

1 A bill to be entitled
2 An act relating to assisted care communities; creating ch.
3 429, F.S.; transferring pt. III of ch. 400, F.S., relating
4 to assisted living facilities, to pt. I of ch. 429, F.S.;
5 transferring pt. VII of ch. 400, F.S., relating to adult
6 family-care homes, to pt. II of ch. 429, F.S.;
7 transferring pt. V of ch. 400, F.S., relating to adult day
8 care centers, to pt. III of ch. 429, F.S.; amending ss.
9 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
10 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
11 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
12 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
13 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
14 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
15 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
16 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428,
17 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444,
18 400.447, 400.452, 400.462, 400.464, 400.497, 400.552,
19 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,
20 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,
21 400.9905, 400.9935, 401.23, 402.164, 408.032, 408.033,
22 408.034, 408.07, 408.831, 409.212, 409.221, 409.905,
23 409.906, 409.907, 409.912, 410.031, 410.034, 413.20,
24 415.1111, 419.001, 430.601, 430.703, 435.03, 435.04,
25 440.13, 468.1685, 468.505, 477.025, 483.285, 509.032,
26 509.241, 627.6617, 627.732, 651.011, 651.022, 651.023,
27 651.055, 651.095, 651.118, 765.1103, 765.205, 768.735,
28 893.13, 943.0585, and 943.059, F.S., to conform references

29 to changes made by the act; requesting the Division of
 30 Statutory Revision to make necessary conforming changes to
 31 the Florida Statutes; providing an effective date.

32

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

34

35 Section 1. Chapter 429, Florida Statutes, is created, to
 36 be entitled "Assisted Care Communities."

37 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
 38 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
 39 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
 40 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
 41 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
 42 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
 43 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
 44 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and
 45 400.454, Florida Statutes, are renumbered as sections 429.01,
 46 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
 47 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,
 48 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
 49 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
 50 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,
 51 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
 52 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
 53 Florida Statutes, respectively, designated as part I of chapter
 54 429, Florida Statutes, and entitled "ASSISTED LIVING
 55 FACILITIES."

56 Section 3. Sections 400.616, 400.617, 400.618, 400.619,

57 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
 58 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
 59 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
 60 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
 61 Florida Statutes, respectively, designated as part II of chapter
 62 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."

63 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
 64 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
 65 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
 66 and 400.564, Florida Statutes, are renumbered as sections
 67 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
 68 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
 69 429.927, 429.929, 429.931, and 429.933, Florida Statutes,
 70 designated as part III of chapter 429, Florida Statutes, and
 71 entitled "ADULT DAY CARE CENTERS."

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

74 101.655 Supervised voting by absent electors in certain
 75 facilities.--

76 (1) The supervisor of elections of a county shall provide
 77 supervised voting for absent electors residing in any assisted
 78 living facility, as defined in s. 429.02 ~~s. 400.402~~, or nursing
 79 home facility, as defined in s. 400.021, within that county at
 80 the request of any administrator of such a facility. Such
 81 request for supervised voting in the facility shall be made by
 82 submitting a written request to the supervisor of elections no
 83 later than 21 days prior to the election for which that request
 84 is submitted. The request shall specify the name and address of

85 | the facility and the name of the electors who wish to vote
 86 | absentee in that election. If the request contains the names of
 87 | fewer than five voters, the supervisor of elections is not
 88 | required to provide supervised voting.

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

91 | 189.428 Special districts; oversight review process.--

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

100 | Section 7. Paragraph (b) of subsection (2) of section
 101 | 196.1975, Florida Statutes, is amended to read:

102 | 196.1975 Exemption for property used by nonprofit homes
 103 | for the aged.--Nonprofit homes for the aged are exempt to the
 104 | extent that they meet the following criteria:

105 | (2) A facility will not qualify as a "home for the aged"
 106 | unless at least 75 percent of the occupants are over the age of
 107 | 62 years or totally and permanently disabled. For homes for the
 108 | aged which are exempt from paying income taxes to the United
 109 | States as specified in subsection (1), licensing by the Agency
 110 | for Health Care Administration is required for ad valorem tax
 111 | exemption hereunder only if the home:

112 | (b) Qualifies as an assisted living facility under ~~part~~

113 ~~III~~ of chapter 429 400.

114 Section 8. Paragraph (c) of subsection (4) of section
115 202.125, Florida Statutes, is amended to read:

116 202.125 Sales of communications services; specified
117 exemptions.--

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

128 (c) "Home for the aged" includes any nonprofit
129 corporation:

130 1. In which at least 75 percent of the occupants are 62
131 years of age or older or totally and permanently disabled; which
132 qualifies for an ad valorem property tax exemption under s.
133 196.196, s. 196.197, or s. 196.1975; and which is exempt from
134 the sales tax imposed under chapter 212.

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

138 Section 9. Section 205.1965, Florida Statutes, is amended
139 to read:

140 205.1965 Assisted living facilities.--A county or

141 municipality may not issue an occupational license for the
 142 operation of an assisted living facility pursuant to ~~part III of~~
 143 chapter 429 ~~400~~ without first ascertaining that the applicant
 144 has been licensed by the Agency for Health Care Administration
 145 to operate such facility at the specified location or locations.

146 The Agency for Health Care Administration shall furnish to
 147 local agencies responsible for issuing occupational licenses
 148 sufficient instructions for making the above required
 149 determinations.

150 Section 10. Paragraph (b) of subsection (1) of section
 151 212.031, Florida Statutes, is amended to read:

152 212.031 Tax on rental or license fee for use of real
 153 property.--

154 (1)

155 (b) When a lease involves multiple use of real property
 156 wherein a part of the real property is subject to the tax
 157 herein, and a part of the property would be excluded from the
 158 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
 159 (a)3., or subparagraph (a)5., the department shall determine,
 160 from the lease or license and such other information as may be
 161 available, that portion of the total rental charge which is
 162 exempt from the tax imposed by this section. The portion of the
 163 premises leased or rented by a for-profit entity providing a
 164 residential facility for the aged will be exempt on the basis of
 165 a pro rata portion calculated by combining the square footage of
 166 the areas used for residential units by the aged and for the
 167 care of such residents and dividing the resultant sum by the
 168 total square footage of the rented premises. For purposes of

169 | this section, the term "residential facility for the aged" means
 170 | a facility that is licensed or certified in whole or in part
 171 | under chapter 400, chapter 429, or chapter 651; or that provides
 172 | residences to the elderly and is financed by a mortgage or loan
 173 | made or insured by the United States Department of Housing and
 174 | Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
 175 | 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
 176 | or other such similar facility that provides residences
 177 | primarily for the elderly.

178 | Section 11. Paragraph (i) of subsection (7) of section
 179 | 212.08, Florida Statutes, is amended to read:

180 | 212.08 Sales, rental, use, consumption, distribution, and
 181 | storage tax; specified exemptions.--The sale at retail, the
 182 | rental, the use, the consumption, the distribution, and the
 183 | storage to be used or consumed in this state of the following
 184 | are hereby specifically exempt from the tax imposed by this
 185 | chapter.

186 | (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 187 | entity by this chapter do not inure to any transaction that is
 188 | otherwise taxable under this chapter when payment is made by a
 189 | representative or employee of the entity by any means,
 190 | including, but not limited to, cash, check, or credit card, even
 191 | when that representative or employee is subsequently reimbursed
 192 | by the entity. In addition, exemptions provided to any entity by
 193 | this subsection do not inure to any transaction that is
 194 | otherwise taxable under this chapter unless the entity has
 195 | obtained a sales tax exemption certificate from the department
 196 | or the entity obtains or provides other documentation as

197 required by the department. Eligible purchases or leases made
 198 with such a certificate must be in strict compliance with this
 199 subsection and departmental rules, and any person who makes an
 200 exempt purchase with a certificate that is not in strict
 201 compliance with this subsection and the rules is liable for and
 202 shall pay the tax. The department may adopt rules to administer
 203 this subsection.

204 (i) Hospital meals and rooms.--Also exempt from payment of
 205 the tax imposed by this chapter on rentals and meals are
 206 patients and inmates of any hospital or other physical plant or
 207 facility designed and operated primarily for the care of persons
 208 who are ill, aged, infirm, mentally or physically incapacitated,
 209 or otherwise dependent on special care or attention. Residents
 210 of a home for the aged are exempt from payment of taxes on meals
 211 provided through the facility. A home for the aged is defined
 212 as a facility that is licensed or certified in part or in whole
 213 under chapter 400, chapter 429, or chapter 651, or that is
 214 financed by a mortgage loan made or insured by the United States
 215 Department of Housing and Urban Development under s. 202, s. 202
 216 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
 217 the National Housing Act, or other such similar facility
 218 designed and operated primarily for the care of the aged.

