or more of the facility  
25 may not meet the background screening requirements of s.  
26 429.174 ~~s. 400.4174~~, or that the applicant has been excluded,  
27 permanently suspended, or terminated from the Medicaid or  
28 Medicare programs.

29 (k) An intentional or negligent life-threatening act  
30 in violation of the uniform firesafety standards for assisted  
31 living facilities or other firesafety standards that threatens

1 the health, safety, or welfare of a resident of a facility, as  
2 communicated to the agency by the local authority having  
3 jurisdiction or the State Fire Marshal.

4 (l) Exclusion, permanent suspension, or termination  
5 from the Medicare or Medicaid programs.

6 (m) Knowingly operating any unlicensed facility or  
7 providing without a license any service that must be licensed  
8 under this chapter or chapter 400.

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

11  
12 Administrative proceedings challenging agency action under  
13 this subsection shall be reviewed on the basis of the facts  
14 and conditions that resulted in the agency action.

15 (2) Upon notification by the local authority having  
16 jurisdiction or by the State Fire Marshal, the agency may deny  
17 or revoke the license of an assisted living facility that  
18 fails to correct cited fire code violations that affect or  
19 threaten the health, safety, or welfare of a resident of a  
20 facility.

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

1 | was subject to a moratorium on admissions; had an injunctive  
2 | proceeding initiated against it; or has an outstanding fine  
3 | assessed under this chapter or chapter 400.

4 |         (4) The agency shall deny or revoke the license of an  
5 | assisted living facility that has two or more class I  
6 | violations that are similar or identical to violations  
7 | identified by the agency during a survey, inspection,  
8 | monitoring visit, or complaint investigation occurring within  
9 | the previous 2 years.

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

21 |         (6) The agency shall provide to the Division of Hotels  
22 | and Restaurants of the Department of Business and Professional  
23 | Regulation, on a monthly basis, a list of those assisted  
24 | living facilities that have had their licenses denied,  
25 | suspended, or revoked or that are involved in an appellate  
26 | proceeding pursuant to s. 120.60 related to the denial,  
27 | suspension, or revocation of a license.

28 |         (7) Agency notification of a license suspension or  
29 | revocation, or denial of a license renewal, shall be posted  
30 | and visible to the public at the facility.  
31 |

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

4           Section 37. Section 400.415, Florida Statutes, is  
5 renumbered as section 429.15, Florida Statutes, and amended to  
6 read:

7           429.15 ~~400.415~~ Moratorium on admissions; notice.--The  
8 agency may impose an immediate moratorium on admissions to any  
9 assisted living facility if the agency determines that any  
10 condition in the facility presents a threat to the health,  
11 safety, or welfare of the residents in the facility.

12           (1) A facility the license of which is denied,  
13 revoked, or suspended pursuant to s. 429.14 ~~s. 400.414~~ may be  
14 subject to immediate imposition of a moratorium on admissions  
15 to run concurrently with licensure denial, revocation, or  
16 suspension.

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

20           (3) The department may by rule establish conditions  
21 that constitute grounds for imposing a moratorium on a  
22 facility and procedures for imposing and lifting a moratorium,  
23 as necessary to administer this section.

24           Section 38. Section 400.417, Florida Statutes, is  
25 renumbered as section 429.17, Florida Statutes, and amended to  
26 read:

27           429.17 ~~400.417~~ Expiration of license; renewal;  
28 conditional license.--

29           (1) Biennial licenses, unless sooner suspended or  
30 revoked, shall expire 2 years from the date of issuance.

31 Limited nursing, extended congregate care, and limited mental

1 health licenses shall expire at the same time as the  
2 facility's standard license, regardless of when issued. The  
3 agency shall notify the facility at least 120 days prior to  
4 expiration that a renewal license is necessary to continue  
5 operation. The notification must be provided electronically or  
6 by mail delivery. Ninety days prior to the expiration date, an  
7 application for renewal shall be submitted to the agency. Fees  
8 must be prorated. The failure to file a timely renewal  
9 application shall result in a late fee charged to the facility  
10 in an amount equal to 50 percent of the current fee.

11 (2) A license shall be renewed within 90 days upon the  
12 timely filing of an application on forms furnished by the  
13 agency and the provision of satisfactory proof of ability to  
14 operate and conduct the facility in accordance with the  
15 requirements of this part and adopted rules, including proof  
16 that the facility has received a satisfactory firesafety  
17 inspection, conducted by the local authority having  
18 jurisdiction or the State Fire Marshal, within the preceding  
19 12 months and an affidavit of compliance with the background  
20 screening requirements of s. 429.174 ~~s. 400.4174~~.

21 (3) An applicant for renewal of a license who has  
22 complied with the provisions of s. 429.11 ~~s. 400.411~~ with  
23 respect to proof of financial ability to operate shall not be  
24 required to provide further proof unless the facility or any  
25 other facility owned or operated in whole or in part by the  
26 same person has demonstrated financial instability as provided  
27 under s. 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects  
28 that the facility is not financially stable as a result of the  
29 annual survey or complaints from the public or a report from  
30 the State Long-Term Care Ombudsman Council. Each facility  
31 must report to the agency any adverse court action concerning

1 the facility's financial viability, within 7 days after its  
2 occurrence. The agency shall have access to books, records,  
3 and any other financial documents maintained by the facility  
4 to the extent necessary to determine the facility's financial  
5 stability. A license for the operation of a facility shall  
6 not be renewed if the licensee has any outstanding fines  
7 assessed pursuant to this part which are in final order  
8 status.

9 (4) A licensee against whom a revocation or suspension  
10 proceeding is pending at the time of license renewal may be  
11 issued a conditional license effective until final disposition  
12 by the agency. If judicial relief is sought from the final  
13 disposition, the court having jurisdiction may issue a  
14 conditional license for the duration of the judicial  
15 proceeding.

16 (5) A conditional license may be issued to an  
17 applicant for license renewal if the applicant fails to meet  
18 all standards and requirements for licensure. A conditional  
19 license issued under this subsection shall be limited in  
20 duration to a specific period of time not to exceed 6 months,  
21 as determined by the agency, and shall be accompanied by an  
22 agency-approved plan of correction.

23 (6) When an extended care or limited nursing license  
24 is requested during a facility's biennial license period, the  
25 fee shall be prorated in order to permit the additional  
26 license to expire at the end of the biennial license period.  
27 The fee shall be calculated as of the date the additional  
28 license application is received by the agency.

29 (7) The department may by rule establish renewal  
30 procedures, identify forms, and specify documentation  
31 necessary to administer this section.



1           Section 39. Section 400.4174, Florida Statutes, is  
2 renumbered as section 429.174, Florida Statutes, and amended  
3 to read:

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

5           (1)(a) Level 2 background screening must be conducted  
6 on each of the following persons, who shall be considered  
7 employees for the purposes of conducting screening under  
8 chapter 435:

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

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

31

1           (b) Proof of compliance with level 2 screening  
2 standards which has been submitted within the previous 5 years  
3 to meet any facility or professional licensure requirements of  
4 the agency or the Department of Health satisfies the  
5 requirements of this subsection, provided that such proof is  
6 accompanied, under penalty of perjury, by an affidavit of  
7 compliance with the provisions of chapter 435. Proof of  
8 compliance with the background screening requirements of the  
9 Financial Services Commission and the Office of Insurance  
10 Regulation for applicants for a certificate of authority to  
11 operate a continuing care retirement community under chapter  
12 651, submitted within the last 5 years, satisfies the  
13 Department of Law Enforcement and Federal Bureau of  
14 Investigation portions of a level 2 background check.

15           (c) The agency may grant a provisional license to a  
16 facility applying for an initial license when each individual  
17 required by this subsection to undergo screening has completed  
18 the Department of Law Enforcement background checks, but has  
19 not yet received results from the Federal Bureau of  
20 Investigation, or when a request for an exemption from  
21 disqualification has been submitted to the agency pursuant to  
22 s. 435.07, but a response has not been issued.

23           (2) The owner or administrator of an assisted living  
24 facility must conduct level 1 background screening, as set  
25 forth in chapter 435, on all employees hired on or after  
26 October 1, 1998, who perform personal services as defined in  
27 s. 429.02(17) ~~s. 400.402(17)~~. The agency may exempt an  
28 individual from employment disqualification as set forth in  
29 chapter 435. Such persons shall be considered as having met  
30 this requirement if:  
31

1 (a) Proof of compliance with level 1 screening  
2 requirements obtained to meet any professional license  
3 requirements in this state is provided and accompanied, under  
4 penalty of perjury, by a copy of the person's current  
5 professional license and an affidavit of current compliance  
6 with the background screening requirements.

7 (b) The person required to be screened has been  
8 continuously employed in the same type of occupation for which  
9 the person is seeking employment without a breach in service  
10 which exceeds 180 days, and proof of compliance with the level  
11 1 screening requirement which is no more than 2 years old is  
12 provided. Proof of compliance shall be provided directly from  
13 one employer or contractor to another, and not from the person  
14 screened. Upon request, a copy of screening results shall be  
15 provided by the employer retaining documentation of the  
16 screening to the person screened.

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

23 Section 40. Section 400.4176, Florida Statutes, is  
24 renumbered as section 429.176, Florida Statutes, and amended  
25 to read:

26 429.176 ~~400.4176~~ Notice of change of  
27 administrator.--If, during the period for which a license is  
28 issued, the owner changes administrators, the owner must  
29 notify the agency of the change within 10 days and provide  
30 documentation within 90 days that the new administrator has  
31 completed the applicable core educational requirements under

1 s. 429.52 ~~s. 400.452~~. Background screening shall be completed  
2 on any new administrator as specified in s. 429.174 ~~s.~~  
3 ~~400.4174~~.

4 Section 41. Section 400.4178, Florida Statutes, is  
5 renumbered as section 429.178, Florida Statutes, and amended  
6 to read:

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

9 (1) A facility which advertises that it provides  
10 special care for persons with Alzheimer's disease or other  
11 related disorders must meet the following standards of  
12 operation:

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

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

20 (b) Offer activities specifically designed for persons  
21 who are cognitively impaired.

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

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

26 (2)(a) An individual who is employed by a facility  
27 that provides special care for residents with Alzheimer's  
28 disease or other related disorders, and who has regular  
29 contact with such residents, must complete up to 4 hours of  
30 initial dementia-specific training developed or approved by  
31 the department. The training shall be completed within 3

1 months after beginning employment and shall satisfy the core  
2 training requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

3 (b) A direct caregiver who is employed by a facility  
4 that provides special care for residents with Alzheimer's  
5 disease or other related disorders, and who provides direct  
6 care to such residents, must complete the required initial  
7 training and 4 additional hours of training developed or  
8 approved by the department. The training shall be completed  
9 within 9 months after beginning employment and shall satisfy  
10 the core training requirements of s. 429.52(2)(g) ~~s.  
11 400.452(2)(g)~~.

12 (c) An individual who is employed by a facility that  
13 provides special care for residents with Alzheimer's disease  
14 or other related disorders, but who only has incidental  
15 contact with such residents, must be given, at a minimum,  
16 general information on interacting with individuals with  
17 Alzheimer's disease or other related disorders, within 3  
18 months after beginning employment.

19 (3) In addition to the training required under  
20 subsection (2), a direct caregiver must participate in a  
21 minimum of 4 contact hours of continuing education each  
22 calendar year. The continuing education must include one or  
23 more topics included in the dementia-specific training  
24 developed or approved by the department, in which the  
25 caregiver has not received previous training.

26 (4) Upon completing any training listed in subsection  
27 (2), the employee or direct caregiver shall be issued a  
28 certificate that includes the name of the training provider,  
29 the topic covered, and the date and signature of the training  
30 provider. The certificate is evidence of completion of  
31 training in the identified topic, and the employee or direct

1 caregiver is not required to repeat training in that topic if  
2 the employee or direct caregiver changes employment to a  
3 different facility. The employee or direct caregiver must  
4 comply with other applicable continuing education  
5 requirements.

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

8 (6) The department shall keep a current list of  
9 providers who are approved to provide initial and continuing  
10 education for staff of facilities that provide special care  
11 for persons with Alzheimer's disease or other related  
12 disorders.

13 (7) Any facility more than 90 percent of whose  
14 residents receive monthly optional supplementation payments is  
15 not required to pay for the training and education programs  
16 required under this section. A facility that has one or more  
17 such residents shall pay a reduced fee that is proportional to  
18 the percentage of such residents in the facility. A facility  
19 that does not have any residents who receive monthly optional  
20 supplementation payments must pay a reasonable fee, as  
21 established by the department, for such training and education  
22 programs.

23 (8) The department shall adopt rules to establish  
24 standards for trainers and training and to implement this  
25 section.

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

29 429.18 ~~400.418~~ Disposition of fees and administrative  
30 fines.--

31

1 (1) Income from license fees, inspection fees, late  
2 fees, and administrative fines generated pursuant to ss.  
3 429.07, 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407,~~  
4 ~~400.408, 400.417, 400.419, and 400.431~~ shall be deposited in  
5 the Health Care Trust Fund administered by the agency. Such  
6 funds shall be directed to and used by the agency for the  
7 following purposes:

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

14 (b) An amount of \$5,000 of the trust funds accrued  
15 each year under this part shall be allocated to pay for  
16 inspection-related physical and mental health examinations  
17 requested by the agency pursuant to s. 429.26 ~~s. 400.426~~ for  
18 residents who are either recipients of supplemental security  
19 income or have monthly incomes not in excess of the maximum  
20 combined federal and state cash subsidies available to  
21 supplemental security income recipients, as provided for in s.  
22 409.212. Such funds shall only be used where the resident is  
23 ineligible for Medicaid.

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

31

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

5           Section 43. Section 400.419, Florida Statutes, is  
 6 renumbered as section 429.19, Florida Statutes, and amended to  
 7 read:

8           429.19 ~~400.419~~ Violations; imposition of  
 9 administrative fines; grounds.--

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

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

23          (a) Class "I" violations are those conditions or  
 24 occurrences related to the operation and maintenance of a  
 25 facility or to the personal care of residents which the agency  
 26 determines present an imminent danger to the residents or  
 27 guests of the facility or a substantial probability that death  
 28 or serious physical or emotional harm would result therefrom.  
 29 The condition or practice constituting a class I violation  
 30 shall be abated or eliminated within 24 hours, unless a fixed  
 31 period, as determined by the agency, is required for



1 correction. The agency shall impose an administrative fine for  
2 a cited class I violation in an amount not less than \$5,000  
3 and not exceeding \$10,000 for each violation. A fine may be  
4 levied notwithstanding the correction of the violation.

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

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

28 (d) Class "IV" violations are those conditions or  
29 occurrences related to the operation and maintenance of a  
30 building or to required reports, forms, or documents that do  
31 not have the potential of negatively affecting residents.

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

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

15 (a) The gravity of the violation, including the  
16 probability that death or serious physical or emotional harm  
17 to a resident will result or has resulted, the severity of the  
18 action or potential harm, and the extent to which the  
19 provisions of the applicable laws or rules were violated.

20 (b) Actions taken by the owner or administrator to  
21 correct violations.

22 (c) Any previous violations.

23 (d) The financial benefit to the facility of  
24 committing or continuing the violation.

25 (e) The licensed capacity of the facility.

26 (4) Each day of continuing violation after the date  
27 fixed for termination of the violation, as ordered by the  
28 agency, constitutes an additional, separate, and distinct  
29 violation.

30 (5) Any action taken to correct a violation shall be  
31 documented in writing by the owner or administrator of the

1 facility and verified through followup visits by agency  
2 personnel. The agency may impose a fine and, in the case of an  
3 owner-operated facility, revoke or deny a facility's license  
4 when a facility administrator fraudulently misrepresents  
5 action taken to correct a violation.

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

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

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

15 (9) Any facility whose owner fails to apply for a  
16 change-of-ownership license in accordance with s. 429.12 ~~s.~~  
17 ~~400.412~~ and operates the facility under the new ownership is  
18 subject to a fine of \$5,000.

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

27 (11) The agency, as an alternative to or in  
28 conjunction with an administrative action against a facility  
29 for violations of this part and adopted rules, shall make a  
30 reasonable attempt to discuss each violation and recommended  
31 corrective action with the owner or administrator of the

1 facility, prior to written notification. The agency, instead  
2 of fixing a period within which the facility shall enter into  
3 compliance with standards, may request a plan of corrective  
4 action from the facility which demonstrates a good faith  
5 effort to remedy each violation by a specific date, subject to  
6 the approval of the agency.

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

10 (13) The agency shall develop and disseminate an  
11 annual list of all facilities sanctioned or fined \$5,000 or  
12 more for violations of state standards, the number and class  
13 of violations involved, the penalties imposed, and the current  
14 status of cases. The list shall be disseminated, at no charge,  
15 to the Department of Elderly Affairs, the Department of  
16 Health, the Department of Children and Family Services, the  
17 area agencies on aging, the Florida Statewide Advocacy  
18 Council, and the state and local ombudsman councils. The  
19 Department of Children and Family Services shall disseminate  
20 the list to service providers under contract to the department  
21 who are responsible for referring persons to a facility for  
22 residency. The agency may charge a fee commensurate with the  
23 cost of printing and postage to other interested parties  
24 requesting a copy of this list.

25 Section 44. Section 400.42, Florida Statutes, is  
26 renumbered as section 429.20, Florida Statutes, and amended to  
27 read:

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

30 (1) A person may not, in connection with the  
31 solicitation of contributions by or on behalf of an assisted

1 living facility or facilities, misrepresent or mislead any  
 2 person, by any manner, means, practice, or device whatsoever,  
 3 to believe that the receipts of such solicitation will be used  
 4 for charitable purposes, if that is not the fact.

5 (2) Solicitation of contributions of any kind in a  
 6 threatening, coercive, or unduly forceful manner by or on  
 7 behalf of an assisted living facility or facilities by any  
 8 agent, employee, owner, or representative of any assisted  
 9 living facility or facilities is grounds for denial,  
 10 suspension, or revocation of the license of the assisted  
 11 living facility or facilities by or on behalf of which such  
 12 contributions were solicited.

13 (3) The admission or maintenance of assisted living  
 14 facility residents whose care is supported, in whole or in  
 15 part, by state funds may not be conditioned upon the receipt  
 16 of any manner of contribution or donation from any person. The  
 17 solicitation or receipt of contributions in violation of this  
 18 subsection is grounds for denial, suspension, or revocation of  
 19 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted  
 20 living facility by or on behalf of which such contributions  
 21 were solicited.

22 (4) An assisted living facility may accept additional  
 23 supplementation from third parties on behalf of residents  
 24 receiving optional state supplementation in accordance with s.  
 25 409.212.

26 Section 45. Section 400.422, Florida Statutes, is  
 27 renumbered as section 429.22, Florida Statutes, and amended to  
 28 read:

29 429.22 ~~400.422~~ Receivership proceedings.--

30 (1) As an alternative to or in conjunction with an  
 31 injunctive proceeding, the agency may petition a court of

1 competent jurisdiction for the appointment of a receiver, if  
2 suitable alternate placements are not available, when any of  
3 the following conditions exist:

4 (a) The facility is operating without a license and  
5 refuses to make application for a license as required by ss.  
6 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

7 (b) The facility is closing or has informed the agency  
8 that it intends to close and adequate arrangements have not  
9 been made for relocation of the residents within 7 days,  
10 exclusive of weekends and holidays, of the closing of the  
11 facility.

12 (c) The agency determines there exist in the facility  
13 conditions which present an imminent danger to the health,  
14 safety, or welfare of the residents of the facility or a  
15 substantial probability that death or serious physical harm  
16 would result therefrom.

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

19 (2) Petitions for receivership shall take precedence  
20 over other court business unless the court determines that  
21 some other pending proceeding, having similar statutory  
22 precedence, shall have priority. A hearing shall be conducted  
23 within 5 days of the filing of the petition, at which time all  
24 interested parties shall have the opportunity to present  
25 evidence pertaining to the petition. The agency shall notify,  
26 by certified mail, the owner or administrator of the facility  
27 named in the petition and the facility resident or, if  
28 applicable, the resident's representative or designee, or the  
29 resident's surrogate, guardian, or attorney in fact, of its  
30 filing, the substance of the violation, and the date and place  
31 set for the hearing. The court shall grant the petition only

1 upon finding that the health, safety, or welfare of facility  
2 residents would be threatened if a condition existing at the  
3 time the petition was filed is permitted to continue. A  
4 receiver shall not be appointed ex parte unless the court  
5 determines that one or more of the conditions in subsection  
6 (1) exist; that the facility owner or administrator cannot be  
7 found; that all reasonable means of locating the owner or  
8 administrator and notifying him or her of the petition and  
9 hearing have been exhausted; or that the owner or  
10 administrator after notification of the hearing chooses not to  
11 attend. After such findings, the court may appoint any  
12 qualified person as a receiver, except it may not appoint any  
13 owner or affiliate of the facility which is in receivership.  
14 The receiver may be selected from a list of persons qualified  
15 to act as receivers developed by the agency and presented to  
16 the court with each petition for receivership. Under no  
17 circumstances may the agency or designated agency employee be  
18 appointed as a receiver for more than 60 days; however, the  
19 receiver may petition the court, one time only, for a 30-day  
20 extension. The court shall grant the extension upon a showing  
21 of good cause.

22 (3) The receiver must make provisions for the  
23 continued health, safety, and welfare of all residents of the  
24 facility and:

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

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

29 (c) Shall take such action as is reasonably necessary  
30 to protect or conserve the assets or property of the facility  
31 for which the receiver is appointed, or the proceeds from any

1 transfer thereof, and may use them only in the performance of  
2 the powers and duties set forth in this section and by order  
3 of the court.

4 (d) May use the building, fixtures, furnishings, and  
5 any accompanying consumable goods in the provision of care and  
6 services to residents and to any other persons receiving  
7 services from the facility at the time the petition for  
8 receivership was filed. The receiver shall collect payments  
9 for all goods and services provided to residents or others  
10 during the period of the receivership at the same rate of  
11 payment charged by the owners at the time the petition for  
12 receivership was filed, or at a fair and reasonable rate  
13 otherwise approved by the court.

14 (e) May correct or eliminate any deficiency in the  
15 structure or furnishings of the facility which endangers the  
16 safety or health of residents while they remain in the  
17 facility, if the total cost of correction does not exceed  
18 \$10,000. The court may order expenditures for this purpose in  
19 excess of \$10,000 on application from the receiver after  
20 notice to the owner and a hearing.

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

23 (g) Shall honor all leases, mortgages, and secured  
24 transactions governing the building in which the facility is  
25 located and all goods and fixtures in the building of which  
26 the receiver has taken possession, but only to the extent of  
27 payments which, in the case of a rental agreement, are for the  
28 use of the property during the period of the receivership, or  
29 which, in the case of a purchase agreement, become due during  
30 the period of the receivership.

31



1           (h) Shall have full power to direct and manage and to  
2 discharge employees of the facility, subject to any contract  
3 rights they may have. The receiver shall pay employees at the  
4 rate of compensation, including benefits, approved by the  
5 court. A receivership does not relieve the owner of any  
6 obligation to employees made prior to the appointment of a  
7 receiver and not carried out by the receiver.

8           (i) Shall be entitled to and take possession of all  
9 property or assets of residents which are in the possession of  
10 a facility or its owner. The receiver shall preserve all  
11 property, assets, and records of residents of which the  
12 receiver takes possession and shall provide for the prompt  
13 transfer of the property, assets, and records to the new  
14 placement of any transferred resident. An inventory list  
15 certified by the owner and receiver shall be made immediately  
16 at the time the receiver takes possession of the facility.

17           (4)(a) A person who is served with notice of an order  
18 of the court appointing a receiver and of the receiver's name  
19 and address shall be liable to pay the receiver for any goods  
20 or services provided by the receiver after the date of the  
21 order if the person would have been liable for the goods or  
22 services as supplied by the owner. The receiver shall give a  
23 receipt for each payment and shall keep a copy of each receipt  
24 on file. The receiver shall deposit accounts received in a  
25 separate account and shall use this account for all  
26 disbursements.

27           (b) The receiver may bring an action to enforce the  
28 liability created by paragraph (a).

29           (c) A payment to the receiver of any sum owing to the  
30 facility or its owner shall discharge any obligation to the  
31 facility to the extent of the payment.

1           (5)(a) A receiver may petition the court that he or  
2 she not be required to honor any lease, mortgage, secured  
3 transaction, or other wholly or partially executory contract  
4 entered into by the owner of the facility if the rent, price,  
5 or rate of interest required to be paid under the agreement  
6 was substantially in excess of a reasonable rent, price, or  
7 rate of interest at the time the contract was entered into, or  
8 if any material provision of the agreement was unreasonable,  
9 when compared to contracts negotiated under similar  
10 conditions. Any relief in this form provided by the court  
11 shall be limited to the life of the receivership, unless  
12 otherwise determined by the court.

13           (b) If the receiver is in possession of real estate or  
14 goods subject to a lease, mortgage, or security interest which  
15 the receiver has obtained a court order to avoid under  
16 paragraph (a), and if the real estate or goods are necessary  
17 for the continued operation of the facility under this  
18 section, the receiver may apply to the court to set a  
19 reasonable rental, price, or rate of interest to be paid by  
20 the receiver during the duration of the receivership. The  
21 court shall hold a hearing on the application within 15 days.  
22 The receiver shall send notice of the application to any known  
23 persons who own the property involved at least 10 days prior  
24 to the hearing. Payment by the receiver of the amount  
25 determined by the court to be reasonable is a defense to any  
26 action against the receiver for payment or for possession of  
27 the goods or real estate subject to the lease, security  
28 interest, or mortgage involved by any person who received such  
29 notice, but the payment does not relieve the owner of the  
30 facility of any liability for the difference between the  
31

1 amount paid by the receiver and the amount due under the  
2 original lease, security interest, or mortgage involved.

3 (6) The court shall set the compensation of the  
4 receiver, which will be considered a necessary expense of a  
5 receivership.

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

9 (8) The court may require a receiver to post a bond.

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

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

14 (a) The court determines that the receivership is no  
15 longer necessary because the conditions which gave rise to the  
16 receivership no longer exist or the agency grants the facility  
17 a new license; or

18 (b) All of the residents in the facility have been  
19 transferred or discharged.

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

24 (12) Nothing in this section shall be deemed to  
25 relieve any owner, administrator, or employee of a facility  
26 placed in receivership of any civil or criminal liability  
27 incurred, or any duty imposed by law, by reason of acts or  
28 omissions of the owner, administrator, or employee prior to  
29 the appointment of a receiver; nor shall anything contained in  
30 this section be construed to suspend during the receivership  
31 any obligation of the owner, administrator, or employee for

1 payment of taxes or other operating and maintenance expenses  
2 of the facility or of the owner, administrator, employee, or  
3 any other person for the payment of mortgages or liens. The  
4 owner shall retain the right to sell or mortgage any facility  
5 under receivership, subject to approval of the court which  
6 ordered the receivership.

7 Section 46. Section 400.424, Florida Statutes, is  
8 renumbered as section 429.24, Florida Statutes, and amended to  
9 read:

10 429.24 ~~400.424~~ Contracts.--

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

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

29 (a) Such funds shall be deposited in a banking  
30 institution in this state that is located, if possible, in the  
31 same community in which the facility is located; shall be kept

1 separate from the funds and property of the facility; may not  
2 be represented as part of the assets of the facility on  
3 financial statements; and shall be used, or otherwise  
4 expended, only for the account of the resident.

5 (b) The licensee shall, within 30 days of receipt of  
6 advance rent or a security deposit, notify the resident or  
7 residents in writing of the manner in which the licensee is  
8 holding the advance rent or security deposit and state the  
9 name and address of the depository where the moneys are being  
10 held. The licensee shall notify residents of the facility's  
11 policy on advance deposits.

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

1 the refund due the resident. Except in the case of death or a  
2 discharge due to medical reasons, the refunds shall be  
3 computed in accordance with the notice of relocation  
4 requirements specified in the contract. However, a resident  
5 may not be required to provide the licensee with more than 30  
6 days' notice of termination. If after a contract is  
7 terminated, the facility intends to make a claim against a  
8 refund due the resident, the facility shall notify the  
9 resident or responsible party in writing of the claim and  
10 shall provide said party with a reasonable time period of no  
11 less than 14 calendar days to respond. The facility shall  
12 provide a refund to the resident or responsible party within  
13 45 days after the transfer, discharge, or death of the  
14 resident. The agency shall impose a fine upon a facility that  
15 fails to comply with the refund provisions of the paragraph,  
16 which fine shall be equal to three times the amount due to the  
17 resident. One-half of the fine shall be remitted to the  
18 resident or his or her estate, and the other half to the  
19 Health Care Trust Fund to be used for the purpose specified in  
20 s. 429.18 ~~s. 400.418~~.

21 (b) If a licensee agrees to reserve a bed for a  
22 resident who is admitted to a medical facility, including, but  
23 not limited to, a nursing home, health care facility, or  
24 psychiatric facility, the resident or his or her responsible  
25 party shall notify the licensee of any change in status that  
26 would prevent the resident from returning to the facility.  
27 Until such notice is received, the agreed-upon daily rate may  
28 be charged by the licensee.

29 (c) The purpose of any advance payment and a refund  
30 policy for such payment, including any advance payment for  
31

1 | housing, meals, or personal services, shall be covered in the  
2 | contract.

3 |         (4) The contract shall state whether or not the  
4 | facility is affiliated with any religious organization and, if  
5 | so, which organization and its general responsibility to the  
6 | facility.

7 |         (5) Neither the contract nor any provision thereof  
8 | relieves any licensee of any requirement or obligation imposed  
9 | upon it by this part or rules adopted under this part.

10 |         (6) In lieu of the provisions of this section,  
11 | facilities certified under chapter 651 shall comply with the  
12 | requirements of s. 651.055.

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

29 |         (8) The department may by rule clarify terms,  
30 | establish procedures, clarify refund policies and contract  
31 |

1 provisions, and specify documentation as necessary to  
2 administer this section.

3 Section 47. Section 400.4255, Florida Statutes, is  
4 renumbered as section 429.255, Florida Statutes, and are  
5 amended to read:

6 429.255 ~~400.4255~~ Use of personnel; emergency care.--

7 (1)(a) Persons under contract to the facility,  
8 facility staff, or volunteers, who are licensed according to  
9 part I of chapter 464, or those persons exempt under s.  
10 464.022(1), and others as defined by rule, may administer  
11 medications to residents, take residents' vital signs, manage  
12 individual weekly pill organizers for residents who  
13 self-administer medication, give prepackaged enemas ordered by  
14 a physician, observe residents, document observations on the  
15 appropriate resident's record, report observations to the  
16 resident's physician, and contract or allow residents or a  
17 resident's representative, designee, surrogate, guardian, or  
18 attorney in fact to contract with a third party, provided  
19 residents meet the criteria for appropriate placement as  
20 defined in s. 429.26 ~~s. 400.426~~. Nursing assistants certified  
21 pursuant to part II of chapter 464 may take residents' vital  
22 signs as directed by a licensed nurse or physician.

23 (b) All staff in facilities licensed under this part  
24 shall exercise their professional responsibility to observe  
25 residents, to document observations on the appropriate  
26 resident's record, and to report the observations to the  
27 resident's physician. However, the owner or administrator of  
28 the facility shall be responsible for determining that the  
29 resident receiving services is appropriate for residence in  
30 the facility.

31



1 (c) In an emergency situation, licensed personnel may  
2 carry out their professional duties pursuant to part I of  
3 chapter 464 until emergency medical personnel assume  
4 responsibility for care.

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

14 (3) Facility staff may withhold or withdraw  
15 cardiopulmonary resuscitation if presented with an order not  
16 to resuscitate executed pursuant to s. 401.45. The department  
17 shall adopt rules providing for the implementation of such  
18 orders. Facility staff and facilities shall not be subject to  
19 criminal prosecution or civil liability, nor be considered to  
20 have engaged in negligent or unprofessional conduct, for  
21 withholding or withdrawing cardiopulmonary resuscitation  
22 pursuant to such an order and rules adopted by the department.  
23 The absence of an order to resuscitate executed pursuant to s.  
24 401.45 does not preclude a physician from withholding or  
25 withdrawing cardiopulmonary resuscitation as otherwise  
26 permitted by law.

27 Section 48. Section 400.4256, Florida Statutes, is  
28 renumbered as section 429.256, Florida Statutes, and is  
29 amended to read:

30 429.256 ~~400.4256~~ Assistance with self-administration  
31 of medication.--

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

2 (a) "Informed consent" means advising the resident, or  
3 the resident's surrogate, guardian, or attorney in fact, that  
4 an assisted living facility is not required to have a licensed  
5 nurse on staff, that the resident may be receiving assistance  
6 with self-administration of medication from an unlicensed  
7 person, and that such assistance, if provided by an unlicensed  
8 person, will or will not be overseen by a licensed nurse.

9 (b) "Unlicensed person" means an individual not  
10 currently licensed to practice nursing or medicine who is  
11 employed by or under contract to an assisted living facility  
12 and who has received training with respect to assisting with  
13 the self-administration of medication in an assisted living  
14 facility as provided under s. 429.52 ~~s. 400.452~~ prior to  
15 providing such assistance as described in this section.

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

- 1           (3) Assistance with self-administration of medication  
2 includes:
- 3           (a) Taking the medication, in its previously  
4 dispensed, properly labeled container, from where it is  
5 stored, and bringing it to the resident.
- 6           (b) In the presence of the resident, reading the  
7 label, opening the container, removing a prescribed amount of  
8 medication from the container, and closing the container.
- 9           (c) Placing an oral dosage in the resident's hand or  
10 placing the dosage in another container and helping the  
11 resident by lifting the container to his or her mouth.
- 12           (d) Applying topical medications.
- 13           (e) Returning the medication container to proper  
14 storage.
- 15           (f) Keeping a record of when a resident receives  
16 assistance with self-administration under this section.
- 17           (4) Assistance with self-administration does not  
18 include:
- 19           (a) Mixing, compounding, converting, or calculating  
20 medication doses, except for measuring a prescribed amount of  
21 liquid medication or breaking a scored tablet or crushing a  
22 tablet as prescribed.
- 23           (b) The preparation of syringes for injection or the  
24 administration of medications by any injectable route.
- 25           (c) Administration of medications through intermittent  
26 positive pressure breathing machines or a nebulizer.
- 27           (d) Administration of medications by way of a tube  
28 inserted in a cavity of the body.
- 29           (e) Administration of parenteral preparations.
- 30           (f) Irrigations or debriding agents used in the  
31 treatment of a skin condition.