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

221 296.02 Definitions.--For the purposes of this part, except
 222 where the context clearly indicates otherwise:

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

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

227 381.0035 Educational course on HIV and AIDS; employees and
 228 clients of certain health care facilities.--

229 (1) The Department of Health shall require all employees
 230 and clients of facilities licensed under chapters 393, 394, and
 231 397 and employees of facilities licensed under chapter 395, ~~and~~
 232 parts II, III, and IV, ~~and VI~~ of chapter 400, and part I of
 233 chapter 429 to complete, biennially, a continuing educational
 234 course on the modes of transmission, infection control
 235 procedures, clinical management, and prevention of human
 236 immunodeficiency virus and acquired immune deficiency syndrome
 237 with an emphasis on appropriate behavior and attitude change.
 238 Such instruction shall include information on current Florida
 239 law and its impact on testing, confidentiality of test results,
 240 and treatment of patients and any protocols and procedures
 241 applicable to human immunodeficiency counseling and testing,
 242 reporting, the offering of HIV testing to pregnant women, and
 243 partner notification issues pursuant to ss. 381.004 and 384.25.

244 (3) Facilities licensed under chapters 393, 394, 395, and
 245 397, and parts II, III, and IV, ~~and VI~~ of chapter 400, and part
 246 I of chapter 429 shall maintain a record of employees and dates
 247 of attendance at human immunodeficiency virus and acquired
 248 immune deficiency syndrome educational courses.

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

251 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
 252 381.739-381.79, the term:

253 (9) "Transitional living facility" means a state-approved
 254 facility, as defined and licensed under chapter 400 or chapter
 255 429, or a facility approved by the brain and spinal cord injury
 256 program in accordance with this chapter.

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

259 393.063 Definitions.--For the purposes of this chapter:

260 (24) "Intermediate care facility for the developmentally
 261 disabled" or "ICF/DD" means a residential facility licensed and
 262 certified pursuant to part VIII ~~XI~~ of chapter 400.

263 Section 16. Paragraph (b) of subsection (1) of section
 264 393.506, Florida Statutes, is amended to read:

265 393.506 Administration of medication.--

266 (1) Notwithstanding the provisions of part I of chapter
 267 464, the Nurse Practice Act, unlicensed direct care services
 268 staff providing services to persons with developmental
 269 disabilities may administer oral, transdermal, inhaled, or
 270 topical prescription medications as provided in this section.

271 (b) For intermediate care facilities for the
 272 developmentally disabled licensed pursuant to part VIII ~~XI~~ of
 273 chapter 400, unlicensed staff designated by the director may
 274 provide medication assistance under the general supervision of a
 275 registered nurse licensed pursuant to chapter 464.

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

278 394.455 Definitions.--As used in this part, unless the
 279 context clearly requires otherwise, the term:

280 (10) "Facility" means any hospital, community facility,

281 public or private facility, or receiving or treatment facility
 282 providing for the evaluation, diagnosis, care, treatment,
 283 training, or hospitalization of persons who appear to have a
 284 mental illness or have been diagnosed as having a mental
 285 illness. "Facility" does not include any program or entity
 286 licensed pursuant to chapter 400 or chapter 429.

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

289 394.4574 Department responsibilities for a mental health
 290 resident who resides in an assisted living facility that holds a
 291 limited mental health license.--

292 (2) The department must ensure that:

293 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~
 294 ~~400.4075~~, is developed between the mental health care services
 295 provider that serves a mental health resident and the
 296 administrator of the assisted living facility with a limited
 297 mental health license in which the mental health resident is
 298 living. Any entity that provides Medicaid prepaid health plan
 299 services shall ensure the appropriate coordination of health
 300 care services with an assisted living facility in cases where a
 301 Medicaid recipient is both a member of the entity's prepaid
 302 health plan and a resident of the assisted living facility. If
 303 the entity is at risk for Medicaid targeted case management and
 304 behavioral health services, the entity shall inform the assisted
 305 living facility of the procedures to follow should an emergent
 306 condition arise.

307 (c) The community living support plan, as defined in s.
 308 429.02 ~~s. 400.402~~, has been prepared by a mental health resident

309 and a mental health case manager of that resident in
 310 consultation with the administrator of the facility or the
 311 administrator's designee. The plan must be provided to the
 312 administrator of the assisted living facility with a limited
 313 mental health license in which the mental health resident lives.
 314 The support plan and the agreement may be in one document.

315 (e) The mental health services provider assigns a case
 316 manager to each mental health resident who lives in an assisted
 317 living facility with a limited mental health license. The case
 318 manager is responsible for coordinating the development of and
 319 implementation of the community living support plan defined in
 320 s. 429.02 ~~s. 400.402~~. The plan must be updated at least
 321 annually.

322 Section 19. Paragraph (b) of subsection (2) of section
 323 394.463, Florida Statutes, is amended to read:

324 394.463 Involuntary examination.--

325 (2) INVOLUNTARY EXAMINATION.--

326 (b) A person shall not be removed from any program or
 327 residential placement licensed under chapter 400 or chapter 429
 328 and transported to a receiving facility for involuntary
 329 examination unless an ex parte order, a professional
 330 certificate, or a law enforcement officer's report is first
 331 prepared. If the condition of the person is such that
 332 preparation of a law enforcement officer's report is not
 333 practicable before removal, the report shall be completed as
 334 soon as possible after removal, but in any case before the
 335 person is transported to a receiving facility. A receiving
 336 facility admitting a person for involuntary examination who is

337 not accompanied by the required ex parte order, professional
 338 certificate, or law enforcement officer's report shall notify
 339 the Agency for Health Care Administration of such admission by
 340 certified mail no later than the next working day. The
 341 provisions of this paragraph do not apply when transportation is
 342 provided by the patient's family or guardian.

343 Section 20. Paragraph (b) of subsection (3) of section
 344 400.0063, Florida Statutes, is amended to read:

345 400.0063 Establishment of Office of State Long-Term Care
 346 Ombudsman; designation of ombudsman and legal advocate.--

347 (3)

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

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

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

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

358 4. Serving as legal counsel to the state and local
 359 ombudsman councils, or individual members thereof, against whom
 360 any suit or other legal action is initiated in connection with
 361 the performance of the official duties of the councils or an
 362 individual member.

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

365 400.0069 Local long-term care ombudsman councils; duties;
 366 membership.--

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

372 Section 22. Paragraphs (c) and (f) of subsection (5) and
 373 subsection (6) of section 400.0073, Florida Statutes, are
 374 amended to read:

375 400.0073 State and local ombudsman council
 376 investigations.--

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

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

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

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

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

395 400.0077 Confidentiality.--

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

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

402 400.0239 Quality of Long-Term Care Facility Improvement
 403 Trust Fund.--

404 (1) There is created within the Agency for Health Care
 405 Administration a Quality of Long-Term Care Facility Improvement
 406 Trust Fund to support activities and programs directly related
 407 to improvement of the care of nursing home and assisted living
 408 facility residents. The trust fund shall be funded through
 409 proceeds generated pursuant to ss. 400.0238 and 429.298
 410 ~~400.4298~~, through funds specifically appropriated by the
 411 Legislature, through gifts, endowments, and other charitable
 412 contributions allowed under federal and state law, and through
 413 federal nursing home civil monetary penalties collected by the
 414 Centers for Medicare and Medicaid Services and returned to the
 415 state. These funds must be utilized in accordance with federal
 416 requirements.

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

419 400.119 Confidentiality of records and meetings of risk
 420 management and quality assurance committees.--

421 (1) Records of meetings of the risk management and quality
 422 assurance committee of a long-term care facility licensed under
 423 this part or part I ~~III~~ of ~~this~~ chapter 429, as well as incident
 424 reports filed with the facility's risk manager and
 425 administrator, notifications of the occurrence of an adverse
 426 incident, and adverse incident reports from the facility are
 427 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 428 of the State Constitution. However, if the Agency for Health
 429 Care Administration has a reasonable belief that conduct by a
 430 staff member or employee of a facility is criminal activity or
 431 grounds for disciplinary action by a regulatory board, the
 432 agency may disclose such records to the appropriate law
 433 enforcement agency or regulatory board.

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

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

441 400.141 Administration and management of nursing home
 442 facilities.--Every licensed facility shall comply with all
 443 applicable standards and rules of the agency and shall:

444 (4) Provide for resident use of a community pharmacy as
 445 specified in s. 400.022(1)(q). Any other law to the contrary
 446 notwithstanding, a registered pharmacist licensed in Florida,
 447 that is under contract with a facility licensed under this
 448 chapter or chapter 429, shall repackage a nursing facility

449 resident's bulk prescription medication which has been packaged
450 by another pharmacist licensed in any state in the United States
451 into a unit dose system compatible with the system used by the
452 nursing facility, if the pharmacist is requested to offer such
453 service. In order to be eligible for the repackaging, a resident
454 or the resident's spouse must receive prescription medication
455 benefits provided through a former employer as part of his or
456 her retirement benefits, a qualified pension plan as specified
457 in s. 4972 of the Internal Revenue Code, a federal retirement
458 program as specified under 5 C.F.R. s. 831, or a long-term care
459 policy as defined in s. 627.9404(1). A pharmacist who correctly
460 repackages and relabels the medication and the nursing facility
461 which correctly administers such repackaged medication under the
462 provisions of this subsection shall not be held liable in any
463 civil or administrative action arising from the repackaging. In
464 order to be eligible for the repackaging, a nursing facility
465 resident for whom the medication is to be repackaged shall sign
466 an informed consent form provided by the facility which includes
467 an explanation of the repackaging process and which notifies the
468 resident of the immunities from liability provided herein. A
469 pharmacist who repackages and relabels prescription medications,
470 as authorized under this subsection, may charge a reasonable fee
471 for costs resulting from the implementation of this provision.