1 (g) Rectal, urethral, or vaginal preparations.

2 (h) Medications ordered by the physician or health  
3 care professional with prescriptive authority to be given "as  
4 needed," unless the order is written with specific parameters  
5 that preclude independent judgment on the part of the  
6 unlicensed person, and at the request of a competent resident.

7 (i) Medications for which the time of administration,  
8 the amount, the strength of dosage, the method of  
9 administration, or the reason for administration requires  
10 judgment or discretion on the part of the unlicensed person.

11 (5) Assistance with the self-administration of  
12 medication by an unlicensed person as described in this  
13 section shall not be considered administration as defined in  
14 s. 465.003.

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

18 Section 49. Section 400.426, Florida Statutes, is  
19 renumbered as section 429.26, Florida Statutes, and amended to  
20 read:

21 429.26 ~~400.426~~ Appropriateness of placements;  
22 examinations of residents.--

23 (1) The owner or administrator of a facility is  
24 responsible for determining the appropriateness of admission  
25 of an individual to the facility and for determining the  
26 continued appropriateness of residence of an individual in the  
27 facility. A determination shall be based upon an assessment  
28 of the strengths, needs, and preferences of the resident, the  
29 care and services offered or arranged for by the facility in  
30 accordance with facility policy, and any limitations in law or  
31 rule related to admission criteria or continued residency for

1 the type of license held by the facility under this part. A  
2 resident may not be moved from one facility to another without  
3 consultation with and agreement from the resident or, if  
4 applicable, the resident's representative or designee or the  
5 resident's family, guardian, surrogate, or attorney in fact.  
6 In the case of a resident who has been placed by the  
7 department or the Department of Children and Family Services,  
8 the administrator must notify the appropriate contact person  
9 in the applicable department.

10 (2) A physician, physician assistant, or nurse  
11 practitioner who is employed by an assisted living facility to  
12 provide an initial examination for admission purposes may not  
13 have financial interest in the facility.

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

26 (4) If possible, each resident shall have been  
27 examined by a licensed physician, a licensed physician  
28 assistant, or a licensed nurse practitioner within 60 days  
29 before admission to the facility. The signed and completed  
30 medical examination report shall be submitted to the owner or  
31 administrator of the facility who shall use the information

1 contained therein to assist in the determination of the  
2 appropriateness of the resident's admission and continued stay  
3 in the facility. The medical examination report shall become  
4 a permanent part of the record of the resident at the facility  
5 and shall be made available to the agency during inspection or  
6 upon request. An assessment that has been completed through  
7 the Comprehensive Assessment and Review for Long-Term Care  
8 Services (CARES) Program fulfills the requirements for a  
9 medical examination under this subsection and s.  
10 429.07(3)(b)6. ~~s. 400.407(3)(b)6.~~

11 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a  
12 medical examination has not been completed within 60 days  
13 before the admission of the resident to the facility, a  
14 licensed physician, licensed physician assistant, or licensed  
15 nurse practitioner shall examine the resident and complete a  
16 medical examination form provided by the agency within 30 days  
17 following the admission to the facility to enable the facility  
18 owner or administrator to determine the appropriateness of the  
19 admission. The medical examination form shall become a  
20 permanent part of the record of the resident at the facility  
21 and shall be made available to the agency during inspection by  
22 the agency or upon request.

23 (6) Any resident accepted in a facility and placed by  
24 the department or the Department of Children and Family  
25 Services shall have been examined by medical personnel within  
26 30 days before placement in the facility. The examination  
27 shall include an assessment of the appropriateness of  
28 placement in a facility. The findings of this examination  
29 shall be recorded on the examination form provided by the  
30 agency. The completed form shall accompany the resident and  
31 shall be submitted to the facility owner or administrator.

1 Additionally, in the case of a mental health resident, the  
2 Department of Children and Family Services must provide  
3 documentation that the individual has been assessed by a  
4 psychiatrist, clinical psychologist, clinical social worker,  
5 or psychiatric nurse, or an individual who is supervised by  
6 one of these professionals, and determined to be appropriate  
7 to reside in an assisted living facility. The documentation  
8 must be in the facility within 30 days after the mental health  
9 resident has been admitted to the facility. An evaluation  
10 completed upon discharge from a state mental hospital meets  
11 the requirements of this subsection related to appropriateness  
12 for placement as a mental health resident providing it was  
13 completed within 90 days prior to admission to the facility.  
14 The applicable department shall provide to the facility  
15 administrator any information about the resident that would  
16 help the administrator meet his or her responsibilities under  
17 subsection (1). Further, department personnel shall explain  
18 to the facility operator any special needs of the resident and  
19 advise the operator whom to call should problems arise. The  
20 applicable department shall advise and assist the facility  
21 administrator where the special needs of residents who are  
22 recipients of optional state supplementation require such  
23 assistance.

24 (7) The facility must notify a licensed physician when  
25 a resident exhibits signs of dementia or cognitive impairment  
26 or has a change of condition in order to rule out the presence  
27 of an underlying physiological condition that may be  
28 contributing to such dementia or impairment. The notification  
29 must occur within 30 days after the acknowledgment of such  
30 signs by facility staff. If an underlying condition is  
31 determined to exist, the facility shall arrange, with the

1 appropriate health care provider, the necessary care and  
2 services to treat the condition.

3 (8) The Department of Children and Family Services may  
4 require an examination for supplemental security income and  
5 optional state supplementation recipients residing in  
6 facilities at any time and shall provide the examination  
7 whenever a resident's condition requires it. Any facility  
8 administrator; personnel of the agency, the department, or the  
9 Department of Children and Family Services; or long-term care  
10 ombudsman council member who believes a resident needs to be  
11 evaluated shall notify the resident's case manager, who shall  
12 take appropriate action. A report of the examination findings  
13 shall be provided to the resident's case manager and the  
14 facility administrator to help the administrator meet his or  
15 her responsibilities under subsection (1).

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



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

28 (10) A terminally ill resident who no longer meets the  
29 criteria for continued residency may remain in the facility if  
30 the arrangement is mutually agreeable to the resident and the  
31 facility; additional care is rendered through a licensed

1 hospice, and the resident is under the care of a physician who  
 2 agrees that the physical needs of the resident are being met.

3 (11) Facilities licensed to provide extended  
 4 congregate care services shall promote aging in place by  
 5 determining appropriateness of continued residency based on a  
 6 comprehensive review of the resident's physical and functional  
 7 status; the ability of the facility, family members, friends,  
 8 or any other pertinent individuals or agencies to provide the  
 9 care and services required; and documentation that a written  
 10 service plan consistent with facility policy has been  
 11 developed and implemented to ensure that the resident's needs  
 12 and preferences are addressed.

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

17 Section 50. Section 400.427, Florida Statutes, is  
 18 renumbered as section 429.27, Florida Statutes, is amended to  
 19 read:

20 429.27 ~~400.427~~ Property and personal affairs of  
 21 residents.--

22 (1)(a) A resident shall be given the option of using  
 23 his or her own belongings, as space permits; choosing his or  
 24 her roommate; and, whenever possible, unless the resident is  
 25 adjudicated incompetent or incapacitated under state law,  
 26 managing his or her own affairs.

27 (b) The admission of a resident to a facility and his  
 28 or her presence therein shall not confer on the facility or  
 29 its owner, administrator, employees, or representatives any  
 30 authority to manage, use, or dispose of any property of the  
 31 resident; nor shall such admission or presence confer on any

1 of such persons any authority or responsibility for the  
2 personal affairs of the resident, except that which may be  
3 necessary for the safe management of the facility or for the  
4 safety of the resident.

5 (2) A facility, or an owner, administrator, employee,  
6 or representative thereof, may not act as the guardian,  
7 trustee, or conservator for any resident of the assisted  
8 living facility or any of such resident's property. An owner,  
9 administrator, or staff member, or representative thereof, may  
10 not act as a competent resident's payee for social security,  
11 veteran's, or railroad benefits without the consent of the  
12 resident. Any facility whose owner, administrator, or staff,  
13 or representative thereof, serves as representative payee for  
14 any resident of the facility shall file a surety bond with the  
15 agency in an amount equal to twice the average monthly  
16 aggregate income or personal funds due to residents, or  
17 expendable for their account, which are received by a  
18 facility. Any facility whose owner, administrator, or staff,  
19 or a representative thereof, is granted power of attorney for  
20 any resident of the facility shall file a surety bond with the  
21 agency for each resident for whom such power of attorney is  
22 granted. The surety bond shall be in an amount equal to twice  
23 the average monthly income of the resident, plus the value of  
24 any resident's property under the control of the attorney in  
25 fact. The bond shall be executed by the facility as principal  
26 and a licensed surety company. The bond shall be conditioned  
27 upon the faithful compliance of the facility with this section  
28 and shall run to the agency for the benefit of any resident  
29 who suffers a financial loss as a result of the misuse or  
30 misappropriation by a facility of funds held pursuant to this  
31 subsection. Any surety company that cancels or does not renew

1 the bond of any licensee shall notify the agency in writing  
2 not less than 30 days in advance of such action, giving the  
3 reason for the cancellation or nonrenewal. Any facility  
4 owner, administrator, or staff, or representative thereof, who  
5 is granted power of attorney for any resident of the facility  
6 shall, on a monthly basis, be required to provide the resident  
7 a written statement of any transaction made on behalf of the  
8 resident pursuant to this subsection, and a copy of such  
9 statement given to the resident shall be retained in each  
10 resident's file and available for agency inspection.

11 (3) A facility, upon mutual consent with the resident,  
12 shall provide for the safekeeping in the facility of personal  
13 effects not in excess of \$500 and funds of the resident not in  
14 excess of \$200 cash, and shall keep complete and accurate  
15 records of all such funds and personal effects received. If a  
16 resident is absent from a facility for 24 hours or more, the  
17 facility may provide for the safekeeping of the resident's  
18 personal effects in excess of \$500.

19 (4) Any funds or other property belonging to or due to  
20 a resident, or expendable for his or her account, which is  
21 received by a facility shall be trust funds which shall be  
22 kept separate from the funds and property of the facility and  
23 other residents or shall be specifically credited to such  
24 resident. Such trust funds shall be used or otherwise  
25 expended only for the account of the resident. At least once  
26 every 3 months, unless upon order of a court of competent  
27 jurisdiction, the facility shall furnish the resident and his  
28 or her guardian, trustee, or conservator, if any, a complete  
29 and verified statement of all funds and other property to  
30 which this subsection applies, detailing the amount and items  
31 received, together with their sources and disposition. In any

1 event, the facility shall furnish such statement annually and  
2 upon the discharge or transfer of a resident. Any  
3 governmental agency or private charitable agency contributing  
4 funds or other property to the account of a resident shall  
5 also be entitled to receive such statement annually and upon  
6 the discharge or transfer of the resident.

7 (5) Any personal funds available to facility residents  
8 may be used by residents as they choose to obtain clothing,  
9 personal items, leisure activities, and other supplies and  
10 services for their personal use. A facility may not demand,  
11 require, or contract for payment of all or any part of the  
12 personal funds in satisfaction of the facility rate for  
13 supplies and services beyond that amount agreed to in writing  
14 and may not levy an additional charge to the individual or the  
15 account for any supplies or services that the facility has  
16 agreed by contract to provide as part of the standard monthly  
17 rate. Any service or supplies provided by the facility which  
18 are charged separately to the individual or the account may be  
19 provided only with the specific written consent of the  
20 individual, who shall be furnished in advance of the provision  
21 of the services or supplies with an itemized written statement  
22 to be attached to the contract setting forth the charges for  
23 the services or supplies.

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

26 1. Intentionally withholds a resident's personal  
27 funds, personal property, or personal needs allowance, or who  
28 demands, beneficially receives, or contracts for payment of  
29 all or any part of a resident's personal property or personal  
30 needs allowance in satisfaction of the facility rate for  
31 supplies and services; or

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

4  
5 commits a misdemeanor of the first degree, punishable as  
6 provided in s. 775.082 or s. 775.083.

7           (b) Any facility owner, administrator, or staff, or  
8 representative thereof, who is granted power of attorney for  
9 any resident of the facility and who misuses or  
10 misappropriates funds obtained through this power commits a  
11 felony of the third degree, punishable as provided in s.  
12 775.082, s. 775.083, or s. 775.084.

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

31

1           (8) The department may by rule clarify terms and  
2 specify procedures and documentation necessary to administer  
3 the provisions of this section relating to the proper  
4 management of residents' funds and personal property and the  
5 execution of surety bonds.

6           Section 51. Section 400.428, Florida Statutes, is  
7 renumbered as section 429.28, Florida Statutes, and amended to  
8 read:

9           429.28 ~~400.428~~ Resident bill of rights.--

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

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

17           (b) Be treated with consideration and respect and with  
18 due recognition of personal dignity, individuality, and the  
19 need for privacy.

20           (c) Retain and use his or her own clothes and other  
21 personal property in his or her immediate living quarters, so  
22 as to maintain individuality and personal dignity, except when  
23 the facility can demonstrate that such would be unsafe,  
24 impractical, or an infringement upon the rights of other  
25 residents.

26           (d) Unrestricted private communication, including  
27 receiving and sending unopened correspondence, access to a  
28 telephone, and visiting with any person of his or her choice,  
29 at any time between the hours of 9 a.m. and 9 p.m. at a  
30 minimum. Upon request, the facility shall make provisions to  
31

1 extend visiting hours for caregivers and out-of-town guests,  
2 and in other similar situations.

3 (e) Freedom to participate in and benefit from  
4 community services and activities and to achieve the highest  
5 possible level of independence, autonomy, and interaction  
6 within the community.

7 (f) Manage his or her financial affairs unless the  
8 resident or, if applicable, the resident's representative,  
9 designee, surrogate, guardian, or attorney in fact authorizes  
10 the administrator of the facility to provide safekeeping for  
11 funds as provided in s. 429.27 ~~s. 400.427~~.

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

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

17 (i) Exercise civil and religious liberties, including  
18 the right to independent personal decisions. No religious  
19 beliefs or practices, nor any attendance at religious  
20 services, shall be imposed upon any resident.

21 (j) Access to adequate and appropriate health care  
22 consistent with established and recognized standards within  
23 the community.

24 (k) At least 45 days' notice of relocation or  
25 termination of residency from the facility unless, for medical  
26 reasons, the resident is certified by a physician to require  
27 an emergency relocation to a facility providing a more skilled  
28 level of care or the resident engages in a pattern of conduct  
29 that is harmful or offensive to other residents. In the case  
30 of a resident who has been adjudicated mentally incapacitated,  
31 the guardian shall be given at least 45 days' notice of a



1 nonemergency relocation or residency termination. Reasons for  
2 relocation shall be set forth in writing. In order for a  
3 facility to terminate the residency of an individual without  
4 notice as provided herein, the facility shall show good cause  
5 in a court of competent jurisdiction.

6 (1) Present grievances and recommend changes in  
7 policies, procedures, and services to the staff of the  
8 facility, governing officials, or any other person without  
9 restraint, interference, coercion, discrimination, or  
10 reprisal. Each facility shall establish a grievance procedure  
11 to facilitate the residents' exercise of this right. This  
12 right includes access to ombudsman volunteers and advocates  
13 and the right to be a member of, to be active in, and to  
14 associate with advocacy or special interest groups.

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

28 (3)(a) The agency shall conduct a survey to determine  
29 general compliance with facility standards and compliance with  
30 residents' rights as a prerequisite to initial licensure or  
31 licensure renewal.

1 (b) In order to determine whether the facility is  
2 adequately protecting residents' rights, the biennial survey  
3 shall include private informal conversations with a sample of  
4 residents and consultation with the ombudsman council in the  
5 planning and service area in which the facility is located to  
6 discuss residents' experiences within the facility.

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

12 (d) The agency may conduct periodic followup  
13 inspections as necessary to monitor the compliance of  
14 facilities with a history of any class I, class II, or class  
15 III violations that threaten the health, safety, or security  
16 of residents.

17 (e) The agency may conduct complaint investigations as  
18 warranted to investigate any allegations of noncompliance with  
19 requirements required under this part or rules adopted under  
20 this part.

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

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

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

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

29 (c) Files a civil action alleging a violation of the  
30 provisions of this part or notifies a state attorney or the  
31 Attorney General of a possible violation of such provisions.

1           (6) Any facility which terminates the residency of an  
2 individual who participated in activities specified in  
3 subsection (5) shall show good cause in a court of competent  
4 jurisdiction.

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

14           Section 52. Section 400.429, Florida Statutes, is  
15 renumbered as section 429.29, Florida Statutes, and amended to  
16 read:

17           429.29 ~~400.429~~ Civil actions to enforce rights.--

18           (1) Any person or resident whose rights as specified  
19 in this part are violated shall have a cause of action. The  
20 action may be brought by the resident or his or her guardian,  
21 or by a person or organization acting on behalf of a resident  
22 with the consent of the resident or his or her guardian, or by  
23 the personal representative of the estate of a deceased  
24 resident regardless of the cause of death. If the action  
25 alleges a claim for the resident's rights or for negligence  
26 that caused the death of the resident, the claimant shall be  
27 required to elect either survival damages pursuant to s.  
28 46.021 or wrongful death damages pursuant to s. 768.21. If the  
29 action alleges a claim for the resident's rights or for  
30 negligence that did not cause the death of the resident, the  
31 personal representative of the estate may recover damages for

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

24 (2) In any claim brought pursuant to this part  
25 alleging a violation of resident's rights or negligence  
26 causing injury to or the death of a resident, the claimant  
27 shall have the burden of proving, by a preponderance of the  
28 evidence, that:

- 29 (a) The defendant owed a duty to the resident;  
30 (b) The defendant breached the duty to the resident;

31

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

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

5  
6 Nothing in this part shall be interpreted to create strict  
7 liability. A violation of the rights set forth in s. 429.28 ~~s.~~  
8 ~~400.428~~ or in any other standard or guidelines specified in  
9 this part or in any applicable administrative standard or  
10 guidelines of this state or a federal regulatory agency shall  
11 be evidence of negligence but shall not be considered  
12 negligence per se.

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

18 (4) In any claim for resident's rights violation or  
19 negligence by a nurse licensed under part I of chapter 464,  
20 such nurse shall have the duty to exercise care consistent  
21 with the prevailing professional standard of care for a nurse.  
22 The prevailing professional standard of care for a nurse shall  
23 be that level of care, skill, and treatment which, in light of  
24 all relevant surrounding circumstances, is recognized as  
25 acceptable and appropriate by reasonably prudent similar  
26 nurses.

27 (5) Discovery of financial information for the purpose  
28 of determining the value of punitive damages may not be had  
29 unless the plaintiff shows the court by proffer or evidence in  
30 the record that a reasonable basis exists to support a claim  
31 for punitive damages.

1           (6) In addition to any other standards for punitive  
2 damages, any award of punitive damages must be reasonable in  
3 light of the actual harm suffered by the resident and the  
4 egregiousness of the conduct that caused the actual harm to  
5 the resident.

6           (7) The resident or the resident's legal  
7 representative shall serve a copy of any complaint alleging in  
8 whole or in part a violation of any rights specified in this  
9 part to the Agency for Health Care Administration at the time  
10 of filing the initial complaint with the clerk of the court  
11 for the county in which the action is pursued. The requirement  
12 of providing a copy of the complaint to the agency does not  
13 impair the resident's legal rights or ability to seek relief  
14 for his or her claim.

15           Section 53. Section 400.4293, Florida Statutes, is  
16 renumbered as section 429.293, Florida Statutes, and amended  
17 to read:

18           429.293 ~~400.4293~~ Presuit notice; investigation;  
19 notification of violation of residents' rights or alleged  
20 negligence; claims evaluation procedure; informal discovery;  
21 review; settlement offer; mediation.--

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

23           (a) "Claim for residents' rights violation or  
24 negligence" means a negligence claim alleging injury to or the  
25 death of a resident arising out of an asserted violation of  
26 the rights of a resident under s. 429.28 ~~s. 400.428~~ or an  
27 asserted deviation from the applicable standard of care.

28           (b) "Insurer" means any self-insurer authorized under  
29 s. 627.357, liability insurance carrier, joint underwriting  
30 association, or uninsured prospective defendant.

31

1           (2) Prior to filing a claim for a violation of a  
2 resident's rights or a claim for negligence, a claimant  
3 alleging injury to or the death of a resident shall notify  
4 each prospective defendant by certified mail, return receipt  
5 requested, of an asserted violation of a resident's rights  
6 provided in s. 429.28 ~~s. 400.428~~ or deviation from the  
7 standard of care. Such notification shall include an  
8 identification of the rights the prospective defendant has  
9 violated and the negligence alleged to have caused the  
10 incident or incidents and a brief description of the injuries  
11 sustained by the resident which are reasonably identifiable at  
12 the time of notice. The notice shall contain a certificate of  
13 counsel that counsel's reasonable investigation gave rise to a  
14 good faith belief that grounds exist for an action against  
15 each prospective defendant.

16           (3)(a) No suit may be filed for a period of 75 days  
17 after notice is mailed to any prospective defendant. During  
18 the 75-day period, the prospective defendants or their  
19 insurers shall conduct an evaluation of the claim to determine  
20 the liability of each defendant and to evaluate the damages of  
21 the claimants. Each defendant or insurer of the defendant  
22 shall have a procedure for the prompt evaluation of claims  
23 during the 75-day period. The procedure shall include one or  
24 more of the following:

- 25           1. Internal review by a duly qualified facility risk  
26 manager or claims adjuster;
- 27           2. Internal review by counsel for each prospective  
28 defendant;
- 29           3. A quality assurance committee authorized under any  
30 applicable state or federal statutes or regulations; or

31

1           4. Any other similar procedure that fairly and  
2 promptly evaluates the claims.

3  
4 Each defendant or insurer of the defendant shall evaluate the  
5 claim in good faith.

6           (b) At or before the end of the 75 days, the defendant  
7 or insurer of the defendant shall provide the claimant with a  
8 written response:

- 9           1. Rejecting the claim; or  
10          2. Making a settlement offer.

11          (c) The response shall be delivered to the claimant if  
12 not represented by counsel or to the claimant's attorney, by  
13 certified mail, return receipt requested. Failure of the  
14 prospective defendant or insurer of the defendant to reply to  
15 the notice within 75 days after receipt shall be deemed a  
16 rejection of the claim for purposes of this section.

17          (4) The notification of a violation of a resident's  
18 rights or alleged negligence shall be served within the  
19 applicable statute of limitations period; however, during the  
20 75-day period, the statute of limitations is tolled as to all  
21 prospective defendants. Upon stipulation by the parties, the  
22 75-day period may be extended and the statute of limitations  
23 is tolled during any such extension. Upon receiving written  
24 notice by certified mail, return receipt requested, of  
25 termination of negotiations in an extended period, the  
26 claimant shall have 60 days or the remainder of the period of  
27 the statute of limitations, whichever is greater, within which  
28 to file suit.

29          (5) No statement, discussion, written document,  
30 report, or other work product generated by presuit claims  
31 evaluation procedures under this section is discoverable or



1 | admissible in any civil action for any purpose by the opposing  
2 | party. All participants, including, but not limited to,  
3 | physicians, investigators, witnesses, and employees or  
4 | associates of the defendant, are immune from civil liability  
5 | arising from participation in the presuit claims evaluation  
6 | procedure. Any licensed physician or registered nurse may be  
7 | retained by either party to provide an opinion regarding the  
8 | reasonable basis of the claim. The presuit opinions of the  
9 | expert are not discoverable or admissible in any civil action  
10 | for any purpose by the opposing party.

11 |         (6) Upon receipt by a prospective defendant of a  
12 | notice of claim, the parties shall make discoverable  
13 | information available without formal discovery as provided in  
14 | subsection (7).

15 |         (7) Informal discovery may be used by a party to  
16 | obtain unsworn statements and the production of documents or  
17 | things, as follows:

18 |         (a) Unsworn statements.--Any party may require other  
19 | parties to appear for the taking of an unsworn statement. Such  
20 | statements may be used only for the purpose of claims  
21 | evaluation and are not discoverable or admissible in any civil  
22 | action for any purpose by any party. A party seeking to take  
23 | the unsworn statement of any party must give reasonable notice  
24 | in writing to all parties. The notice must state the time and  
25 | place for taking the statement and the name and address of the  
26 | party to be examined. Unless otherwise impractical, the  
27 | examination of any party must be done at the same time by all  
28 | other parties. Any party may be represented by counsel at the  
29 | taking of an unsworn statement. An unsworn statement may be  
30 | recorded electronically, stenographically, or on videotape.  
31 | The taking of unsworn statements is subject to the provisions

1 of the Florida Rules of Civil Procedure and may be terminated  
2 for abuses.

3 (b) Documents or things.--Any party may request  
4 discovery of relevant documents or things. The documents or  
5 things must be produced, at the expense of the requesting  
6 party, within 20 days after the date of receipt of the  
7 request. A party is required to produce relevant and  
8 discoverable documents or things within that party's  
9 possession or control, if in good faith it can reasonably be  
10 done within the timeframe of the claims evaluation process.

11 (8) Each request for and notice concerning informal  
12 discovery pursuant to this section must be in writing, and a  
13 copy thereof must be sent to all parties. Such a request or  
14 notice must bear a certificate of service identifying the name  
15 and address of the person to whom the request or notice is  
16 served, the date of the request or notice, and the manner of  
17 service thereof.

18 (9) If a prospective defendant makes a written  
19 settlement offer, the claimant shall have 15 days from the  
20 date of receipt to accept the offer. An offer shall be deemed  
21 rejected unless accepted by delivery of a written notice of  
22 acceptance.

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

26 (11) Within 30 days after the claimant's receipt of  
27 defendant's response to the claim, the parties or their  
28 designated representatives shall meet in mediation to discuss  
29 the issues of liability and damages in accordance with the  
30 mediation rules of practice and procedures adopted by the  
31 Supreme Court. Upon stipulation of the parties, this 30-day

1 period may be extended and the statute of limitations is  
2 tolled during the mediation and any such extension. At the  
3 conclusion of mediation, the claimant shall have 60 days or  
4 the remainder of the period of the statute of limitations,  
5 whichever is greater, within which to file suit.

6 Section 54. Section 400.431, Florida Statutes, is  
7 renumbered as section 429.31, Florida Statutes, and amended to  
8 read:

9 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

10 (1) Whenever a facility voluntarily discontinues  
11 operation, it shall inform the agency in writing at least 90  
12 days prior to the discontinuance of operation. The facility  
13 shall also inform each resident or the next of kin, legal  
14 representative, or agency acting on each resident's behalf, of  
15 the fact and the proposed time of such discontinuance,  
16 following the notification requirements provided in s.  
17 429.28(1)(k) ~~s. 400.428(1)(k)~~. In the event a resident has no  
18 person to represent him or her, the facility shall be  
19 responsible for referral to an appropriate social service  
20 agency for placement.

21 (2) Immediately upon the notice by the agency of the  
22 voluntary or involuntary termination of such operation, the  
23 agency shall monitor the transfer of residents to other  
24 facilities and ensure that residents' rights are being  
25 protected. The department, in consultation with the  
26 Department of Children and Family Services, shall specify  
27 procedures for ensuring that all residents who receive  
28 services are appropriately relocated.

29 (3) All charges shall be prorated as of the date on  
30 which the facility discontinues operation, and if any payments  
31 have been made in advance, the payments for services not

1 received shall be refunded to the resident or the resident's  
2 guardian within 10 working days of voluntary or involuntary  
3 closure of the facility, whether or not such refund is  
4 requested by the resident or guardian.

5 (4) Immediately upon discontinuance of the operation  
6 of a facility, the owner shall surrender the license therefor  
7 to the agency, and the license shall be canceled.

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

19 Section 55. Section 400.441, Florida Statutes, is  
20 renumbered as section 429.41, Florida Statutes, and amended to  
21 read:

22 429.41 ~~400.441~~ Rules establishing standards.--

23 (1) It is the intent of the Legislature that rules  
24 published and enforced pursuant to this section shall include  
25 criteria by which a reasonable and consistent quality of  
26 resident care and quality of life may be ensured and the  
27 results of such resident care may be demonstrated. Such rules  
28 shall also ensure a safe and sanitary environment that is  
29 residential and noninstitutional in design or nature. It is  
30 further intended that reasonable efforts be made to  
31 accommodate the needs and preferences of residents to enhance

1 the quality of life in a facility. In order to provide safe  
2 and sanitary facilities and the highest quality of resident  
3 care accommodating the needs and preferences of residents, the  
4 department, in consultation with the agency, the Department of  
5 Children and Family Services, and the Department of Health,  
6 shall adopt rules, policies, and procedures to administer this  
7 part, which must include reasonable and fair minimum standards  
8 in relation to:

9 (a) The requirements for and maintenance of  
10 facilities, not in conflict with the provisions of chapter  
11 553, relating to plumbing, heating, cooling, lighting,  
12 ventilation, living space, and other housing conditions, which  
13 will ensure the health, safety, and comfort of residents and  
14 protection from fire hazard, including adequate provisions for  
15 fire alarm and other fire protection suitable to the size of  
16 the structure. Uniform firesafety standards shall be  
17 established and enforced by the State Fire Marshal in  
18 cooperation with the agency, the department, and the  
19 Department of Health.

20 1. Evacuation capability determination.--

21 a. The provisions of the National Fire Protection  
22 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used  
23 for determining the ability of the residents, with or without  
24 staff assistance, to relocate from or within a licensed  
25 facility to a point of safety as provided in the fire codes  
26 adopted herein. An evacuation capability evaluation for  
27 initial licensure shall be conducted within 6 months after the  
28 date of licensure. For existing licensed facilities that are  
29 not equipped with an automatic fire sprinkler system, the  
30 administrator shall evaluate the evacuation capability of  
31 residents at least annually. The evacuation capability

1 evaluation for each facility not equipped with an automatic  
2 fire sprinkler system shall be validated, without liability,  
3 by the State Fire Marshal, by the local fire marshal, or by  
4 the local authority having jurisdiction over firesafety,  
5 before the license renewal date. If the State Fire Marshal,  
6 local fire marshal, or local authority having jurisdiction  
7 over firesafety has reason to believe that the evacuation  
8 capability of a facility as reported by the administrator may  
9 have changed, it may, with assistance from the facility  
10 administrator, reevaluate the evacuation capability through  
11 timed exiting drills. Translation of timed fire exiting drills  
12 to evacuation capability may be determined:

13 (I) Three minutes or less: prompt.

14 (II) More than 3 minutes, but not more than 13  
15 minutes: slow.

16 (III) More than 13 minutes: impractical.

17 b. The Office of the State Fire Marshal shall provide  
18 or cause the provision of training and education on the proper  
19 application of Chapter 5, NFPA 101A, 1995 edition, to its  
20 employees, to staff of the Agency for Health Care  
21 Administration who are responsible for regulating facilities  
22 under this part, and to local governmental inspectors. The  
23 Office of the State Fire Marshal shall provide or cause the  
24 provision of this training within its existing budget, but may  
25 charge a fee for this training to offset its costs. The  
26 initial training must be delivered within 6 months after July  
27 1, 1995, and as needed thereafter.

28 c. The Office of the State Fire Marshal, in  
29 cooperation with provider associations, shall provide or cause  
30 the provision of a training program designed to inform  
31 facility operators on how to properly review bid documents

1 relating to the installation of automatic fire sprinklers. The  
2 Office of the State Fire Marshal shall provide or cause the  
3 provision of this training within its existing budget, but may  
4 charge a fee for this training to offset its costs. The  
5 initial training must be delivered within 6 months after July  
6 1, 1995, and as needed thereafter.

7 d. The administrator of a licensed facility shall sign  
8 an affidavit verifying the number of residents occupying the  
9 facility at the time of the evacuation capability evaluation.

10 2. Firesafety requirements.--

11 a. Except for the special applications provided  
12 herein, effective January 1, 1996, the provisions of the  
13 National Fire Protection Association, Life Safety Code, NFPA  
14 101, 1994 edition, Chapter 22 for new facilities and Chapter  
15 23 for existing facilities shall be the uniform fire code  
16 applied by the State Fire Marshal for assisted living  
17 facilities, pursuant to s. 633.022.

18 b. Any new facility, regardless of size, that applies  
19 for a license on or after January 1, 1996, must be equipped  
20 with an automatic fire sprinkler system. The exceptions as  
21 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as  
22 adopted herein, apply to any new facility housing eight or  
23 fewer residents. On July 1, 1995, local governmental entities  
24 responsible for the issuance of permits for construction shall  
25 inform, without liability, any facility whose permit for  
26 construction is obtained prior to January 1, 1996, of this  
27 automatic fire sprinkler requirement. As used in this part,  
28 the term "a new facility" does not mean an existing facility  
29 that has undergone change of ownership.

30 c. Notwithstanding any provision of s. 633.022 or of  
31 the National Fire Protection Association, NFPA 101A, Chapter

1 5, 1995 edition, to the contrary, any existing facility  
2 housing eight or fewer residents is not required to install an  
3 automatic fire sprinkler system, nor to comply with any other  
4 requirement in Chapter 23, NFPA 101, 1994 edition, that  
5 exceeds the firesafety requirements of NFPA 101, 1988 edition,  
6 that applies to this size facility, unless the facility has  
7 been classified as impractical to evacuate. Any existing  
8 facility housing eight or fewer residents that is classified  
9 as impractical to evacuate must install an automatic fire  
10 sprinkler system within the timeframes granted in this  
11 section.

12 d. Any existing facility that is required to install  
13 an automatic fire sprinkler system under this paragraph need  
14 not meet other firesafety requirements of Chapter 23, NFPA  
15 101, 1994 edition, which exceed the provisions of NFPA 101,  
16 1988 edition. The mandate contained in this paragraph which  
17 requires certain facilities to install an automatic fire  
18 sprinkler system supersedes any other requirement.

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

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

24 g. A local government may charge fees only in an  
25 amount not to exceed the actual expenses incurred by local  
26 government relating to the installation and maintenance of an  
27 automatic fire sprinkler system in an existing and properly  
28 licensed assisted living facility structure as of January 1,  
29 1996.