472 (7) If the facility has a standard license or is a Gold
473 Seal facility, exceeds the minimum required hours of licensed
474 nursing and certified nursing assistant direct care per resident
475 per day, and is part of a continuing care facility licensed
476 under chapter 651 or a retirement community that offers other

477 services pursuant to part III of this chapter or chapter 429
478 ~~part IV, or part V~~ on a single campus, be allowed to share
479 programming and staff. At the time of inspection and in the
480 semiannual report required pursuant to subsection (15), a
481 continuing care facility or retirement community that uses this
482 option must demonstrate through staffing records that minimum
483 staffing requirements for the facility were met. Licensed nurses
484 and certified nursing assistants who work in the nursing home
485 facility may be used to provide services elsewhere on campus if
486 the facility exceeds the minimum number of direct care hours
487 required per resident per day and the total number of residents
488 receiving direct care services from a licensed nurse or a
489 certified nursing assistant does not cause the facility to
490 violate the staffing ratios required under s. 400.23(3)(a).
491 Compliance with the minimum staffing ratios shall be based on
492 total number of residents receiving direct care services,
493 regardless of where they reside on campus. If the facility
494 receives a conditional license, it may not share staff until the
495 conditional license status ends. This subsection does not
496 restrict the agency's authority under federal or state law to
497 require additional staff if a facility is cited for deficiencies
498 in care which are caused by an insufficient number of certified
499 nursing assistants or licensed nurses. The agency may adopt
500 rules for the documentation necessary to determine compliance
501 with this provision.

502
503 Facilities that have been awarded a Gold Seal under the program
504 established in s. 400.235 may develop a plan to provide

505 certified nursing assistant training as prescribed by federal
 506 regulations and state rules and may apply to the agency for
 507 approval of their program.

508 Section 27. Subsection (1) of section 400.142, Florida
 509 Statutes, is amended to read:

510 400.142 Emergency medication kits; orders not to
 511 resuscitate.--

512 (1) Other provisions of this chapter or of chapter 429,
 513 chapter 465, chapter 499, or chapter 893 to the contrary
 514 notwithstanding, each nursing home operating pursuant to a
 515 license issued by the agency may maintain an emergency
 516 medication kit for the purpose of storing medicinal drugs to be
 517 administered under emergency conditions to residents residing in
 518 such facility.

519 Section 28. Paragraph (a) of subsection (2) of section
 520 400.191, Florida Statutes, is amended to read:

521 400.191 Availability, distribution, and posting of reports
 522 and records.--

523 (2) The agency shall provide additional information in
 524 consumer-friendly printed and electronic formats to assist
 525 consumers and their families in comparing and evaluating nursing
 526 home facilities.

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

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

533 2. Whether such nursing home facilities are proprietary or
534 nonproprietary.

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

537 4. The name of the owner or owners of each facility and
538 whether the facility is affiliated with a company or other
539 organization owning or managing more than one nursing facility
540 in this state.

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

542 6. The number of private and semiprivate rooms in each
543 facility.

544 7. The religious affiliation, if any, of each facility.

545 8. The languages spoken by the administrator and staff of
546 each facility.

547 9. Whether or not each facility accepts Medicare or
548 Medicaid recipients or insurance, health maintenance
549 organization, Veterans Administration, CHAMPUS program, or
550 workers' compensation coverage.

551 10. Recreational and other programs available at each
552 facility.

553 11. Special care units or programs offered at each
554 facility.

555 12. Whether the facility is a part of a retirement
556 community that offers other services pursuant to part III of
557 this chapter or part I or part III of chapter 429, part IV, or
558 part V.

559 13. Survey and deficiency information contained on the
560 Online Survey Certification and Reporting (OSCAR) system of the

561 federal Health Care Financing Administration, including annual
562 survey, revisit, and complaint survey information, for each
563 facility for the past 45 months. For noncertified nursing
564 homes, state survey and deficiency information, including annual
565 survey, revisit, and complaint survey information for the past
566 45 months shall be provided.

567 14. A summary of the Online Survey Certification and
568 Reporting (OSCAR) data for each facility over the past 45
569 months. Such summary may include a score, rating, or comparison
570 ranking with respect to other facilities based on the number of
571 citations received by the facility of annual, revisit, and
572 complaint surveys; the severity and scope of the citations; and
573 the number of annual recertification surveys the facility has
574 had during the past 45 months. The score, rating, or comparison
575 ranking may be presented in either numeric or symbolic form for
576 the intended consumer audience.

577 Section 29. Paragraph (b) of subsection (2) of section
578 400.215, Florida Statutes, is amended to read:

579 400.215 Personnel screening requirement.--

580 (2) Employers and employees shall comply with the
581 requirements of s. 435.05.

582 (b) Employees qualified under the provisions of paragraph
583 (a) who have not maintained continuous residency within the
584 state for the 5 years immediately preceding the date of request
585 for background screening must complete level 2 screening, as
586 provided in chapter 435. Such employees may work in a
587 conditional status up to 180 days pending the receipt of written
588 findings evidencing the completion of level 2 screening. Level 2

589 screening shall not be required of employees or prospective
 590 employees who attest in writing under penalty of perjury that
 591 they meet the residency requirement. Completion of level 2
 592 screening shall require the employee or prospective employee to
 593 furnish to the nursing facility a full set of fingerprints to
 594 enable a criminal background investigation to be conducted. The
 595 nursing facility shall submit the completed fingerprint card to
 596 the agency. The agency shall establish a record of the request
 597 in the database provided for in paragraph (c) and forward the
 598 request to the Department of Law Enforcement, which is
 599 authorized to submit the fingerprints to the Federal Bureau of
 600 Investigation for a national criminal history records check. The
 601 results of the national criminal history records check shall be
 602 returned to the agency, which shall maintain the results in the
 603 database provided for in paragraph (c). The agency shall notify
 604 the administrator of the requesting nursing facility or the
 605 administrator of any other facility licensed under chapter 393,
 606 chapter 394, chapter 395, chapter 397, chapter 429, or this
 607 chapter, as requested by such facility, as to whether or not the
 608 employee has qualified under level 1 or level 2 screening. An
 609 employee or prospective employee who has qualified under level 2
 610 screening and has maintained such continuous residency within
 611 the state shall not be required to complete a subsequent level 2
 612 screening as a condition of employment at another facility.

613 Section 30. Section 400.402, Florida Statutes, is
 614 renumbered as section 429.02, Florida Statutes, and amended to
 615 read:

616 429.02 ~~400.402~~ Definitions.--When used in this part, the

617 term:

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

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

624 (3) "Agency" means the Agency for Health Care
625 Administration.

626 (4) "Aging in place" or "age in place" means the process
627 of providing increased or adjusted services to a person to
628 compensate for the physical or mental decline that may occur
629 with the aging process, in order to maximize the person's
630 dignity and independence and permit them to remain in a
631 familiar, noninstitutional, residential environment for as long
632 as possible. Such services may be provided by facility staff,
633 volunteers, family, or friends, or through contractual
634 arrangements with a third party.

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

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

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

649 (8) "Community living support plan" means a written
 650 document prepared by a mental health resident and the resident's
 651 mental health case manager in consultation with the
 652 administrator of an assisted living facility with a limited
 653 mental health license or the administrator's designee. A copy
 654 must be provided to the administrator. The plan must include
 655 information about the supports, services, and special needs of
 656 the resident which enable the resident to live in the assisted
 657 living facility and a method by which facility staff can
 658 recognize and respond to the signs and symptoms particular to
 659 that resident which indicate the need for professional services.

660 (9) "Cooperative agreement" means a written statement of
 661 understanding between a mental health care provider and the
 662 administrator of the assisted living facility with a limited
 663 mental health license in which a mental health resident is
 664 living. The agreement must specify directions for accessing
 665 emergency and after-hours care for the mental health resident. A
 666 single cooperative agreement may service all mental health
 667 residents who are clients of the same mental health care
 668 provider.

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

670 (11) "Emergency" means a situation, physical condition, or
 671 method of operation which presents imminent danger of death or
 672 serious physical or mental harm to facility residents.

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

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

685 (14) "Limited nursing services" means acts that may be
686 performed pursuant to part I of chapter 464 by persons licensed
687 thereunder while carrying out their professional duties but
688 limited to those acts which the department specifies by rule.
689 Acts which may be specified by rule as allowable limited nursing
690 services shall be for persons who meet the admission criteria
691 established by the department for assisted living facilities and
692 shall not be complex enough to require 24-hour nursing
693 supervision and may include such services as the application and
694 care of routine dressings, and care of casts, braces, and
695 splints.

696 (15) "Managed risk" means the process by which the
697 facility staff discuss the service plan and the needs of the
698 resident with the resident and, if applicable, the resident's
699 representative or designee or the resident's surrogate,
700 guardian, or attorney in fact, in such a way that the

701 consequences of a decision, including any inherent risk, are
 702 explained to all parties and reviewed periodically in
 703 conjunction with the service plan, taking into account changes
 704 in the resident's status and the ability of the facility to
 705 respond accordingly.

706 (16) "Mental health resident" means an individual who
 707 receives social security disability income due to a mental
 708 disorder as determined by the Social Security Administration or
 709 receives supplemental security income due to a mental disorder
 710 as determined by the Social Security Administration and receives
 711 optional state supplementation.