30 h. If a licensed facility undergoes major  
31 reconstruction or addition to an existing building on or after



1 January 1, 1996, the entire building must be equipped with an  
2 automatic fire sprinkler system. Major reconstruction of a  
3 building means repair or restoration that costs in excess of  
4 50 percent of the value of the building as reported on the tax  
5 rolls, excluding land, before reconstruction. Multiple  
6 reconstruction projects within a 5-year period the total costs  
7 of which exceed 50 percent of the initial value of the  
8 building at the time the first reconstruction project was  
9 permitted are to be considered as major reconstruction.  
10 Application for a permit for an automatic fire sprinkler  
11 system is required upon application for a permit for a  
12 reconstruction project that creates costs that go over the  
13 50-percent threshold.

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

19 (I) Impractical evacuation capability, 24 months.

20 (II) Slow evacuation capability, 48 months.

21 (III) Prompt evacuation capability, 60 months.

22

23 The beginning date from which the deadline for the automatic  
24 fire sprinkler installation requirement must be calculated is  
25 upon receipt of written notice from the local fire official  
26 that an automatic fire sprinkler system must be installed. The  
27 local fire official shall send a copy of the document  
28 indicating the requirement of a fire sprinkler system to the  
29 Agency for Health Care Administration.

30 j. It is recognized that the installation of an  
31 automatic fire sprinkler system may create financial hardship

1 for some facilities. The appropriate local fire official  
2 shall, without liability, grant two 1-year extensions to the  
3 timeframes for installation established herein, if an  
4 automatic fire sprinkler installation cost estimate and proof  
5 of denial from two financial institutions for a construction  
6 loan to install the automatic fire sprinkler system are  
7 submitted. However, for any facility with a class I or class  
8 II, or a history of uncorrected class III, firesafety  
9 deficiencies, an extension must not be granted. The local fire  
10 official shall send a copy of the document granting the time  
11 extension to the Agency for Health Care Administration.

12 k. A facility owner whose facility is required to be  
13 equipped with an automatic fire sprinkler system under Chapter  
14 23, NFPA 101, 1994 edition, as adopted herein, must disclose  
15 to any potential buyer of the facility that an installation of  
16 an automatic fire sprinkler requirement exists. The sale of  
17 the facility does not alter the timeframe for the installation  
18 of the automatic fire sprinkler system.

19 l. Existing facilities required to install an  
20 automatic fire sprinkler system as a result of  
21 construction-type restrictions in Chapter 23, NFPA 101, 1994  
22 edition, as adopted herein, or evacuation capability  
23 requirements shall be notified by the local fire official in  
24 writing of the automatic fire sprinkler requirement, as well  
25 as the appropriate date for final compliance as provided in  
26 this subparagraph. The local fire official shall send a copy  
27 of the document to the Agency for Health Care Administration.

28 m. Except in cases of life-threatening fire hazards,  
29 if an existing facility experiences a change in the evacuation  
30 capability, or if the local authority having jurisdiction  
31 identifies a construction-type restriction, such that an

1 automatic fire sprinkler system is required, it shall be  
2 afforded time for installation as provided in this  
3 subparagraph.

4  
5 Facilities that are fully sprinkled and in compliance with  
6 other firesafety standards are not required to conduct more  
7 than one of the required fire drills between the hours of 11  
8 p.m. and 7 a.m., per year. In lieu of the remaining drills,  
9 staff responsible for residents during such hours may be  
10 required to participate in a mock drill that includes a review  
11 of evacuation procedures. Such standards must be included or  
12 referenced in the rules adopted by the State Fire Marshal.  
13 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the  
14 final administrative authority for firesafety standards  
15 established and enforced pursuant to this section. All  
16 licensed facilities must have an annual fire inspection  
17 conducted by the local fire marshal or authority having  
18 jurisdiction.

19       3. Resident elopement requirements.--Facilities are  
20 required to conduct a minimum of two resident elopement  
21 prevention and response drills per year. All administrators  
22 and direct care staff must participate in the drills which  
23 shall include a review of procedures to address resident  
24 elopement. Facilities must document the implementation of the  
25 drills and ensure that the drills are conducted in a manner  
26 consistent with the facility's resident elopement policies and  
27 procedures.

28       (b) The preparation and annual update of a  
29 comprehensive emergency management plan. Such standards must  
30 be included in the rules adopted by the department after  
31 consultation with the Department of Community Affairs. At a

1 minimum, the rules must provide for plan components that  
2 address emergency evacuation transportation; adequate  
3 sheltering arrangements; postdisaster activities, including  
4 provision of emergency power, food, and water; postdisaster  
5 transportation; supplies; staffing; emergency equipment;  
6 individual identification of residents and transfer of  
7 records; communication with families; and responses to family  
8 inquiries. The comprehensive emergency management plan is  
9 subject to review and approval by the local emergency  
10 management agency. During its review, the local emergency  
11 management agency shall ensure that the following agencies, at  
12 a minimum, are given the opportunity to review the plan: the  
13 Department of Elderly Affairs, the Department of Health, the  
14 Agency for Health Care Administration, and the Department of  
15 Community Affairs. Also, appropriate volunteer organizations  
16 must be given the opportunity to review the plan. The local  
17 emergency management agency shall complete its review within  
18 60 days and either approve the plan or advise the facility of  
19 necessary revisions.

20 (c) The number, training, and qualifications of all  
21 personnel having responsibility for the care of residents.  
22 The rules must require adequate staff to provide for the  
23 safety of all residents. Facilities licensed for 17 or more  
24 residents are required to maintain an alert staff for 24 hours  
25 per day.

26 (d) All sanitary conditions within the facility and  
27 its surroundings which will ensure the health and comfort of  
28 residents. The rules must clearly delineate the  
29 responsibilities of the agency's licensure and survey staff,  
30 the county health departments, and the local authority having  
31 jurisdiction over fire safety and ensure that inspections are

1 not duplicative. The agency may collect fees for food service  
2 inspections conducted by the county health departments and  
3 transfer such fees to the Department of Health.

4 (e) License application and license renewal, transfer  
5 of ownership, proper management of resident funds and personal  
6 property, surety bonds, resident contracts, refund policies,  
7 financial ability to operate, and facility and staff records.

8 (f) Inspections, complaint investigations,  
9 moratoriums, classification of deficiencies, levying and  
10 enforcement of penalties, and use of income from fees and  
11 fines.

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

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

- 16 1. The supervision of residents;
- 17 2. The provision of personal services;
- 18 3. The provision of, or arrangement for, social and  
19 leisure activities;
- 20 4. The arrangement for appointments and transportation  
21 to appropriate medical, dental, nursing, or mental health  
22 services, as needed by residents;
- 23 5. The management of medication;
- 24 6. The nutritional needs of residents;
- 25 7. Resident records; and
- 26 8. Internal risk management and quality assurance.

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

29 (j) The establishment of specific criteria to define  
30 appropriateness of resident admission and continued residency  
31

1 in a facility holding a standard, limited nursing, extended  
2 congregate care, and limited mental health license.

3 (k) The use of physical or chemical restraints. The  
4 use of physical restraints is limited to half-bed rails as  
5 prescribed and documented by the resident's physician with the  
6 consent of the resident or, if applicable, the resident's  
7 representative or designee or the resident's surrogate,  
8 guardian, or attorney in fact. The use of chemical restraints  
9 is limited to prescribed dosages of medications authorized by  
10 the resident's physician and must be consistent with the  
11 resident's diagnosis. Residents who are receiving medications  
12 that can serve as chemical restraints must be evaluated by  
13 their physician at least annually to assess:

14 1. The continued need for the medication.

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

17 3. The need for adjustments in the prescription.

18 (1) The establishment of specific policies and  
19 procedures on resident elopement. Facilities shall conduct a  
20 minimum of two resident elopement drills each year. All  
21 administrators and direct care staff shall participate in the  
22 drills. Facilities shall document the drills.

23 (2) In adopting any rules pursuant to this part, the  
24 department, in conjunction with the agency, shall make  
25 distinct standards for facilities based upon facility size;  
26 the types of care provided; the physical and mental  
27 capabilities and needs of residents; the type, frequency, and  
28 amount of services and care offered; and the staffing  
29 characteristics of the facility. Rules developed pursuant to  
30 this section shall not restrict the use of shared staffing and  
31 shared programming in facilities that are part of retirement

1 communities that provide multiple levels of care and otherwise  
2 meet the requirements of law and rule. Except for uniform  
3 firesafety standards, the department shall adopt by rule  
4 separate and distinct standards for facilities with 16 or  
5 fewer beds and for facilities with 17 or more beds. The  
6 standards for facilities with 16 or fewer beds shall be  
7 appropriate for a noninstitutional residential environment,  
8 provided that the structure is no more than two stories in  
9 height and all persons who cannot exit the facility unassisted  
10 in an emergency reside on the first floor. The department, in  
11 conjunction with the agency, may make other distinctions among  
12 types of facilities as necessary to enforce the provisions of  
13 this part. Where appropriate, the agency shall offer alternate  
14 solutions for complying with established standards, based on  
15 distinctions made by the department and the agency relative to  
16 the physical characteristics of facilities and the types of  
17 care offered therein.

18 (3) The department shall submit a copy of proposed  
19 rules to the Speaker of the House of Representatives, the  
20 President of the Senate, and appropriate committees of  
21 substance for review and comment prior to the promulgation  
22 thereof.

23 (a) Rules promulgated by the department shall  
24 encourage the development of homelike facilities which promote  
25 the dignity, individuality, personal strengths, and  
26 decisionmaking ability of residents.

27 (b) The agency, in consultation with the department,  
28 may waive rules promulgated pursuant to this part in order to  
29 demonstrate and evaluate innovative or cost-effective  
30 congregate care alternatives which enable individuals to age  
31 in place. Such waivers may be granted only in instances where

1 | there is reasonable assurance that the health, safety, or  
2 | welfare of residents will not be endangered. To apply for a  
3 | waiver, the licensee shall submit to the agency a written  
4 | description of the concept to be demonstrated, including  
5 | goals, objectives, and anticipated benefits; the number and  
6 | types of residents who will be affected, if applicable; a  
7 | brief description of how the demonstration will be evaluated;  
8 | and any other information deemed appropriate by the agency.  
9 | Any facility granted a waiver shall submit a report of  
10 | findings to the agency and the department within 12 months.  
11 | At such time, the agency may renew or revoke the waiver or  
12 | pursue any regulatory or statutory changes necessary to allow  
13 | other facilities to adopt the same practices. The department  
14 | may by rule clarify terms and establish waiver application  
15 | procedures, criteria for reviewing waiver proposals, and  
16 | procedures for reporting findings, as necessary to implement  
17 | this subsection.

18 |         (4) The agency may use an abbreviated biennial  
19 | standard licensure inspection that consists of a review of key  
20 | quality-of-care standards in lieu of a full inspection in  
21 | facilities which have a good record of past performance.  
22 | However, a full inspection shall be conducted in facilities  
23 | which have had a history of class I or class II violations,  
24 | uncorrected class III violations, confirmed ombudsman council  
25 | complaints, or confirmed licensure complaints, within the  
26 | previous licensure period immediately preceding the inspection  
27 | or when a potentially serious problem is identified during the  
28 | abbreviated inspection. The agency, in consultation with the  
29 | department, shall develop the key quality-of-care standards  
30 | with input from the State Long-Term Care Ombudsman Council and  
31 | representatives of provider groups for incorporation into its



1 rules. The department, in consultation with the agency, shall  
 2 report annually to the Legislature concerning its  
 3 implementation of this subsection. The report shall include,  
 4 at a minimum, the key quality-of-care standards which have  
 5 been developed; the number of facilities identified as being  
 6 eligible for the abbreviated inspection; the number of  
 7 facilities which have received the abbreviated inspection and,  
 8 of those, the number that were converted to full inspection;  
 9 the number and type of subsequent complaints received by the  
 10 agency or department on facilities which have had abbreviated  
 11 inspections; any recommendations for modification to this  
 12 subsection; any plans by the agency to modify its  
 13 implementation of this subsection; and any other information  
 14 which the department believes should be reported.

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

19 Section 56. Section 400.442, Florida Statutes, is  
 20 renumbered as section 429.42, Florida Statutes, and amended to  
 21 read:

22 429.42 ~~400.442~~ Pharmacy and dietary services.--

23 (1) Any assisted living facility in which the agency  
 24 has documented a class I or class II deficiency or uncorrected  
 25 class III deficiencies regarding medicinal drugs or  
 26 over-the-counter preparations, including their storage, use,  
 27 delivery, or administration, or dietary services, or both,  
 28 during a biennial survey or a monitoring visit or an  
 29 investigation in response to a complaint, shall, in addition  
 30 to or as an alternative to any penalties imposed under s.  
 31 429.19 ~~s. 400.419~~, be required to employ the consultant

1 services of a licensed pharmacist, a licensed registered  
2 nurse, or a registered or licensed dietitian, as applicable.  
3 The consultant shall, at a minimum, provide onsite quarterly  
4 consultation until the inspection team from the agency  
5 determines that such consultation services are no longer  
6 required.

7 (2) A corrective action plan for deficiencies related  
8 to assistance with the self-administration of medication or  
9 the administration of medication must be developed and  
10 implemented by the facility within 48 hours after notification  
11 of such deficiency, or sooner if the deficiency is determined  
12 by the agency to be life-threatening.

13 (3) The agency shall employ at least two pharmacists  
14 licensed pursuant to chapter 465 among its personnel who  
15 biennially inspect assisted living facilities licensed under  
16 this part, to participate in biennial inspections or consult  
17 with the agency regarding deficiencies relating to medicinal  
18 drugs or over-the-counter preparations.

19 (4) The department may by rule establish procedures  
20 and specify documentation as necessary to implement this  
21 section.

22 Section 57. Section 400.444, Florida Statutes, is  
23 renumbered as section 429.44, Florida Statutes, and amended to  
24 read:

25 429.44 ~~400.444~~ Construction and renovation;  
26 requirements.--

27 (1) The requirements for the construction and  
28 renovation of a facility shall comply with the provisions of  
29 chapter 553 which pertain to building construction standards,  
30 including plumbing, electrical code, glass, manufactured  
31 buildings, accessibility for persons with disabilities, and

1 the state minimum building code and with the provisions of s.  
2 633.022, which pertain to uniform firesafety standards.

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

8 (3) The department may adopt rules to establish  
9 procedures and specify the documentation necessary to  
10 implement this section.

11 Section 58. Section 400.447, Florida Statutes, is  
12 renumbered as section 429.47, Florida Statutes, and amended to  
13 read:

14 429.47 ~~400.447~~ Prohibited acts; penalties for  
15 violation.--

16 (1) It is unlawful for any person or public body to  
17 offer or advertise to the public, in any way by any medium  
18 whatever, personal services as defined in this act, without  
19 obtaining a valid current license. It is unlawful for any  
20 holder of a license issued pursuant to the provisions of this  
21 act to advertise or hold out to the public that it holds a  
22 license for a facility other than that for which it actually  
23 holds a license.

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

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

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

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

12 (5) A freestanding facility shall not advertise or  
13 imply that any part of it is a nursing home. For the purpose  
14 of this subsection, "freestanding facility" means a facility  
15 that is not operated in conjunction with a nursing home to  
16 which residents of the facility are given priority when  
17 nursing care is required. A person who violates this  
18 subsection is subject to fine as specified in s. 429.19 ~~s.~~  
19 ~~400.419~~.

20 (6) Any facility which is affiliated with any  
21 religious organization or which has a name implying religious  
22 affiliation shall include in its advertising whether or not it  
23 is affiliated with any religious organization and, if so,  
24 which organization.

25 (7) A facility licensed under this part which is not  
26 part of a facility authorized under chapter 651 shall include  
27 the facility's license number as given by the agency in all  
28 advertising. A company or person owning more than one  
29 facility shall include at least one license number per  
30 advertisement. All advertising shall include the term  
31 "assisted living facility" before the license number.

1           Section 59. Section 400.452, Florida Statutes, is  
2 renumbered as section 429.52, Florida Statutes, and amended to  
3 read:

4           429.52 ~~400.452~~ Staff training and educational  
5 programs; core educational requirement.--

6           (1) Administrators and other assisted living facility  
7 staff must meet minimum training and education requirements  
8 established by the Department of Elderly Affairs by rule. This  
9 training and education is intended to assist facilities to  
10 appropriately respond to the needs of residents, to maintain  
11 resident care and facility standards, and to meet licensure  
12 requirements.

13           (2) The department shall establish a competency test  
14 and a minimum required score to indicate successful completion  
15 of the training and educational requirements. The competency  
16 test must be developed by the department in conjunction with  
17 the agency and providers. The required training and education  
18 must cover at least the following topics:

19           (a) State law and rules relating to assisted living  
20 facilities.

21           (b) Resident rights and identifying and reporting  
22 abuse, neglect, and exploitation.

23           (c) Special needs of elderly persons, persons with  
24 mental illness, and persons with developmental disabilities  
25 and how to meet those needs.

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

28           (e) Medication management, recordkeeping, and proper  
29 techniques for assisting residents with self-administered  
30 medication.

31

1 (f) Firesafety requirements, including fire evacuation  
2 drill procedures and other emergency procedures.

3 (g) Care of persons with Alzheimer's disease and  
4 related disorders.

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

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

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

25 (6) Other facility staff shall participate in training  
26 relevant to their job duties as specified by rule of the  
27 department.

28 (7) If the department or the agency determines that  
29 there are problems in a facility that could be reduced through  
30 specific staff training or education beyond that already  
31 required under this section, the department or the agency may

1 require, and provide, or cause to be provided, the training or  
2 education of any personal care staff in the facility.

3 (8) The department shall adopt rules related to these  
4 training requirements, the competency test, necessary  
5 procedures, and competency test fees.

6 Section 60. Subsections (1), (10), and (18) of section  
7 400.462, Florida Statutes, are amended to read:

8 400.462 Definitions.--As used in this part, the term:

9 (1) "Administrator" means a direct employee, as  
10 defined in subsection (9). The administrator must be a  
11 licensed physician, physician assistant, or registered nurse  
12 licensed to practice in this state or an individual having at  
13 least 1 year of supervisory or administrative experience in  
14 home health care or in a facility licensed under chapter 395,  
15 ~~or under part II or part III of this chapter, or under part I~~  
16 of chapter 429. An administrator may manage a maximum of five  
17 licensed home health agencies located within one agency  
18 service district or within an immediately contiguous county.  
19 If the home health agency is licensed under this chapter and  
20 is part of a retirement community that provides multiple  
21 levels of care, an employee of the retirement community may  
22 administer the home health agency and up to a maximum of four  
23 entities licensed under this chapter or chapter 429 that are  
24 owned, operated, or managed by the same corporate entity. An  
25 administrator shall designate, in writing, for each licensed  
26 entity, a qualified alternate administrator to serve during  
27 absences.

28 (10) "Director of nursing" means a registered nurse  
29 who is a direct employee, as defined in subsection (9), of the  
30 agency and who is a graduate of an approved school of nursing  
31 and is licensed in this state; who has at least 1 year of

1 supervisory experience as a registered nurse; and who is  
2 responsible for overseeing the professional nursing and home  
3 health aid delivery of services of the agency. A director of  
4 nursing may be the director of a maximum of five licensed home  
5 health agencies operated by a related business entity and  
6 located within one agency service district or within an  
7 immediately contiguous county. If the home health agency is  
8 licensed under this chapter and is part of a retirement  
9 community that provides multiple levels of care, an employee  
10 of the retirement community may serve as the director of  
11 nursing of the home health agency and of up to four entities  
12 licensed under this chapter or chapter 429 which are owned,  
13 operated, or managed by the same corporate entity.

14 (18) "Nurse registry" means any person that procures,  
15 offers, promises, or attempts to secure health-care-related  
16 contracts for registered nurses, licensed practical nurses,  
17 certified nursing assistants, home health aides, companions,  
18 or homemakers, who are compensated by fees as independent  
19 contractors, including, but not limited to, contracts for the  
20 provision of services to patients and contracts to provide  
21 private duty or staffing services to health care facilities  
22 licensed under chapter 395, ~~or~~ this chapter, or chapter 429 or  
23 other business entities.

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

26 400.464 Home health agencies to be licensed;  
27 expiration of license; exemptions; unlawful acts; penalties.--

28 (5) The following are exempt from the licensure  
29 requirements of this part:

30 (h) The delivery of assisted living facility services  
31 for which the assisted living facility is licensed under part



1 I ~~III~~ of ~~this~~ chapter 429, to serve its residents in its  
2 facility.

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

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

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

12 400.497 Rules establishing minimum standards.--The  
13 agency shall adopt, publish, and enforce rules to implement  
14 this part, including, as applicable, ss. 400.506 and 400.509,  
15 which must provide reasonable and fair minimum standards  
16 relating to:

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

22 Section 63. Paragraph (c) of subsection (2) of section  
23 400.556, Florida Statutes, is amended to read:

24 400.556 Denial, suspension, revocation of license;  
25 administrative fines; investigations and inspections.--

26 (2) Each of the following actions by the owner of an  
27 adult day care center or by its operator or employee is a  
28 ground for action by the agency against the owner of the  
29 center or its operator or employee:

30 (c) A failure of persons subject to level 2 background  
31 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the

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

6 Section 64. Paragraph (c) of subsection (2) of section  
7 400.5572, Florida Statutes, is amended to read:

8 400.5572 Background screening.--

9 (2) The owner or administrator of an adult day care  
10 center must conduct level 1 background screening as set forth  
11 in chapter 435 on all employees hired on or after October 1,  
12 1998, who provide basic services or supportive and optional  
13 services to the participants. Such persons satisfy this  
14 requirement if:

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

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

24 400.601 Definitions.--As used in this part, the term:

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

31

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

3           400.618 Definitions.--As used in this part, the term:

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

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

13           Section 67. Paragraph (f) of subsection (1) of section  
14 400.628, Florida Statutes, is amended to read:

15           400.628 Residents' bill of rights.--

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

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

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

29           400.93 Licensure required; exemptions; unlawful acts;  
30 penalties.--

31

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

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

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

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

11          (f) Intermediate care facilities, homes for special  
12 services, and transitional living facilities licensed under  
13 part ~~V~~ VIII.

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

16          400.962 License required; license application.--

17          (10)

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

31

1           Section 70. Paragraph (b) of subsection (1) of section  
2 400.980, Florida Statutes, is amended to read:

3           400.980 Health care services pools.--

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

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

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

21           400.9905 Definitions.--

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

28           (a) Entities licensed or registered by the state under  
29 chapter 395; or entities licensed or registered by the state  
30 and providing only health care services within the scope of  
31 services authorized under their respective licenses granted

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

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

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

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

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

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

27 401.23 Definitions.--As used in this part, the term:

28 (12) "Interfacility transfer" means the transportation  
 29 by ambulance of a patient between two facilities licensed  
 30 under chapter 393, chapter 395, ~~or~~ chapter 400, or chapter  
 31 429, pursuant to this part.

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

3           402.164 Legislative intent; definitions.--

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

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

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

18           408.032 Definitions relating to Health Facility and  
19 Services Development Act.--As used in ss. 408.031-408.045, the  
20 term:

21           (10) "Hospice" or "hospice program" means a hospice as  
22 defined in part IV ~~V~~ of chapter 400.

23           Section 75. Paragraph (b) of subsection (2) of section  
24 408.033, Florida Statutes, is amended to read:

25           408.033 Local and state health planning.--

26           (2) FUNDING.--

27           (b)1. A hospital licensed under chapter 395, a nursing  
28 home licensed under chapter 400, and an assisted living  
29 facility licensed under chapter 429 ~~400~~ shall be assessed an  
30 annual fee based on number of beds.  
31



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

3           3. Facilities operated by the Department of Children  
4 and Family Services, the Department of Health, or the  
5 Department of Corrections and any hospital which meets the  
6 definition of rural hospital pursuant to s. 395.602 are exempt  
7 from the assessment required in this subsection.

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

10           408.034 Duties and responsibilities of agency;  
11 rules.--

12           (2) In the exercise of its authority to issue licenses  
13 to health care facilities and health service providers, as  
14 provided under chapters 393 ~~and~~ 395~~7~~ and parts II and IV ~~VI~~  
15 of chapter 400, the agency may not issue a license to any  
16 health care facility or health service provider that fails to  
17 receive a certificate of need or an exemption for the licensed  
18 facility or service.

19           Section 77. Subsections (28) and (29) of section  
20 408.07, Florida Statutes, are amended to read:

21           408.07 Definitions.--As used in this chapter, with the  
22 exception of ss. 408.031-408.045, the term:

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

25           (29) "Hospice" means an organization licensed under  
26 part IV ~~VI~~ of chapter 400.

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

29           408.831 Denial, suspension, or revocation of a  
30 license, registration, certificate, or application.--

31

1           (3) This section provides standards of enforcement  
2 applicable to all entities licensed or regulated by the Agency  
3 for Health Care Administration. This section controls over any  
4 conflicting provisions of chapters 39, 381, 383, 390, 391,  
5 393, 394, 395, 400, 408, 429, 468, 483, and 641 or rules  
6 adopted pursuant to those chapters.

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

9           409.212 Optional supplementation.--

10          (2) The base rate of payment for optional state  
11 supplementation shall be established by the department within  
12 funds appropriated. Additional amounts may be provided for  
13 mental health residents in facilities designed to provide  
14 limited mental health services as provided for in s. 429.075  
15 ~~s. 400.4075~~. The base rate of payment does not include the  
16 personal needs allowance.

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

19          409.905 Mandatory Medicaid services.--The agency may  
20 make payments for the following services, which are required  
21 of the state by Title XIX of the Social Security Act,  
22 furnished by Medicaid providers to recipients who are  
23 determined to be eligible on the dates on which the services  
24 were provided. Any service under this section shall be  
25 provided only when medically necessary and in accordance with  
26 state and federal law. Mandatory services rendered by  
27 providers in mobile units to Medicaid recipients may be  
28 restricted by the agency. Nothing in this section shall be  
29 construed to prevent or limit the agency from adjusting fees,  
30 reimbursement rates, lengths of stay, number of visits, number  
31 of services, or any other adjustments necessary to comply with

1 the availability of moneys and any limitations or directions  
2 provided for in the General Appropriations Act or chapter 216.

3 (4) HOME HEALTH CARE SERVICES.--The agency shall pay  
4 for nursing and home health aide services, supplies,  
5 appliances, and durable medical equipment, necessary to assist  
6 a recipient living at home. An entity that provides services  
7 pursuant to this subsection shall be licensed under part III  
8 ~~IV~~ of chapter 400. These services, equipment, and supplies, or  
9 reimbursement therefor, may be limited as provided in the  
10 General Appropriations Act and do not include services,  
11 equipment, or supplies provided to a person residing in a  
12 hospital or nursing facility.

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

15 (b) The agency shall implement a comprehensive  
16 utilization management program that requires prior  
17 authorization of all private duty nursing services, an  
18 individualized treatment plan that includes information about  
19 medication and treatment orders, treatment goals, methods of  
20 care to be used, and plans for care coordination by nurses and  
21 other health professionals. The utilization management program  
22 shall also include a process for periodically reviewing the  
23 ongoing use of private duty nursing services. The assessment  
24 of need shall be based on a child's condition, family support  
25 and care supplements, a family's ability to provide care, and  
26 a family's and child's schedule regarding work, school, sleep,  
27 and care for other family dependents. When implemented, the  
28 private duty nursing utilization management program shall  
29 replace the current authorization program used by the Agency  
30 for Health Care Administration and the Children's Medical  
31 Services program of the Department of Health. The agency may

1 competitively bid on a contract to select a qualified  
2 organization to provide utilization management of private duty  
3 nursing services. The agency is authorized to seek federal  
4 waivers to implement this initiative.

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

7 409.906 Optional Medicaid services.--Subject to  
8 specific appropriations, the agency may make payments for  
9 services which are optional to the state under Title XIX of  
10 the Social Security Act and are furnished by Medicaid  
11 providers to recipients who are determined to be eligible on  
12 the dates on which the services were provided. Any optional  
13 service that is provided shall be provided only when medically  
14 necessary and in accordance with state and federal law.

15 Optional services rendered by providers in mobile units to  
16 Medicaid recipients may be restricted or prohibited by the  
17 agency. Nothing in this section shall be construed to prevent  
18 or limit the agency from adjusting fees, reimbursement rates,  
19 lengths of stay, number of visits, or number of services, or  
20 making any other adjustments necessary to comply with the  
21 availability of moneys and any limitations or directions  
22 provided for in the General Appropriations Act or chapter 216.  
23 If necessary to safeguard the state's systems of providing  
24 services to elderly and disabled persons and subject to the  
25 notice and review provisions of s. 216.177, the Governor may  
26 direct the Agency for Health Care Administration to amend the  
27 Medicaid state plan to delete the optional Medicaid service  
28 known as "Intermediate Care Facilities for the Developmentally  
29 Disabled." Optional services may include:

30 (14) HOSPICE CARE SERVICES.--The agency may pay for  
31 all reasonable and necessary services for the palliation or

1 management of a recipient's terminal illness, if the services  
2 are provided by a hospice that is licensed under part IV ~~VI~~ of  
3 chapter 400 and meets Medicare certification requirements.

4 Section 82. Subsection (7) and paragraph (a) of  
5 subsection (8) of section 409.907, Florida Statutes, are  
6 amended to read:

7 409.907 Medicaid provider agreements.--The agency may  
8 make payments for medical assistance and related services  
9 rendered to Medicaid recipients only to an individual or  
10 entity who has a provider agreement in effect with the agency,  
11 who is performing services or supplying goods in accordance  
12 with federal, state, and local law, and who agrees that no  
13 person shall, on the grounds of handicap, race, color, or  
14 national origin, or for any other reason, be subjected to  
15 discrimination under any program or activity for which the  
16 provider receives payment from the agency.

17 (7) The agency may require, as a condition of  
18 participating in the Medicaid program and before entering into  
19 the provider agreement, that the provider submit information,  
20 in an initial and any required renewal applications,  
21 concerning the professional, business, and personal background  
22 of the provider and permit an onsite inspection of the  
23 provider's service location by agency staff or other personnel  
24 designated by the agency to perform this function. The agency  
25 shall perform a random onsite inspection, within 60 days after  
26 receipt of a fully complete new provider's application, of the  
27 provider's service location prior to making its first payment  
28 to the provider for Medicaid services to determine the  
29 applicant's ability to provide the services that the applicant  
30 is proposing to provide for Medicaid reimbursement. The agency  
31 is not required to perform an onsite inspection of a provider

1 or program that is licensed by the agency, that provides  
2 services under waiver programs for home and community-based  
3 services, or that is licensed as a medical foster home by the  
4 Department of Children and Family Services. As a continuing  
5 condition of participation in the Medicaid program, a provider  
6 shall immediately notify the agency of any current or pending  
7 bankruptcy filing. Before entering into the provider  
8 agreement, or as a condition of continuing participation in  
9 the Medicaid program, the agency may also require that  
10 Medicaid providers reimbursed on a fee-for-services basis or  
11 fee schedule basis which is not cost-based, post a surety bond  
12 not to exceed \$50,000 or the total amount billed by the  
13 provider to the program during the current or most recent  
14 calendar year, whichever is greater. For new providers, the  
15 amount of the surety bond shall be determined by the agency  
16 based on the provider's estimate of its first year's billing.  
17 If the provider's billing during the first year exceeds the  
18 bond amount, the agency may require the provider to acquire an  
19 additional bond equal to the actual billing level of the  
20 provider. A provider's bond shall not exceed \$50,000 if a  
21 physician or group of physicians licensed under chapter 458,  
22 chapter 459, or chapter 460 has a 50 percent or greater  
23 ownership interest in the provider or if the provider is an  
24 assisted living facility licensed under ~~part III of~~ chapter  
25 429 400. The bonds permitted by this section are in addition  
26 to the bonds referenced in s. 400.179(5)(d). If the provider  
27 is a corporation, partnership, association, or other entity,  
28 the agency may require the provider to submit information  
29 concerning the background of that entity and of any principal  
30 of the entity, including any partner or shareholder having an  
31 ownership interest in the entity equal to 5 percent or

1 greater, and any treating provider who participates in or  
2 intends to participate in Medicaid through the entity. The  
3 information must include:

4 (a) Proof of holding a valid license or operating  
5 certificate, as applicable, if required by the state or local  
6 jurisdiction in which the provider is located or if required  
7 by the Federal Government.

8 (b) Information concerning any prior violation, fine,  
9 suspension, termination, or other administrative action taken  
10 under the Medicaid laws, rules, or regulations of this state  
11 or of any other state or the Federal Government; any prior  
12 violation of the laws, rules, or regulations relating to the  
13 Medicare program; any prior violation of the rules or  
14 regulations of any other public or private insurer; and any  
15 prior violation of the laws, rules, or regulations of any  
16 regulatory body of this or any other state.

17 (c) Full and accurate disclosure of any financial or  
18 ownership interest that the provider, or any principal,  
19 partner, or major shareholder thereof, may hold in any other  
20 Medicaid provider or health care related entity or any other  
21 entity that is licensed by the state to provide health or  
22 residential care and treatment to persons.