712 (17) "Personal services" means direct physical assistance
 713 with or supervision of the activities of daily living and the
 714 self-administration of medication and other similar services
 715 which the department may define by rule. "Personal services"
 716 shall not be construed to mean the provision of medical,
 717 nursing, dental, or mental health services.

718 (18) "Physical restraint" means a device which physically
 719 limits, restricts, or deprives an individual of movement or
 720 mobility, including, but not limited to, a half-bed rail, a
 721 full-bed rail, a geriatric chair, and a posey restraint. The
 722 term "physical restraint" shall also include any device which
 723 was not specifically manufactured as a restraint but which has
 724 been altered, arranged, or otherwise used for this purpose. The
 725 term shall not include bandage material used for the purpose of
 726 binding a wound or injury.

727 (19) "Relative" means an individual who is the father,
 728 mother, stepfather, stepmother, son, daughter, brother, sister,

729 grandmother, grandfather, great-grandmother, great-grandfather,
 730 grandson, granddaughter, uncle, aunt, first cousin, nephew,
 731 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
 732 daughter-in-law, brother-in-law, sister-in-law, stepson,
 733 stepdaughter, stepbrother, stepsister, half brother, or half
 734 sister of an owner or administrator.

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

737 (21) "Resident's representative or designee" means a
 738 person other than the owner, or an agent or employee of the
 739 facility, designated in writing by the resident, if legally
 740 competent, to receive notice of changes in the contract executed
 741 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
 742 participate in meetings between the resident and the facility
 743 owner, administrator, or staff concerning the rights of the
 744 resident; to assist the resident in contacting the ombudsman
 745 council if the resident has a complaint against the facility; or
 746 to bring legal action on behalf of the resident pursuant to s.
 747 429.29 ~~s. 400.429~~.

748 (22) "Service plan" means a written plan, developed and
 749 agreed upon by the resident and, if applicable, the resident's
 750 representative or designee or the resident's surrogate,
 751 guardian, or attorney in fact, if any, and the administrator or
 752 designee representing the facility, which addresses the unique
 753 physical and psychosocial needs, abilities, and personal
 754 preferences of each resident receiving extended congregate care
 755 services. The plan shall include a brief written description, in
 756 easily understood language, of what services shall be provided,

757 | who shall provide the services, when the services shall be
 758 | rendered, and the purposes and benefits of the services.

759 | (23) "Shared responsibility" means exploring the options
 760 | available to a resident within a facility and the risks involved
 761 | with each option when making decisions pertaining to the
 762 | resident's abilities, preferences, and service needs, thereby
 763 | enabling the resident and, if applicable, the resident's
 764 | representative or designee, or the resident's surrogate,
 765 | guardian, or attorney in fact, and the facility to develop a
 766 | service plan which best meets the resident's needs and seeks to
 767 | improve the resident's quality of life.

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

772 | (25) "Supplemental security income," Title XVI of the
 773 | Social Security Act, means a program through which the Federal
 774 | Government guarantees a minimum monthly income to every person
 775 | who is age 65 or older, or disabled, or blind and meets the
 776 | income and asset requirements.

777 | (26) "Supportive services" means services designed to
 778 | encourage and assist aged persons or adults with disabilities to
 779 | remain in the least restrictive living environment and to
 780 | maintain their independence as long as possible.

781 | (27) "Twenty-four-hour nursing supervision" means services
 782 | that are ordered by a physician for a resident whose condition
 783 | requires the supervision of a physician and continued monitoring
 784 | of vital signs and physical status. Such services shall be:

785 medically complex enough to require constant supervision,
 786 assessment, planning, or intervention by a nurse; required to be
 787 performed by or under the direct supervision of licensed nursing
 788 personnel or other professional personnel for safe and effective
 789 performance; required on a daily basis; and consistent with the
 790 nature and severity of the resident's condition or the disease
 791 state or stage.

792 Section 31. Section 400.404, Florida Statutes, is
 793 renumbered as section 429.04, Florida Statutes, and amended to
 794 read:

795 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--

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

799 (2) The following are exempt from licensure under this
 800 part:

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

803 (b) Any facility or part of a facility licensed under
 804 chapter 393 or chapter 394.

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

807 (d) Any person who provides housing, meals, and one or
 808 more personal services on a 24-hour basis in the person's own
 809 home to not more than two adults who do not receive optional
 810 state supplementation. The person who provides the housing,
 811 meals, and personal services must own or rent the home and
 812 reside therein.

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

816 (f) Any facility that has been incorporated in this state
817 for 50 years or more on or before July 1, 1983, and the board of
818 directors of which is nominated or elected by the residents,
819 until the facility is sold or its ownership is transferred; or
820 any facility, with improvements or additions thereto, which has
821 existed and operated continuously in this state for 60 years or
822 more on or before July 1, 1989, is directly or indirectly owned
823 and operated by a nationally recognized fraternal organization,
824 is not open to the public, and accepts only its own members and
825 their spouses as residents.

826 (g) Any facility certified under chapter 651, or a
827 retirement community, may provide services authorized under this
828 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who
829 live in single-family homes, duplexes, quadruplexes, or
830 apartments located on the campus without obtaining a license to
831 operate an assisted living facility if residential units within
832 such buildings are used by residents who do not require staff
833 supervision for that portion of the day when personal services
834 are not being delivered and the owner obtains a home health
835 license to provide such services. However, any building or
836 distinct part of a building on the campus that is designated for
837 persons who receive personal services and require supervision
838 beyond that which is available while such services are being
839 rendered must be licensed in accordance with this part. If a
840 facility provides personal services to residents who do not

841 otherwise require supervision and the owner is not licensed as a
 842 home health agency, the buildings or distinct parts of buildings
 843 where such services are rendered must be licensed under this
 844 part. A resident of a facility that obtains a home health
 845 license may contract with a home health agency of his or her
 846 choice, provided that the home health agency provides liability
 847 insurance and workers' compensation coverage for its employees.
 848 Facilities covered by this exemption may establish policies that
 849 give residents the option of contracting for services and care
 850 beyond that which is provided by the facility to enable them to
 851 age in place. For purposes of this section, a retirement
 852 community consists of a facility licensed under this part or
 853 under part II of chapter 400, and apartments designed for
 854 independent living located on the same campus.

855 (h) Any residential unit for independent living which is
 856 located within a facility certified under chapter 651, or any
 857 residential unit which is colocated with a nursing home licensed
 858 under part II of chapter 400 or colocated with a facility
 859 licensed under this part in which services are provided through
 860 an outpatient clinic or a nursing home on an outpatient basis.

861 Section 32. Section 400.407, Florida Statutes, is
 862 renumbered as section 429.07, Florida Statutes, and amended to
 863 read:

864 429.07 ~~400.407~~ License required; fee, display.--

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

867 (2) Separate licenses shall be required for facilities
 868 maintained in separate premises, even though operated under the

869 same management. A separate license shall not be required for
 870 separate buildings on the same grounds.

871 (3) Any license granted by the agency must state the
 872 maximum resident capacity of the facility, the type of care for
 873 which the license is granted, the date the license is issued,
 874 the expiration date of the license, and any other information
 875 deemed necessary by the agency. Licenses shall be issued for one
 876 or more of the following categories of care: standard, extended
 877 congregate care, limited nursing services, or limited mental
 878 health.

879 (a) A standard license shall be issued to facilities
 880 providing one or more of the personal services identified in s.
 881 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
 882 with a person licensed under part I of chapter 464 to administer
 883 medications and perform other tasks as specified in s. 429.255
 884 ~~s. 400.4255~~.

885 (b) An extended congregate care license shall be issued to
 886 facilities providing, directly or through contract, services
 887 beyond those authorized in paragraph (a), including acts
 888 performed pursuant to part I of chapter 464 by persons licensed
 889 thereunder, and supportive services defined by rule to persons
 890 who otherwise would be disqualified from continued residence in
 891 a facility licensed under this part.

892 1. In order for extended congregate care services to be
 893 provided in a facility licensed under this part, the agency must
 894 first determine that all requirements established in law and
 895 rule are met and must specifically designate, on the facility's
 896 license, that such services may be provided and whether the

897 designation applies to all or part of a facility. Such
898 designation may be made at the time of initial licensure or
899 relicensure, or upon request in writing by a licensee under this
900 part. Notification of approval or denial of such request shall
901 be made within 90 days after receipt of such request and all
902 necessary documentation. Existing facilities qualifying to
903 provide extended congregate care services must have maintained a
904 standard license and may not have been subject to administrative
905 sanctions during the previous 2 years, or since initial
906 licensure if the facility has been licensed for less than 2
907 years, for any of the following reasons:

- 908 a. A class I or class II violation;
- 909 b. Three or more repeat or recurring class III violations
910 of identical or similar resident care standards as specified in
911 rule from which a pattern of noncompliance is found by the
912 agency;
- 913 c. Three or more class III violations that were not
914 corrected in accordance with the corrective action plan approved
915 by the agency;
- 916 d. Violation of resident care standards resulting in a
917 requirement to employ the services of a consultant pharmacist or
918 consultant dietitian;
- 919 e. Denial, suspension, or revocation of a license for
920 another facility under this part in which the applicant for an
921 extended congregate care license has at least 25 percent
922 ownership interest; or
- 923 f. Imposition of a moratorium on admissions or initiation
924 of injunctive proceedings.

925 2. Facilities that are licensed to provide extended
 926 congregate care services shall maintain a written progress
 927 report on each person who receives such services, which report
 928 describes the type, amount, duration, scope, and outcome of
 929 services that are rendered and the general status of the
 930 resident's health. A registered nurse, or appropriate designee,
 931 representing the agency shall visit such facilities at least
 932 quarterly to monitor residents who are receiving extended
 933 congregate care services and to determine if the facility is in
 934 compliance with this part and with rules that relate to extended
 935 congregate care. One of these visits may be in conjunction with
 936 the regular survey. The monitoring visits may be provided
 937 through contractual arrangements with appropriate community
 938 agencies. A registered nurse shall serve as part of the team
 939 that inspects such facility. The agency may waive one of the
 940 required yearly monitoring visits for a facility that has been
 941 licensed for at least 24 months to provide extended congregate
 942 care services, if, during the inspection, the registered nurse
 943 determines that extended congregate care services are being
 944 provided appropriately, and if the facility has no class I or
 945 class II violations and no uncorrected class III violations.
 946 Before such decision is made, the agency shall consult with the
 947 long-term care ombudsman council for the area in which the
 948 facility is located to determine if any complaints have been
 949 made and substantiated about the quality of services or care.
 950 The agency may not waive one of the required yearly monitoring
 951 visits if complaints have been made and substantiated.

952 3. Facilities that are licensed to provide extended

953 | congregate care services shall:

954 | a. Demonstrate the capability to meet unanticipated

955 | resident service needs.

956 | b. Offer a physical environment that promotes a homelike

957 | setting, provides for resident privacy, promotes resident

958 | independence, and allows sufficient congregate space as defined

959 | by rule.

960 | c. Have sufficient staff available, taking into account

961 | the physical plant and firesafety features of the building, to

962 | assist with the evacuation of residents in an emergency, as

963 | necessary.

964 | d. Adopt and follow policies and procedures that maximize

965 | resident independence, dignity, choice, and decisionmaking to

966 | permit residents to age in place to the extent possible, so that

967 | moves due to changes in functional status are minimized or

968 | avoided.

969 | e. Allow residents or, if applicable, a resident's

970 | representative, designee, surrogate, guardian, or attorney in

971 | fact to make a variety of personal choices, participate in

972 | developing service plans, and share responsibility in

973 | decisionmaking.

974 | f. Implement the concept of managed risk.

975 | g. Provide, either directly or through contract, the

976 | services of a person licensed pursuant to part I of chapter 464.

977 | h. In addition to the training mandated in s. 429.52 ~~s.~~

978 | ~~400.452~~, provide specialized training as defined by rule for

979 | facility staff.

980 | 4. Facilities licensed to provide extended congregate care

981 services are exempt from the criteria for continued residency as
 982 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.

983 Facilities so licensed shall adopt their own requirements within
 984 guidelines for continued residency set forth by the department
 985 in rule. However, such facilities may not serve residents who
 986 require 24-hour nursing supervision. Facilities licensed to
 987 provide extended congregate care services shall provide each
 988 resident with a written copy of facility policies governing
 989 admission and retention.

990 5. The primary purpose of extended congregate care
 991 services is to allow residents, as they become more impaired,
 992 the option of remaining in a familiar setting from which they
 993 would otherwise be disqualified for continued residency. A
 994 facility licensed to provide extended congregate care services
 995 may also admit an individual who exceeds the admission criteria
 996 for a facility with a standard license, if the individual is
 997 determined appropriate for admission to the extended congregate
 998 care facility.

999 6. Before admission of an individual to a facility
 1000 licensed to provide extended congregate care services, the
 1001 individual must undergo a medical examination as provided in s.
 1002 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a
 1003 preliminary service plan for the individual.

1004 7. When a facility can no longer provide or arrange for
 1005 services in accordance with the resident's service plan and
 1006 needs and the facility's policy, the facility shall make
 1007 arrangements for relocating the person in accordance with s.
 1008 429.28(1)(k) ~~s. 400.428(1)(k)~~.

1009 8. Failure to provide extended congregate care services
 1010 may result in denial of extended congregate care license
 1011 renewal.

1012 9. No later than January 1 of each year, the department,
 1013 in consultation with the agency, shall prepare and submit to the
 1014 Governor, the President of the Senate, the Speaker of the House
 1015 of Representatives, and the chairs of appropriate legislative
 1016 committees, a report on the status of, and recommendations
 1017 related to, extended congregate care services. The status report
 1018 must include, but need not be limited to, the following
 1019 information:

1020 a. A description of the facilities licensed to provide
 1021 such services, including total number of beds licensed under
 1022 this part.

1023 b. The number and characteristics of residents receiving
 1024 such services.

1025 c. The types of services rendered that could not be
 1026 provided through a standard license.

1027 d. An analysis of deficiencies cited during licensure
 1028 inspections.

1029 e. The number of residents who required extended
 1030 congregate care services at admission and the source of
 1031 admission.

1032 f. Recommendations for statutory or regulatory changes.

1033 g. The availability of extended congregate care to state
 1034 clients residing in facilities licensed under this part and in
 1035 need of additional services, and recommendations for
 1036 appropriations to subsidize extended congregate care services

1037 | for such persons.

1038 | h. Such other information as the department considers
1039 | appropriate.

1040 | (c) A limited nursing services license shall be issued to
1041 | a facility that provides services beyond those authorized in
1042 | paragraph (a) and as specified in this paragraph.

1043 | 1. In order for limited nursing services to be provided in
1044 | a facility licensed under this part, the agency must first
1045 | determine that all requirements established in law and rule are
1046 | met and must specifically designate, on the facility's license,
1047 | that such services may be provided. Such designation may be made
1048 | at the time of initial licensure or relicensure, or upon request
1049 | in writing by a licensee under this part. Notification of
1050 | approval or denial of such request shall be made within 90 days
1051 | after receipt of such request and all necessary documentation.
1052 | Existing facilities qualifying to provide limited nursing
1053 | services shall have maintained a standard license and may not
1054 | have been subject to administrative sanctions that affect the
1055 | health, safety, and welfare of residents for the previous 2
1056 | years or since initial licensure if the facility has been
1057 | licensed for less than 2 years.

1058 | 2. Facilities that are licensed to provide limited nursing
1059 | services shall maintain a written progress report on each person
1060 | who receives such nursing services, which report describes the
1061 | type, amount, duration, scope, and outcome of services that are
1062 | rendered and the general status of the resident's health. A
1063 | registered nurse representing the agency shall visit such
1064 | facilities at least twice a year to monitor residents who are

1065 receiving limited nursing services and to determine if the
 1066 facility is in compliance with applicable provisions of this
 1067 part and with related rules. The monitoring visits may be
 1068 provided through contractual arrangements with appropriate
 1069 community agencies. A registered nurse shall also serve as part
 1070 of the team that inspects such facility.

1071 3. A person who receives limited nursing services under
 1072 this part must meet the admission criteria established by the
 1073 agency for assisted living facilities. When a resident no
 1074 longer meets the admission criteria for a facility licensed
 1075 under this part, arrangements for relocating the person shall be
 1076 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless
 1077 the facility is licensed to provide extended congregate care
 1078 services.

1079 (4)(a) The biennial license fee required of a facility is
 1080 \$300 per license, with an additional fee of \$50 per resident
 1081 based on the total licensed resident capacity of the facility,
 1082 except that no additional fee will be assessed for beds
 1083 designated for recipients of optional state supplementation
 1084 payments provided for in s. 409.212. The total fee may not
 1085 exceed \$10,000, no part of which shall be returned to the
 1086 facility. The agency shall adjust the per bed license fee and
 1087 the total licensure fee annually by not more than the change in
 1088 the consumer price index based on the 12 months immediately
 1089 preceding the increase.

1090 (b) In addition to the total fee assessed under paragraph
 1091 (a), the agency shall require facilities that are licensed to
 1092 provide extended congregate care services under this part to pay

1093 an additional fee per licensed facility. The amount of the
 1094 biennial fee shall be \$400 per license, with an additional fee
 1095 of \$10 per resident based on the total licensed resident
 1096 capacity of the facility. No part of this fee shall be returned
 1097 to the facility. The agency may adjust the per bed license fee
 1098 and the annual license fee once each year by not more than the
 1099 average rate of inflation for the 12 months immediately
 1100 preceding the increase.

1101 (c) In addition to the total fee assessed under paragraph
 1102 (a), the agency shall require facilities that are licensed to
 1103 provide limited nursing services under this part to pay an
 1104 additional fee per licensed facility. The amount of the
 1105 biennial fee shall be \$250 per license, with an additional fee
 1106 of \$10 per resident based on the total licensed resident
 1107 capacity of the facility. No part of this fee shall be returned
 1108 to the facility. The agency may adjust the per bed license fee
 1109 and the biennial license fee once each year by not more than the
 1110 average rate of inflation for the 12 months immediately
 1111 preceding the increase.

1112 (5) Counties or municipalities applying for licenses under
 1113 this part are exempt from the payment of license fees.