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

26 (8)(a) Each provider, or each principal of the  
27 provider if the provider is a corporation, partnership,  
28 association, or other entity, seeking to participate in the  
29 Medicaid program must submit a complete set of his or her  
30 fingerprints to the agency for the purpose of conducting a  
31 criminal history record check. Principals of the provider

1 include any officer, director, billing agent, managing  
2 employee, or affiliated person, or any partner or shareholder  
3 who has an ownership interest equal to 5 percent or more in  
4 the provider. However, a director of a not-for-profit  
5 corporation or organization is not a principal for purposes of  
6 a background investigation as required by this section if the  
7 director: serves solely in a voluntary capacity for the  
8 corporation or organization, does not regularly take part in  
9 the day-to-day operational decisions of the corporation or  
10 organization, receives no remuneration from the not-for-profit  
11 corporation or organization for his or her service on the  
12 board of directors, has no financial interest in the  
13 not-for-profit corporation or organization, and has no family  
14 members with a financial interest in the not-for-profit  
15 corporation or organization; and if the director submits an  
16 affidavit, under penalty of perjury, to this effect to the  
17 agency and the not-for-profit corporation or organization  
18 submits an affidavit, under penalty of perjury, to this effect  
19 to the agency as part of the corporation's or organization's  
20 Medicaid provider agreement application. Notwithstanding the  
21 above, the agency may require a background check for any  
22 person reasonably suspected by the agency to have been  
23 convicted of a crime. This subsection shall not apply to:

- 24 1. A hospital licensed under chapter 395;
- 25 2. A nursing home licensed under chapter 400;
- 26 3. A hospice licensed under chapter 400;
- 27 4. An assisted living facility licensed under chapter  
28 429; 400-
- 29 5. A unit of local government, except that  
30 requirements of this subsection apply to nongovernmental  
31 providers and entities when contracting with the local



1 government to provide Medicaid services. The actual cost of  
2 the state and national criminal history record checks must be  
3 borne by the nongovernmental provider or entity; or

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

10         Section 83. Paragraph (c) of subsection (5) of section  
11 409.912, Florida Statutes, is amended to read:

12         409.912 Cost-effective purchasing of health care.--The  
13 agency shall purchase goods and services for Medicaid  
14 recipients in the most cost-effective manner consistent with  
15 the delivery of quality medical care. To ensure that medical  
16 services are effectively utilized, the agency may, in any  
17 case, require a confirmation or second physician's opinion of  
18 the correct diagnosis for purposes of authorizing future  
19 services under the Medicaid program. This section does not  
20 restrict access to emergency services or poststabilization  
21 care services as defined in 42 C.F.R. part 438.114. Such  
22 confirmation or second opinion shall be rendered in a manner  
23 approved by the agency. The agency shall maximize the use of  
24 prepaid per capita and prepaid aggregate fixed-sum basis  
25 services when appropriate and other alternative service  
26 delivery and reimbursement methodologies, including  
27 competitive bidding pursuant to s. 287.057, designed to  
28 facilitate the cost-effective purchase of a case-managed  
29 continuum of care. The agency shall also require providers to  
30 minimize the exposure of recipients to the need for acute  
31 inpatient, custodial, and other institutional care and the

1 | inappropriate or unnecessary use of high-cost services. The  
2 | agency shall contract with a vendor to monitor and evaluate  
3 | the clinical practice patterns of providers in order to  
4 | identify trends that are outside the normal practice patterns  
5 | of a provider's professional peers or the national guidelines  
6 | of a provider's professional association. The vendor must be  
7 | able to provide information and counseling to a provider whose  
8 | practice patterns are outside the norms, in consultation with  
9 | the agency, to improve patient care and reduce inappropriate  
10 | utilization. The agency may mandate prior authorization, drug  
11 | therapy management, or disease management participation for  
12 | certain populations of Medicaid beneficiaries, certain drug  
13 | classes, or particular drugs to prevent fraud, abuse, overuse,  
14 | and possible dangerous drug interactions. The Pharmaceutical  
15 | and Therapeutics Committee shall make recommendations to the  
16 | agency on drugs for which prior authorization is required. The  
17 | agency shall inform the Pharmaceutical and Therapeutics  
18 | Committee of its decisions regarding drugs subject to prior  
19 | authorization. The agency is authorized to limit the entities  
20 | it contracts with or enrolls as Medicaid providers by  
21 | developing a provider network through provider credentialing.  
22 | The agency may competitively bid single-source-provider  
23 | contracts if procurement of goods or services results in  
24 | demonstrated cost savings to the state without limiting access  
25 | to care. The agency may limit its network based on the  
26 | assessment of beneficiary access to care, provider  
27 | availability, provider quality standards, time and distance  
28 | standards for access to care, the cultural competence of the  
29 | provider network, demographic characteristics of Medicaid  
30 | beneficiaries, practice and provider-to-beneficiary standards,  
31 | appointment wait times, beneficiary use of services, provider

1 turnover, provider profiling, provider licensure history,  
2 previous program integrity investigations and findings, peer  
3 review, provider Medicaid policy and billing compliance  
4 records, clinical and medical record audits, and other  
5 factors. Providers shall not be entitled to enrollment in the  
6 Medicaid provider network. The agency shall determine  
7 instances in which allowing Medicaid beneficiaries to purchase  
8 durable medical equipment and other goods is less expensive to  
9 the Medicaid program than long-term rental of the equipment or  
10 goods. The agency may establish rules to facilitate purchases  
11 in lieu of long-term rentals in order to protect against fraud  
12 and abuse in the Medicaid program as defined in s. 409.913.  
13 The agency may seek federal waivers necessary to administer  
14 these policies.

15 (5) By December 1, 2005, the Agency for Health Care  
16 Administration, in partnership with the Department of Elderly  
17 Affairs, shall create an integrated, fixed-payment delivery  
18 system for Medicaid recipients who are 60 years of age or  
19 older. The Agency for Health Care Administration shall  
20 implement the integrated system initially on a pilot basis in  
21 two areas of the state. In one of the areas enrollment shall  
22 be on a voluntary basis. The program must transfer all  
23 Medicaid services for eligible elderly individuals who choose  
24 to participate into an integrated-care management model  
25 designed to serve Medicaid recipients in the community. The  
26 program must combine all funding for Medicaid services  
27 provided to individuals 60 years of age or older into the  
28 integrated system, including funds for Medicaid home and  
29 community-based waiver services; all Medicaid services  
30 authorized in ss. 409.905 and 409.906, excluding funds for  
31 Medicaid nursing home services unless the agency is able to

1 demonstrate how the integration of the funds will improve  
2 coordinated care for these services in a less costly manner;  
3 and Medicare coinsurance and deductibles for persons dually  
4 eligible for Medicaid and Medicare as prescribed in s.  
5 409.908(13).

6 (c) The agency must ensure that the  
7 capitation-rate-setting methodology for the integrated system  
8 is actuarially sound and reflects the intent to provide  
9 quality care in the least restrictive setting. The agency must  
10 also require integrated-system providers to develop a  
11 credentialing system for service providers and to contract  
12 with all Gold Seal nursing homes, where feasible, and exclude,  
13 where feasible, chronically poor-performing facilities and  
14 providers as defined by the agency. The integrated system must  
15 provide that if the recipient resides in a noncontracted  
16 residential facility licensed under chapter 400 or chapter 429  
17 at the time the integrated system is initiated, the recipient  
18 must be permitted to continue to reside in the noncontracted  
19 facility as long as the recipient desires. The integrated  
20 system must also provide that, in the absence of a contract  
21 between the integrated-system provider and the residential  
22 facility licensed under chapter 400 or chapter 429, current  
23 Medicaid rates must prevail. The agency and the Department of  
24 Elderly Affairs must jointly develop procedures to manage the  
25 services provided through the integrated system in order to  
26 ensure quality and recipient choice.

27 Section 84. Section 410.031, Florida Statutes, is  
28 amended to read:

29 410.031 Legislative intent.--It is the intent of the  
30 Legislature to encourage the provision of care for disabled  
31 adults in family-type living arrangements in private homes as

1 an alternative to institutional or nursing home care for such  
2 persons. The provisions of ss. 410.031-410.036 are intended to  
3 be supplemental to the provisions of chapters ~~chapter~~ 400 and  
4 429, relating to the licensing and regulation of nursing homes  
5 and assisted living facilities, and do not exempt any person  
6 who is otherwise subject to regulation under chapter 400 or  
7 chapter 429.

8 Section 85. Section 410.034, Florida Statutes, is  
9 amended to read:

10 410.034 Department determination of fitness to provide  
11 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person  
12 caring for an adult who is related to such person by blood or  
13 marriage is not subject to the Assisted Living Facilities Act.  
14 If, however, the person who plans to provide home care under  
15 this act is found by the department to be unable to provide  
16 this care, the department shall notify the person wishing to  
17 provide home care of this determination, and the person shall  
18 not be eligible for subsidy payments under ss.  
19 410.031-410.036.

20 Section 86. Section 415.1111, Florida Statutes, is  
21 amended to read:

22 415.1111 Civil actions.--A vulnerable adult who has  
23 been abused, neglected, or exploited as specified in this  
24 chapter has a cause of action against any perpetrator and may  
25 recover actual and punitive damages for such abuse, neglect,  
26 or exploitation. The action may be brought by the vulnerable  
27 adult, or that person's guardian, by a person or organization  
28 acting on behalf of the vulnerable adult with the consent of  
29 that person or that person's guardian, or by the personal  
30 representative of the estate of a deceased victim without  
31 regard to whether the cause of death resulted from the abuse,

1 neglect, or exploitation. The action may be brought in any  
 2 court of competent jurisdiction to enforce such action and to  
 3 recover actual and punitive damages for any deprivation of or  
 4 infringement on the rights of a vulnerable adult. A party who  
 5 prevails in any such action may be entitled to recover  
 6 reasonable attorney's fees, costs of the action, and damages.  
 7 The remedies provided in this section are in addition to and  
 8 cumulative with other legal and administrative remedies  
 9 available to a vulnerable adult. Notwithstanding the  
 10 foregoing, any civil action for damages against any licensee  
 11 or entity who establishes, controls, conducts, manages, or  
 12 operates a facility licensed under part II of chapter 400  
 13 relating to its operation of the licensed facility shall be  
 14 brought pursuant to s. 400.023, or against any licensee or  
 15 entity who establishes, controls, conducts, manages, or  
 16 operates a facility licensed under part I ~~III~~ of chapter 429  
 17 ~~400~~ relating to its operation of the licensed facility shall  
 18 be brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or  
 19 entity shall not be vicariously liable for the acts or  
 20 omissions of its employees or agents or any other third party  
 21 in an action brought under this section.

22 Section 87. Section 430.601, Florida Statutes, is  
 23 amended to read:

24 430.601 Home care for the elderly; legislative  
 25 intent.--It is the intent of the Legislature to encourage the  
 26 provision of care for the elderly in family-type living  
 27 arrangements in private homes as an alternative to  
 28 institutional or nursing home care for such persons. The  
 29 provisions of ss. 430.601-430.606 are intended to be  
 30 supplemental to the provisions of chapters ~~chapter~~ 400 and  
 31 429, relating to the licensing and regulation of nursing homes

1 and assisted living facilities, and do not exempt any person  
2 who is otherwise subject to regulation under those chapters  
3 ~~the provisions of that chapter.~~

4 Section 88. Subsection (7) of section 430.703, Florida  
5 Statutes, is amended to read:

6 430.703 Definitions.--As used in this act, the term:

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

12 Section 89. Paragraph (a) of subsection (3) of section  
13 435.03, Florida Statutes, is amended to read:

14 435.03 Level 1 screening standards.--

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

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

23 Section 90. Paragraph (a) of subsection (4) of section  
24 435.04, Florida Statutes, is amended to read:

25 435.04 Level 2 screening standards.--

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

27 (a) For employees or employers licensed or registered  
28 pursuant to chapter 400 or chapter 429, does not have a  
29 confirmed report of abuse, neglect, or exploitation as defined  
30 in s. 415.102(6), which has been uncontested or upheld under  
31 s. 415.103.

1           Section 91. Paragraph (g) of subsection (1) of section  
2 440.13, Florida Statutes, is amended to read:

3           440.13 Medical services and supplies; penalty for  
4 violations; limitations.--

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

6           (g) "Health care facility" means any hospital licensed  
7 under chapter 395 and any health care institution licensed  
8 under chapter 400 or chapter 429.

9           Section 92. Subsection (1) of section 465.0235,  
10 Florida Statutes, is amended to read:

11           465.0235 Automated pharmacy systems used by long-term  
12 care facilities, hospices, or state correctional  
13 institutions.--

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

20           Section 93. Subsection (8) of section 468.1685,  
21 Florida Statutes, is amended to read:

22           468.1685 Powers and duties of board and  
23 department.--It is the function and duty of the board,  
24 together with the department, to:

25           (8) Set up procedures by rule for advising and acting  
26 together with the Department of Health and other boards of  
27 other health professions in matters affecting procedures and  
28 methods for effectively enforcing the purpose of this part and  
29 the administration of ~~chapters~~ chapter 400 and 429.

30           Section 94. Paragraph (k) of subsection (1) of section  
31 468.505, Florida Statutes, is amended to read:



1           468.505 Exemptions; exceptions.--

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

5           (k) A person employed by a hospital licensed under  
6 chapter 395, ~~or~~ by a nursing home ~~or assisted living facility~~  
7 licensed under part II ~~or part III~~ of chapter 400, by an  
8 assisted living facility licensed under chapter 429, or by a  
9 continuing care facility certified under chapter 651, if the  
10 person is employed in compliance with the laws and rules  
11 adopted thereunder regarding the operation of its dietetic  
12 department.

13           Section 95. Subsection (11) of section 477.025,  
14 Florida Statutes, is amended to read:

15           477.025 Cosmetology salons; specialty salons;  
16 requisites; licensure; inspection; mobile cosmetology  
17 salons.--

18           (11) Facilities licensed under part II ~~or part III~~ of  
19 chapter 400 or under part I of chapter 429 are ~~shall be~~ exempt  
20 from ~~the provisions of~~ this section, and a cosmetologist  
21 licensed pursuant to s. 477.019 may provide salon services  
22 exclusively for facility residents.

23           Section 96. Paragraph (a) of subsection (2) of section  
24 509.032, Florida Statutes, is amended to read:

25           509.032 Duties.--

26           (2) INSPECTION OF PREMISES.--

27           (a) The division has responsibility and jurisdiction  
28 for all inspections required by this chapter. The division  
29 has responsibility for quality assurance. Each licensed  
30 establishment shall be inspected at least biannually, except  
31 for transient and nontransient apartments, which shall be

1 inspected at least annually, and shall be inspected at such  
 2 other times as the division determines is necessary to ensure  
 3 the public's health, safety, and welfare. The division shall  
 4 establish a system to determine inspection frequency. Public  
 5 lodging units classified as resort condominiums or resort  
 6 dwellings are not subject to this requirement, but shall be  
 7 made available to the division upon request. If, during the  
 8 inspection of a public lodging establishment classified for  
 9 renting to transient or nontransient tenants, an inspector  
 10 identifies vulnerable adults who appear to be victims of  
 11 neglect, as defined in s. 415.102, or, in the case of a  
 12 building that is not equipped with automatic sprinkler  
 13 systems, tenants or clients who may be unable to self-preserve  
 14 in an emergency, the division shall convene meetings with the  
 15 following agencies as appropriate to the individual situation:  
 16 the Department of Health, the Department of Elderly Affairs,  
 17 the area agency on aging, the local fire marshal, the landlord  
 18 and affected tenants and clients, and other relevant  
 19 organizations, to develop a plan which improves the prospects  
 20 for safety of affected residents and, if necessary, identifies  
 21 alternative living arrangements such as facilities licensed  
 22 under part II ~~or part III~~ of chapter 400 or under chapter 429.

23 Section 97. Subsection (1) of section 509.241, Florida  
 24 Statutes, is amended to read:

25 509.241 Licenses required; exceptions.--

26 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging  
 27 establishment and public food service establishment shall  
 28 obtain a license from the division. Such license may not be  
 29 transferred from one place or individual to another. It shall  
 30 be a misdemeanor of the second degree, punishable as provided  
 31 in s. 775.082 or s. 775.083, for such an establishment to

1 operate without a license. Local law enforcement shall provide  
2 immediate assistance in pursuing an illegally operating  
3 establishment. The division may refuse a license, or a renewal  
4 thereof, to any establishment that is not constructed and  
5 maintained in accordance with law and with the rules of the  
6 division. The division may refuse to issue a license, or a  
7 renewal thereof, to any establishment an operator of which,  
8 within the preceding 5 years, has been adjudicated guilty of,  
9 or has forfeited a bond when charged with, any crime  
10 reflecting on professional character, including soliciting for  
11 prostitution, pandering, letting premises for prostitution,  
12 keeping a disorderly place, or illegally dealing in controlled  
13 substances as defined in chapter 893, whether in this state or  
14 in any other jurisdiction within the United States, or has had  
15 a license denied, revoked, or suspended pursuant to s. 429.14  
16 ~~s. 400.414~~. Licenses shall be renewed annually, and the  
17 division shall adopt a rule establishing a staggered schedule  
18 for license renewals. If any license expires while  
19 administrative charges are pending against the license, the  
20 proceedings against the license shall continue to conclusion  
21 as if the license were still in effect.

22 Section 98. Subsection (1) of section 627.732, Florida  
23 Statutes, is amended to read:

24 627.732 Definitions.--As used in ss. 627.730-627.7405,  
25 the term:

26 (1) "Broker" means any person not possessing a license  
27 under chapter 395, chapter 400, chapter 429, chapter 458,  
28 chapter 459, chapter 460, chapter 461, or chapter 641 who  
29 charges or receives compensation for any use of medical  
30 equipment and is not the 100-percent owner or the 100-percent  
31 lessee of such equipment. For purposes of this section, such

1 owner or lessee may be an individual, a corporation, a  
2 partnership, or any other entity and any of its  
3 100-percent-owned affiliates and subsidiaries. For purposes of  
4 this subsection, the term "lessee" means a long-term lessee  
5 under a capital or operating lease, but does not include a  
6 part-time lessee. The term "broker" does not include a  
7 hospital or physician management company whose medical  
8 equipment is ancillary to the practices managed, a debt  
9 collection agency, or an entity that has contracted with the  
10 insurer to obtain a discounted rate for such services; nor  
11 does the term include a management company that has contracted  
12 to provide general management services for a licensed  
13 physician or health care facility and whose compensation is  
14 not materially affected by the usage or frequency of usage of  
15 medical equipment or an entity that is 100-percent owned by  
16 one or more hospitals or physicians. The term "broker" does  
17 not include a person or entity that certifies, upon request of  
18 an insurer, that:

19 (a) It is a clinic licensed under ss. 400.990-400.995;

20 (b) It is a 100-percent owner of medical equipment;

21 and

22 (c) The owner's only part-time lease of medical  
23 equipment for personal injury protection patients is on a  
24 temporary basis not to exceed 30 days in a 12-month period,  
25 and such lease is solely for the purposes of necessary repair  
26 or maintenance of the 100-percent-owned medical equipment or  
27 pending the arrival and installation of the newly purchased or  
28 a replacement for the 100-percent-owned medical equipment, or  
29 for patients for whom, because of physical size or  
30 claustrophobia, it is determined by the medical director or  
31 clinical director to be medically necessary that the test be

1 performed in medical equipment that is open-style. The leased  
2 medical equipment cannot be used by patients who are not  
3 patients of the registered clinic for medical treatment of  
4 services. Any person or entity making a false certification  
5 under this subsection commits insurance fraud as defined in s.  
6 817.234. However, the 30-day period provided in this paragraph  
7 may be extended for an additional 60 days as applicable to  
8 magnetic resonance imaging equipment if the owner certifies  
9 that the extension otherwise complies with this paragraph.