1114 (6) The license shall be displayed in a conspicuous place
 1115 inside the facility.

1116 (7) A license shall be valid only in the possession of the
 1117 individual, firm, partnership, association, or corporation to
 1118 which it is issued and shall not be subject to sale, assignment,
 1119 or other transfer, voluntary or involuntary; nor shall a license
 1120 be valid for any premises other than that for which originally

1121 issued.

1122 (8) A fee may be charged to a facility requesting a
 1123 duplicate license. The fee shall not exceed the actual cost of
 1124 duplication and postage.

1125 Section 33. Section 400.4071, Florida Statutes, is
 1126 renumbered as section 429.071, Florida Statutes, and amended to
 1127 read:

1128 429.071 ~~400.4071~~ Intergenerational respite care assisted
 1129 living facility pilot program.--

1130 (1) It is the intent of the Legislature to establish a
 1131 pilot program to:

1132 (a) Facilitate the receipt of in-home, family-based care
 1133 by minors and adults with disabilities and elderly persons with
 1134 special needs through respite care for up to 14 days.

1135 (b) Prevent caregiver "burnout," in which the caregiver's
 1136 health declines and he or she is unable to continue to provide
 1137 care so that the only option for the person with disabilities or
 1138 special needs is to receive institutional care.

1139 (c) Foster the development of intergenerational respite
 1140 care assisted living facilities to temporarily care for minors
 1141 and adults with disabilities and elderly persons with special
 1142 needs in the same facility and to give caregivers the time they
 1143 need for rejuvenation and healing.

1144 (2) The Agency for Health Care Administration shall
 1145 establish a 5-year pilot program, which shall license an
 1146 intergenerational respite care assisted living facility that
 1147 will provide temporary personal, respite, and custodial care to
 1148 minors and adults with disabilities and elderly persons with

1149 special needs who do not require 24-hour nursing services. The
 1150 intergenerational respite care assisted living facility must:

1151 (a) Meet all applicable requirements and standards
 1152 contained in this part ~~III of this chapter~~, except that, for
 1153 purposes of this section, the term "resident" means a person of
 1154 any age temporarily residing in and receiving care from the
 1155 facility.

1156 (b) Provide respite care services for minors and adults
 1157 with disabilities and elderly persons with special needs for a
 1158 period of at least 24 hours but not for more than 14 consecutive
 1159 days.

1160 (c) Provide a facility or facilities in which minors and
 1161 adults reside in distinct and separate living units.

1162 (d) Provide a facility that has a maximum of 48 beds, is
 1163 located in Miami-Dade County, and is operated by a not-for-
 1164 profit entity.

1165 (3) The agency may establish policies necessary to achieve
 1166 the objectives specific to the pilot program and may adopt rules
 1167 necessary to implement the program.

1168 (4) After 4 years, the agency shall present its report on
 1169 the effectiveness of the pilot program to the President of the
 1170 Senate and the Speaker of the House of Representatives and its
 1171 recommendation as to whether the Legislature should make the
 1172 program permanent.

1173 Section 34. Section 400.408, Florida Statutes, is
 1174 renumbered as section 429.08, Florida Statutes, and amended to
 1175 read:

1176 429.08 ~~400.408~~ Unlicensed facilities; referral of person

1177 for residency to unlicensed facility; penalties; verification of
 1178 licensure status.--

1179 (1)(a) It is unlawful to own, operate, or maintain an
 1180 assisted living facility without obtaining a license under this
 1181 part.

1182 (b) Except as provided under paragraph (d), any person who
 1183 owns, operates, or maintains an unlicensed assisted living
 1184 facility commits a felony of the third degree, punishable as
 1185 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
 1186 continued operation is a separate offense.

1187 (c) Any person found guilty of violating paragraph (a) a
 1188 second or subsequent time commits a felony of the second degree,
 1189 punishable as provided under s. 775.082, s. 775.083, or s.
 1190 775.084. Each day of continued operation is a separate offense.

1191 (d) Any person who owns, operates, or maintains an
 1192 unlicensed assisted living facility due to a change in this part
 1193 or a modification in department rule within 6 months after the
 1194 effective date of such change and who, within 10 working days
 1195 after receiving notification from the agency, fails to cease
 1196 operation or apply for a license under this part commits a
 1197 felony of the third degree, punishable as provided in s.
 1198 775.082, s. 775.083, or s. 775.084. Each day of continued
 1199 operation is a separate offense.

1200 (e) Any facility that fails to cease operation after
 1201 agency notification may be fined for each day of noncompliance
 1202 pursuant to s. 429.19 ~~s. 400.419~~.

1203 (f) When a licensee has an interest in more than one
 1204 assisted living facility, and fails to license any one of these

1205 facilities, the agency may revoke the license, impose a
 1206 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
 1207 on any or all of the licensed facilities until such time as the
 1208 unlicensed facility is licensed or ceases operation.

1209 (g) If the agency determines that an owner is operating or
 1210 maintaining an assisted living facility without obtaining a
 1211 license and determines that a condition exists in the facility
 1212 that poses a threat to the health, safety, or welfare of a
 1213 resident of the facility, the owner is subject to the same
 1214 actions and fines imposed against a licensed facility as
 1215 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

1216 (h) Any person aware of the operation of an unlicensed
 1217 assisted living facility must report that facility to the
 1218 agency. The agency shall provide to the department's elder
 1219 information and referral providers a list, by county, of
 1220 licensed assisted living facilities, to assist persons who are
 1221 considering an assisted living facility placement in locating a
 1222 licensed facility.

1223 (i) Each field office of the Agency for Health Care
 1224 Administration shall establish a local coordinating workgroup
 1225 which includes representatives of local law enforcement
 1226 agencies, state attorneys, the Medicaid Fraud Control Unit of
 1227 the Department of Legal Affairs, local fire authorities, the
 1228 Department of Children and Family Services, the district long-
 1229 term care ombudsman council, and the district human rights
 1230 advocacy committee to assist in identifying the operation of
 1231 unlicensed facilities and to develop and implement a plan to
 1232 ensure effective enforcement of state laws relating to such

1233 facilities. The workgroup shall report its findings, actions,
 1234 and recommendations semiannually to the Director of Health
 1235 Facility Regulation of the agency.

1236 (2) It is unlawful to knowingly refer a person for
 1237 residency to an unlicensed assisted living facility; to an
 1238 assisted living facility the license of which is under denial or
 1239 has been suspended or revoked; or to an assisted living facility
 1240 that has a moratorium on admissions. Any person who violates
 1241 this subsection commits a noncriminal violation, punishable by a
 1242 fine not exceeding \$500 as provided in s. 775.083.

1243 (a) Any health care practitioner, as defined in s.
 1244 456.001, who is aware of the operation of an unlicensed facility
 1245 shall report that facility to the agency. Failure to report a
 1246 facility that the practitioner knows or has reasonable cause to
 1247 suspect is unlicensed shall be reported to the practitioner's
 1248 licensing board.

1249 (b) Any hospital or community mental health center
 1250 licensed under chapter 395 or chapter 394 which knowingly
 1251 discharges a patient or client to an unlicensed facility is
 1252 subject to sanction by the agency.

1253 (c) Any employee of the agency or department, or the
 1254 Department of Children and Family Services, who knowingly refers
 1255 a person for residency to an unlicensed facility; to a facility
 1256 the license of which is under denial or has been suspended or
 1257 revoked; or to a facility that has a moratorium on admissions is
 1258 subject to disciplinary action by the agency or department, or
 1259 the Department of Children and Family Services.

1260 (d) The employer of any person who is under contract with

1261 the agency or department, or the Department of Children and
 1262 Family Services, and who knowingly refers a person for residency
 1263 to an unlicensed facility; to a facility the license of which is
 1264 under denial or has been suspended or revoked; or to a facility
 1265 that has a moratorium on admissions shall be fined and required
 1266 to prepare a corrective action plan designed to prevent such
 1267 referrals.

1268 (e) The agency shall provide the department and the
 1269 Department of Children and Family Services with a list of
 1270 licensed facilities within each county and shall update the list
 1271 at least quarterly.

1272 (f) At least annually, the agency shall notify, in
 1273 appropriate trade publications, physicians licensed under
 1274 chapter 458 or chapter 459, hospitals licensed under chapter
 1275 395, nursing home facilities licensed under part II of ~~this~~
 1276 chapter 400, and employees of the agency or the department, or
 1277 the Department of Children and Family Services, who are
 1278 responsible for referring persons for residency, that it is
 1279 unlawful to knowingly refer a person for residency to an
 1280 unlicensed assisted living facility and shall notify them of the
 1281 penalty for violating such prohibition. The department and the
 1282 Department of Children and Family Services shall, in turn,
 1283 notify service providers under contract to the respective
 1284 departments who have responsibility for resident referrals to
 1285 facilities. Further, the notice must direct each noticed
 1286 facility and individual to contact the appropriate agency office
 1287 in order to verify the licensure status of any facility prior to
 1288 referring any person for residency. Each notice must include the

1289 name, telephone number, and mailing address of the appropriate
 1290 office to contact.

1291 Section 35. Section 400.411, Florida Statutes, is
 1292 renumbered as section 429.11, Florida Statutes, and amended to
 1293 read:

1294 429.11 ~~400.411~~ Initial application for license;
 1295 provisional license.--

1296 (1) Application for a license shall be made to the agency
 1297 on forms furnished by it and shall be accompanied by the
 1298 appropriate license fee.