10 Section 99. Subsection (2) of section 651.011, Florida  
11 Statutes, is amended to read:

12 651.011 Definitions.--For the purposes of this  
13 chapter, the term:

14 (2) "Continuing care" or "care" means furnishing  
15 pursuant to a contract shelter and either nursing care or  
16 personal services as defined in s. 429.02 ~~s. 400.402~~, whether  
17 such nursing care or personal services are provided in the  
18 facility or in another setting designated by the contract for  
19 continuing care, to an individual not related by consanguinity  
20 or affinity to the provider furnishing such care, upon payment  
21 of an entrance fee. Other personal services provided shall be  
22 designated in the continuing care contract. Contracts to  
23 provide continuing care include agreements to provide care for  
24 any duration, including contracts that are terminable by  
25 either party.

26 Section 100. Paragraph (c) of subsection (2) of  
27 section 651.022, Florida Statutes, is amended to read:

28 651.022 Provisional certificate of authority;  
29 application.--

30  
31

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

4           (c)1. Evidence that the applicant is reputable and of  
5 responsible character. If the applicant is a firm,  
6 association, organization, partnership, business trust,  
7 corporation, or company, the form shall require evidence that  
8 the members or shareholders are reputable and of responsible  
9 character, and the person in charge of providing care under a  
10 certificate of authority shall likewise be required to produce  
11 evidence of being reputable and of responsible character.

12           2. Evidence satisfactory to the office of the ability  
13 of the applicant to comply with the provisions of this chapter  
14 and with rules adopted by the commission pursuant to this  
15 chapter.

16           3. A statement of whether a person identified in the  
17 application for a provisional certificate of authority or the  
18 administrator or manager of the facility, if such person has  
19 been designated, or any such person living in the same  
20 location:

21           a. Has been convicted of a felony or has pleaded nolo  
22 contendere to a felony charge, or has been held liable or has  
23 been enjoined in a civil action by final judgment, if the  
24 felony or civil action involved fraud, embezzlement,  
25 fraudulent conversion, or misappropriation of property.

26           b. Is subject to a currently effective injunctive or  
27 restrictive order or federal or state administrative order  
28 relating to business activity or health care as a result of an  
29 action brought by a public agency or department, including,  
30 without limitation, an action affecting a license under  
31 chapter 400 or chapter 429.

1  
2 The statement shall set forth the court or agency, the date of  
3 conviction or judgment, and the penalty imposed or damages  
4 assessed, or the date, nature, and issuer of the  
5 order. Before determining whether a provisional certificate  
6 of authority is to be issued, the office may make an inquiry  
7 to determine the accuracy of the information submitted  
8 pursuant to subparagraphs 1. and 2.

9 Section 101. Subsection (6) of section 651.023,  
10 Florida Statutes, is amended to read:

11 651.023 Certificate of authority; application.--

12 (6) The timeframes provided under s. 651.022(5) and  
13 (6) apply to applications submitted under s. 651.021(2). The  
14 office may not issue a certificate of authority under this  
15 chapter to any facility which does not have a component which  
16 is to be licensed pursuant to part II ~~or part III~~ of chapter  
17 400 or to part I of chapter 429 or which will not offer  
18 personal services or nursing services through written  
19 contractual agreement. Any written contractual agreement must  
20 be disclosed in the continuing care contract and is subject to  
21 the provisions of s. 651.1151, relating to administrative,  
22 vendor, and management contracts.

23 Section 102. Subsection (8) of section 651.055,  
24 Florida Statutes, is amended to read:

25 651.055 Contracts; right to rescind.--

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

29 Section 103. Subsection (5) of section 651.095,  
30 Florida Statutes, is amended to read:

31 651.095 Advertisements; requirements; penalties.--

1           (5) The provisions of this section shall control over  
2 any conflicting provisions contained in part II ~~or part III~~ of  
3 chapter 400 or in part I of chapter 429.

4           Section 104. Subsections (1), (4), (6), (7), and (8)  
5 of section 651.118, Florida Statutes, are amended to read:

6           651.118 Agency for Health Care Administration;  
7 certificates of need; sheltered beds; community beds.--

8           (1) The provisions of this section shall control in  
9 the case of conflict with the provisions of the Health  
10 Facility and Services Development Act, ss. 408.031-408.045;  
11 the provisions of chapter 395; ~~or~~ the provisions of part II  
12 ~~parts II and III~~ of chapter 400; or the provisions of part I  
13 of chapter 429.

14           (4) The Agency for Health Care Administration shall  
15 approve one sheltered nursing home bed for every four proposed  
16 residential units, including those that are licensed under  
17 part I of chapter 429 ~~part III of chapter 400~~, in the  
18 continuing care facility unless the provider demonstrates the  
19 need for a lesser number of sheltered nursing home beds based  
20 on proposed utilization by prospective residents or  
21 demonstrates the need for additional sheltered nursing home  
22 beds based on actual utilization and demand by current  
23 residents.

24           (6) Unless the provider already has a component that  
25 is to be a part of the continuing care facility and that is  
26 licensed under chapter 395, ~~or part II or part III~~ of chapter  
27 400, or part I of chapter 429 at the time of construction of  
28 the continuing care facility, the provider must construct the  
29 nonnursing home portion of the facility and the nursing home  
30 portion of the facility at the same time. If a provider  
31 constructs less than the number of residential units approved



1 in the certificate of authority, the number of licensed  
2 sheltered nursing home beds shall be reduced by a  
3 proportionate share.

4 (7) Notwithstanding the provisions of subsection (2),  
5 at the discretion of the continuing care provider, sheltered  
6 nursing home beds may be used for persons who are not  
7 residents of the continuing care facility and who are not  
8 parties to a continuing care contract for a period of up to 5  
9 years after the date of issuance of the initial nursing home  
10 license. A provider whose 5-year period has expired or is  
11 expiring may request the Agency for Health Care Administration  
12 for an extension, not to exceed 30 percent of the total  
13 sheltered nursing home beds, if the utilization by residents  
14 of the nursing home facility in the sheltered beds will not  
15 generate sufficient income to cover nursing home facility  
16 expenses, as evidenced by one of the following:

17 (a) The nursing home facility has a net loss for the  
18 most recent fiscal year as determined under generally accepted  
19 accounting principles, excluding the effects of extraordinary  
20 or unusual items, as demonstrated in the most recently audited  
21 financial statement; or

22 (b) The nursing home facility would have had a pro  
23 forma loss for the most recent fiscal year, excluding the  
24 effects of extraordinary or unusual items, if revenues were  
25 reduced by the amount of revenues from persons in sheltered  
26 beds who were not residents, as reported on by a certified  
27 public accountant.

28  
29 The agency shall be authorized to grant an extension to the  
30 provider based on the evidence required in this subsection.

31 The agency may request a continuing care facility to use up to

1 25 percent of the patient days generated by new admissions of  
2 nonresidents during the extension period to serve Medicaid  
3 recipients for those beds authorized for extended use if there  
4 is a demonstrated need in the respective service area and if  
5 funds are available. A provider who obtains an extension is  
6 prohibited from applying for additional sheltered beds under  
7 the provision of subsection (2), unless additional residential  
8 units are built or the provider can demonstrate need by  
9 continuing care facility residents to the Agency for Health  
10 Care Administration. The 5-year limit does not apply to up to  
11 five sheltered beds designated for inpatient hospice care as  
12 part of a contractual arrangement with a hospice licensed  
13 under part IV ~~VI~~ of chapter 400. A continuing care facility  
14 that uses such beds after the 5-year period shall report such  
15 use to the Agency for Health Care Administration. For purposes  
16 of this subsection, "resident" means a person who, upon  
17 admission to the continuing care facility, initially resides  
18 in a part of the continuing care facility not licensed under  
19 part II of chapter 400.

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

1 | beds designated for nursing home care, provided that all of  
 2 | the beds are under common ownership. For the purposes of this  
 3 | subsection, fire and life safety codes applicable to nursing  
 4 | home facilities shall apply.

5 |       Section 105. Subsection (2) of section 765.1103,  
 6 | Florida Statutes, is amended to read:

7 |           765.1103 Pain management and palliative care.--

8 |           (2) Health care providers and practitioners regulated  
 9 | under chapter 458, chapter 459, or chapter 464 must, as  
 10 | appropriate, comply with a request for pain management or  
 11 | palliative care from a patient under their care or, for an  
 12 | incapacitated patient under their care, from a surrogate,  
 13 | proxy, guardian, or other representative permitted to make  
 14 | health care decisions for the incapacitated patient.

15 | Facilities regulated under chapter 395, ~~or~~ chapter 400, or  
 16 | chapter 429 must comply with the pain management or palliative  
 17 | care measures ordered by the patient's physician.

18 |       Section 106. Subsection (2) of section 765.205,  
 19 | Florida Statutes, is amended to read:

20 |           765.205 Responsibility of the surrogate.--

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

27 |       Section 107. Subsection (1) of section 768.735,  
 28 | Florida Statutes, is amended to read:

29 |           768.735 Punitive damages; exceptions; limitation.--

30 |           (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not  
 31 | apply to any civil action based upon child abuse, abuse of the

1 elderly under chapter 415, or abuse of the developmentally  
 2 disabled. Such actions are governed by applicable statutes and  
 3 controlling judicial precedent. This section does not apply to  
 4 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.

5 Section 108. Paragraph (h) of subsection (1) of  
 6 section 893.13, Florida Statutes, is amended to read:

7 893.13 Prohibited acts; penalties.--

8 (1)

9 (h) Except as authorized by this chapter, it is  
 10 unlawful for any person to sell, manufacture, or deliver, or  
 11 possess with intent to sell, manufacture, or deliver, a  
 12 controlled substance in, on, or within 1,000 feet of the real  
 13 property comprising an assisted living facility, as that term  
 14 is used in chapter 429 ~~400~~. Any person who violates this  
 15 paragraph with respect to:

16 1. A controlled substance named or described in s.  
 17 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 18 commits a felony of the first degree, punishable as provided  
 19 in s. 775.082, s. 775.083, or s. 775.084.

20 2. A controlled substance named or described in s.  
 21 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,  
 22 (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a  
 23 felony of the second degree, punishable as provided in s.  
 24 775.082, s. 775.083, or s. 775.084.

25 Section 109. Paragraph (a) of subsection (4) of  
 26 section 943.0585, Florida Statutes, is amended to read:

27 943.0585 Court-ordered expunction of criminal history  
 28 records.--The courts of this state have jurisdiction over  
 29 their own procedures, including the maintenance, expunction,  
 30 and correction of judicial records containing criminal history  
 31 information to the extent such procedures are not inconsistent

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

1 not prevent the court from ordering the expunction of only a  
2 portion of a criminal history record pertaining to one arrest  
3 or one incident of alleged criminal activity. Notwithstanding  
4 any law to the contrary, a criminal justice agency may comply  
5 with laws, court orders, and official requests of other  
6 jurisdictions relating to expunction, correction, or  
7 confidential handling of criminal history records or  
8 information derived therefrom. This section does not confer  
9 any right to the expunction of any criminal history record,  
10 and any request for expunction of a criminal history record  
11 may be denied at the sole discretion of the court.

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

26 (a) The person who is the subject of a criminal  
27 history record that is expunged under this section or under  
28 other provisions of law, including former s. 893.14, former s.  
29 901.33, and former s. 943.058, may lawfully deny or fail to  
30 acknowledge the arrests covered by the expunged record, except  
31 when the subject of the record:

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

3           2. Is a defendant in a criminal prosecution;

4           3. Concurrently or subsequently petitions for relief  
5 under this section or s. 943.059;

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

7           5. Is seeking to be employed or licensed by or to  
8 contract with the Department of Children and Family Services  
9 or the Department of Juvenile Justice or to be employed or  
10 used by such contractor or licensee in a sensitive position  
11 having direct contact with children, the developmentally  
12 disabled, the aged, or the elderly as provided in s.  
13 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
15 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400, or chapter  
16 429; or

17           6. Is seeking to be employed or licensed by the  
18 Department of Education, any district school board, any  
19 university laboratory school, any charter school, any private  
20 or parochial school, or any local governmental entity that  
21 licenses child care facilities.

22           Section 110. Paragraph (a) of subsection (4) of  
23 section 943.059, Florida Statutes, is amended to read:

24           943.059 Court-ordered sealing of criminal history  
25 records.--The courts of this state shall continue to have  
26 jurisdiction over their own procedures, including the  
27 maintenance, sealing, and correction of judicial records  
28 containing criminal history information to the extent such  
29 procedures are not inconsistent with the conditions,  
30 responsibilities, and duties established by this section. Any  
31 court of competent jurisdiction may order a criminal justice

1 agency to seal the criminal history record of a minor or an  
2 adult who complies with the requirements of this section. The  
3 court shall not order a criminal justice agency to seal a  
4 criminal history record until the person seeking to seal a  
5 criminal history record has applied for and received a  
6 certificate of eligibility for sealing pursuant to subsection  
7 (2). A criminal history record that relates to a violation of  
8 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,  
9 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,  
10 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
11 916.1075, or a violation enumerated in s. 907.041 may not be  
12 sealed, without regard to whether adjudication was withheld,  
13 if the defendant was found guilty of or pled guilty or nolo  
14 contendere to the offense, or if the defendant, as a minor,  
15 was found to have committed or pled guilty or nolo contendere  
16 to committing the offense as a delinquent act. The court may  
17 only order sealing of a criminal history record pertaining to  
18 one arrest or one incident of alleged criminal activity,  
19 except as provided in this section. The court may, at its sole  
20 discretion, order the sealing of a criminal history record  
21 pertaining to more than one arrest if the additional arrests  
22 directly relate to the original arrest. If the court intends  
23 to order the sealing of records pertaining to such additional  
24 arrests, such intent must be specified in the order. A  
25 criminal justice agency may not seal any record pertaining to  
26 such additional arrests if the order to seal does not  
27 articulate the intention of the court to seal records  
28 pertaining to more than one arrest. This section does not  
29 prevent the court from ordering the sealing of only a portion  
30 of a criminal history record pertaining to one arrest or one  
31 incident of alleged criminal activity. Notwithstanding any law



1 to the contrary, a criminal justice agency may comply with  
2 laws, court orders, and official requests of other  
3 jurisdictions relating to sealing, correction, or confidential  
4 handling of criminal history records or information derived  
5 therefrom. This section does not confer any right to the  
6 sealing of any criminal history record, and any request for  
7 sealing a criminal history record may be denied at the sole  
8 discretion of the court.

9 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
10 criminal history record of a minor or an adult which is  
11 ordered sealed by a court of competent jurisdiction pursuant  
12 to this section is confidential and exempt from the provisions  
13 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
14 and is available only to the person who is the subject of the  
15 record, to the subject's attorney, to criminal justice  
16 agencies for their respective criminal justice purposes, or to  
17 those entities set forth in subparagraphs (a)1., 4., 5., and  
18 6. for their respective licensing and employment purposes.

19 (a) The subject of a criminal history record sealed  
20 under this section or under other provisions of law, including  
21 former s. 893.14, former s. 901.33, and former s. 943.058, may  
22 lawfully deny or fail to acknowledge the arrests covered by  
23 the sealed record, except when the subject of the record:

- 24 1. Is a candidate for employment with a criminal  
25 justice agency;
- 26 2. Is a defendant in a criminal prosecution;
- 27 3. Concurrently or subsequently petitions for relief  
28 under this section or s. 943.0585;
- 29 4. Is a candidate for admission to The Florida Bar;
- 30 5. Is seeking to be employed or licensed by or to  
31 contract with the Department of Children and Family Services

1 or the Department of Juvenile Justice or to be employed or  
2 used by such contractor or licensee in a sensitive position  
3 having direct contact with children, the developmentally  
4 disabled, the aged, or the elderly as provided in s.  
5 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
6 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
7 415.103, s. 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400,  
8 or chapter 429; or

9           6. Is seeking to be employed or licensed by the  
10 Department of Education, any district school board, any  
11 university laboratory school, any charter school, any private  
12 or parochial school, or any local governmental entity that  
13 licenses child care facilities.

14           Section 111. The Division of Statutory Revision of the  
15 Office of Legislative Services is requested to prepare a  
16 reviser's bill for introduction at a subsequent session of the  
17 Legislature to conform the Florida Statutes to changes made by  
18 this act.

19           Section 112. This act shall take effect July 1, 2006.  
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