1299 (2) The applicant may be an individual owner, a
 1300 corporation, a partnership, a firm, an association, or a
 1301 governmental entity.

1302 (3) The application must be signed by the applicant under
 1303 oath and must contain the following:

1304 (a) The name, address, date of birth, and social security
 1305 number of the applicant and the name by which the facility is to
 1306 be known. If the applicant is a firm, partnership, or
 1307 association, the application shall contain the name, address,
 1308 date of birth, and social security number of every member
 1309 thereof. If the applicant is a corporation, the application
 1310 shall contain the corporation's name and address; the name,
 1311 address, date of birth, and social security number of each of
 1312 its directors and officers; and the name and address of each
 1313 person having at least a 5-percent ownership interest in the
 1314 corporation.

1315 (b) The name and address of any professional service,
 1316 firm, association, partnership, or corporation that is to

1317 provide goods, leases, or services to the facility if a 5-
 1318 percent or greater ownership interest in the service, firm,
 1319 association, partnership, or corporation is owned by a person
 1320 whose name must be listed on the application under paragraph
 1321 (a).

1322 (c) The name and address of any long-term care facility
 1323 with which the applicant, administrator, or financial officer
 1324 has been affiliated through ownership or employment within 5
 1325 years of the date of this license application; and a signed
 1326 affidavit disclosing any financial or ownership interest that
 1327 the applicant, or any person listed in paragraph (a), holds or
 1328 has held within the last 5 years in any facility licensed under
 1329 this part, or in any other entity licensed by this state or
 1330 another state to provide health or residential care, which
 1331 facility or entity closed or ceased to operate as a result of
 1332 financial problems, or has had a receiver appointed or a license
 1333 denied, suspended or revoked, or was subject to a moratorium on
 1334 admissions, or has had an injunctive proceeding initiated
 1335 against it.

1336 (d) A description and explanation of any exclusions,
 1337 permanent suspensions, or terminations of the applicant from the
 1338 Medicare or Medicaid programs. Proof of compliance with
 1339 disclosure of ownership and control interest requirements of the
 1340 Medicaid or Medicare programs shall be accepted in lieu of this
 1341 submission.

1342 (e) The names and addresses of persons of whom the agency
 1343 may inquire as to the character, reputation, and financial
 1344 responsibility of the owner and, if different from the

1345 applicant, the administrator and financial officer.

1346 (f) Identification of all other homes or facilities,
 1347 including the addresses and the license or licenses under which
 1348 they operate, if applicable, which are currently operated by the
 1349 applicant or administrator and which provide housing, meals, and
 1350 personal services to residents.

1351 (g) The location of the facility for which a license is
 1352 sought and documentation, signed by the appropriate local
 1353 government official, which states that the applicant has met
 1354 local zoning requirements.

1355 (h) The name, address, date of birth, social security
 1356 number, education, and experience of the administrator, if
 1357 different from the applicant.

1358 (4) The applicant shall furnish satisfactory proof of
 1359 financial ability to operate and conduct the facility in
 1360 accordance with the requirements of this part. A certificate of
 1361 authority, pursuant to chapter 651, may be provided as proof of
 1362 financial ability.

1363 (5) If the applicant is a continuing care facility
 1364 certified under chapter 651, a copy of the facility's
 1365 certificate of authority must be provided.

1366 (6) The applicant shall provide proof of liability
 1367 insurance as defined in s. 624.605.

1368 (7) If the applicant is a community residential home, the
 1369 applicant must provide proof that it has met the requirements
 1370 specified in chapter 419.

1371 (8) The applicant must provide the agency with proof of
 1372 legal right to occupy the property.

1373 (9) The applicant must furnish proof that the facility has
 1374 received a satisfactory firesafety inspection. The local
 1375 authority having jurisdiction or the State Fire Marshal must
 1376 conduct the inspection within 30 days after written request by
 1377 the applicant.

1378 (10) The applicant must furnish documentation of a
 1379 satisfactory sanitation inspection of the facility by the county
 1380 health department.

1381 (11) The applicant must furnish proof of compliance with
 1382 level 2 background screening as required under s. 429.174 ~~s.~~
 1383 ~~400.4174~~.

1384 (12) A provisional license may be issued to an applicant
 1385 making initial application for licensure or making application
 1386 for a change of ownership. A provisional license shall be
 1387 limited in duration to a specific period of time not to exceed 6
 1388 months, as determined by the agency.

1389 (13) A county or municipality may not issue an
 1390 occupational license that is being obtained for the purpose of
 1391 operating a facility regulated under this part without first
 1392 ascertaining that the applicant has been licensed to operate
 1393 such facility at the specified location or locations by the
 1394 agency. The agency shall furnish to local agencies responsible
 1395 for issuing occupational licenses sufficient instruction for
 1396 making such determinations.

1397 Section 36. Section 400.412, Florida Statutes, is
 1398 renumbered as section 429.12, Florida Statutes, and amended to
 1399 read:

1400 429.12 ~~400.412~~ Sale or transfer of ownership of a

1401 facility.--It is the intent of the Legislature to protect the
 1402 rights of the residents of an assisted living facility when the
 1403 facility is sold or the ownership thereof is transferred.
 1404 Therefore, whenever a facility is sold or the ownership thereof
 1405 is transferred, including leasing:

1406 (1) The transferee shall make application to the agency
 1407 for a new license at least 60 days before the date of transfer
 1408 of ownership. The application must comply with the provisions
 1409 of s. 429.11 ~~s. 400.411~~.

1410 (2)(a) The transferor shall notify the agency in writing
 1411 at least 60 days before the date of transfer of ownership.

1412 (b) The new owner shall notify the residents, in writing,
 1413 of the transfer of ownership within 7 days of his or her receipt
 1414 of the license.

1415 (3) The transferor shall be responsible and liable for:

1416 (a) The lawful operation of the facility and the welfare
 1417 of the residents domiciled in the facility until the date the
 1418 transferee is licensed by the agency.

1419 (b) Any and all penalties imposed against the facility for
 1420 violations occurring before the date of transfer of ownership
 1421 unless the penalty imposed is a moratorium on admissions or
 1422 denial of licensure. The moratorium on admissions or denial of
 1423 licensure remains in effect after the transfer of ownership,
 1424 unless the agency has approved the transferee's corrective
 1425 action plan or the conditions which created the moratorium or
 1426 denial have been corrected, and may be grounds for denial of
 1427 license to the transferee in accordance with chapter 120.

1428 (c) Any outstanding liability to the state, unless the

1429 transferee has agreed, as a condition of sale or transfer, to
 1430 accept the outstanding liabilities and to guarantee payment
 1431 therefor; except that, if the transferee fails to meet these
 1432 obligations, the transferor shall remain liable for the
 1433 outstanding liability.

1434 (4) The transferor of a facility the license of which is
 1435 denied pending an administrative hearing shall, as a part of the
 1436 written transfer-of-ownership contract, advise the transferee
 1437 that a plan of correction must be submitted by the transferee
 1438 and approved by the agency at least 7 days before the transfer
 1439 of ownership and that failure to correct the condition which
 1440 resulted in the moratorium on admissions or denial of licensure
 1441 is grounds for denial of the transferee's license.

1442 (5) The transferee must provide the agency with proof of
 1443 legal right to occupy the property before a license may be
 1444 issued. Proof may include, but is not limited to, copies of
 1445 warranty deeds, or copies of lease or rental agreements,
 1446 contracts for deeds, quitclaim deeds, or other such
 1447 documentation.

1448 Section 37. Section 400.414, Florida Statutes, is
 1449 renumbered as section 429.14, Florida Statutes, and amended to
 1450 read:

1451 429.14 ~~400.414~~ Denial, revocation, or suspension of
 1452 license; imposition of administrative fine; grounds.--

1453 (1) The agency may deny, revoke, or suspend any license
 1454 issued under this part, or impose an administrative fine in the
 1455 manner provided in chapter 120, for any of the following actions
 1456 by an assisted living facility, for the actions of any person

1457 subject to level 2 background screening under s. 429.174 ~~s.~~
 1458 ~~400.4174~~, or for the actions of any facility employee:

1459 (a) An intentional or negligent act seriously affecting
 1460 the health, safety, or welfare of a resident of the facility.

1461 (b) The determination by the agency that the owner lacks
 1462 the financial ability to provide continuing adequate care to
 1463 residents.

1464 (c) Misappropriation or conversion of the property of a
 1465 resident of the facility.

1466 (d) Failure to follow the criteria and procedures provided
 1467 under part I of chapter 394 relating to the transportation,
 1468 voluntary admission, and involuntary examination of a facility
 1469 resident.

1470 (e) A citation of any of the following deficiencies as
 1471 defined in s. 429.19 ~~s. 400.419~~:

- 1472 1. One or more cited class I deficiencies.
- 1473 2. Three or more cited class II deficiencies.
- 1474 3. Five or more cited class III deficiencies that have
 1475 been cited on a single survey and have not been corrected within
 1476 the times specified.

1477 (f) A determination that a person subject to level 2
 1478 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
 1479 meet the screening standards of s. 435.04 or that the facility
 1480 is retaining an employee subject to level 1 background screening
 1481 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
 1482 the screening standards of s. 435.03 and for whom exemptions
 1483 from disqualification have not been provided by the agency.

1484 (g) A determination that an employee, volunteer,

1485 administrator, or owner, or person who otherwise has access to
 1486 the residents of a facility does not meet the criteria specified
 1487 in s. 435.03(2), and the owner or administrator has not taken
 1488 action to remove the person. Exemptions from disqualification
 1489 may be granted as set forth in s. 435.07. No administrative
 1490 action may be taken against the facility if the person is
 1491 granted an exemption.

1492 (h) Violation of a moratorium.

1493 (i) Failure of the license applicant, the licensee during
 1494 relicensure, or a licensee that holds a provisional license to
 1495 meet the minimum license requirements of this part, or related
 1496 rules, at the time of license application or renewal.

1497 (j) A fraudulent statement or omission of any material
 1498 fact on an application for a license or any other document
 1499 required by the agency, including the submission of a license
 1500 application that conceals the fact that any board member,
 1501 officer, or person owning 5 percent or more of the facility may
 1502 not meet the background screening requirements of s. 429.174 ~~s.~~
 1503 ~~400.4174~~, or that the applicant has been excluded, permanently
 1504 suspended, or terminated from the Medicaid or Medicare programs.

1505 (k) An intentional or negligent life-threatening act in
 1506 violation of the uniform firesafety standards for assisted
 1507 living facilities or other firesafety standards that threatens
 1508 the health, safety, or welfare of a resident of a facility, as
 1509 communicated to the agency by the local authority having
 1510 jurisdiction or the State Fire Marshal.

1511 (l) Exclusion, permanent suspension, or termination from
 1512 the Medicare or Medicaid programs.

1513 (m) Knowingly operating any unlicensed facility or
 1514 providing without a license any service that must be licensed
 1515 under this part or under chapter 400.

1516 (n) Any act constituting a ground upon which application
 1517 for a license may be denied.

1518
 1519 Administrative proceedings challenging agency action under this
 1520 subsection shall be reviewed on the basis of the facts and
 1521 conditions that resulted in the agency action.

1522 (2) Upon notification by the local authority having
 1523 jurisdiction or by the State Fire Marshal, the agency may deny
 1524 or revoke the license of an assisted living facility that fails
 1525 to correct cited fire code violations that affect or threaten
 1526 the health, safety, or welfare of a resident of a facility.

1527 (3) The agency may deny a license to any applicant or to
 1528 any officer or board member of an applicant who is a firm,
 1529 corporation, partnership, or association or who owns 5 percent
 1530 or more of the facility, if the applicant, officer, or board
 1531 member has or had a 25-percent or greater financial or ownership
 1532 interest in any other facility licensed under this part, or in
 1533 any entity licensed by this state or another state to provide
 1534 health or residential care, which facility or entity during the
 1535 5 years prior to the application for a license closed due to
 1536 financial inability to operate; had a receiver appointed or a
 1537 license denied, suspended, or revoked; was subject to a
 1538 moratorium on admissions; had an injunctive proceeding initiated
 1539 against it; or has an outstanding fine assessed under this part
 1540 or under chapter 400.

1541 (4) The agency shall deny or revoke the license of an
1542 assisted living facility that has two or more class I violations
1543 that are similar or identical to violations identified by the
1544 agency during a survey, inspection, monitoring visit, or
1545 complaint investigation occurring within the previous 2 years.

1546 (5) An action taken by the agency to suspend, deny, or
1547 revoke a facility's license under this part, in which the agency
1548 claims that the facility owner or an employee of the facility
1549 has threatened the health, safety, or welfare of a resident of
1550 the facility be heard by the Division of Administrative Hearings
1551 of the Department of Management Services within 120 days after
1552 receipt of the facility's request for a hearing, unless that
1553 time limitation is waived by both parties. The administrative
1554 law judge must render a decision within 30 days after receipt of
1555 a proposed recommended order.

1556 (6) The agency shall provide to the Division of Hotels and
1557 Restaurants of the Department of Business and Professional
1558 Regulation, on a monthly basis, a list of those assisted living
1559 facilities that have had their licenses denied, suspended, or
1560 revoked or that are involved in an appellate proceeding pursuant
1561 to s. 120.60 related to the denial, suspension, or revocation of
1562 a license.

1563 (7) Agency notification of a license suspension or
1564 revocation, or denial of a license renewal, shall be posted and
1565 visible to the public at the facility.

1566 (8) The agency may issue a temporary license pending final
1567 disposition of a proceeding involving the suspension or
1568 revocation of an assisted living facility license.

1569 Section 38. Section 400.415, Florida Statutes, is
 1570 renumbered as section 429.15, Florida Statutes, and amended to
 1571 read:

1572 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
 1573 agency may impose an immediate moratorium on admissions to any
 1574 assisted living facility if the agency determines that any
 1575 condition in the facility presents a threat to the health,
 1576 safety, or welfare of the residents in the facility.

1577 (1) A facility the license of which is denied, revoked, or
 1578 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
 1579 immediate imposition of a moratorium on admissions to run
 1580 concurrently with licensure denial, revocation, or suspension.

1581 (2) When a moratorium is placed on a facility, notice of
 1582 the moratorium shall be posted and visible to the public at the
 1583 facility until the moratorium is lifted.

1584 (3) The department may by rule establish conditions that
 1585 constitute grounds for imposing a moratorium on a facility and
 1586 procedures for imposing and lifting a moratorium, as necessary
 1587 to administer this section.

1588 Section 39. Section 400.417, Florida Statutes, is
 1589 renumbered as section 429.17, Florida Statutes, and amended to
 1590 read:

1591 429.17 ~~400.417~~ Expiration of license; renewal; conditional
 1592 license.--

1593 (1) Biennial licenses, unless sooner suspended or revoked,
 1594 shall expire 2 years from the date of issuance. Limited nursing,
 1595 extended congregate care, and limited mental health licenses
 1596 shall expire at the same time as the facility's standard

1597 license, regardless of when issued. The agency shall notify the
 1598 facility at least 120 days prior to expiration that a renewal
 1599 license is necessary to continue operation. The notification
 1600 must be provided electronically or by mail delivery. Ninety days
 1601 prior to the expiration date, an application for renewal shall
 1602 be submitted to the agency. Fees must be prorated. The failure
 1603 to file a timely renewal application shall result in a late fee
 1604 charged to the facility in an amount equal to 50 percent of the
 1605 current fee.

1606 (2) A license shall be renewed within 90 days upon the
 1607 timely filing of an application on forms furnished by the agency
 1608 and the provision of satisfactory proof of ability to operate
 1609 and conduct the facility in accordance with the requirements of
 1610 this part and adopted rules, including proof that the facility
 1611 has received a satisfactory firesafety inspection, conducted by
 1612 the local authority having jurisdiction or the State Fire
 1613 Marshal, within the preceding 12 months and an affidavit of
 1614 compliance with the background screening requirements of s.
 1615 429.174 ~~s. 400.4174~~.

1616 (3) An applicant for renewal of a license who has complied
 1617 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
 1618 proof of financial ability to operate shall not be required to
 1619 provide further proof unless the facility or any other facility
 1620 owned or operated in whole or in part by the same person has
 1621 demonstrated financial instability as provided under s.
 1622 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
 1623 facility is not financially stable as a result of the annual
 1624 survey or complaints from the public or a report from the State

1625 Long-Term Care Ombudsman Council. Each facility must report to
 1626 the agency any adverse court action concerning the facility's
 1627 financial viability, within 7 days after its occurrence. The
 1628 agency shall have access to books, records, and any other
 1629 financial documents maintained by the facility to the extent
 1630 necessary to determine the facility's financial stability. A
 1631 license for the operation of a facility shall not be renewed if
 1632 the licensee has any outstanding fines assessed pursuant to this
 1633 part which are in final order status.

1634 (4) A licensee against whom a revocation or suspension
 1635 proceeding is pending at the time of license renewal may be
 1636 issued a conditional license effective until final disposition
 1637 by the agency. If judicial relief is sought from the final
 1638 disposition, the court having jurisdiction may issue a
 1639 conditional license for the duration of the judicial proceeding.

1640 (5) A conditional license may be issued to an applicant
 1641 for license renewal if the applicant fails to meet all standards
 1642 and requirements for licensure. A conditional license issued
 1643 under this subsection shall be limited in duration to a specific
 1644 period of time not to exceed 6 months, as determined by the
 1645 agency, and shall be accompanied by an agency-approved plan of
 1646 correction.

1647 (6) When an extended care or limited nursing license is
 1648 requested during a facility's biennial license period, the fee
 1649 shall be prorated in order to permit the additional license to
 1650 expire at the end of the biennial license period. The fee shall
 1651 be calculated as of the date the additional license application
 1652 is received by the agency.

1653 (7) The department may by rule establish renewal
1654 procedures, identify forms, and specify documentation necessary
1655 to administer this section.

1656 Section 40. Section 400.4174, Florida Statutes, is
1657 renumbered as section 429.174, Florida Statutes, and amended to
1658 read:

1659 429.174 ~~400.4174~~ Background screening; exemptions.--

1660 (1)(a) Level 2 background screening must be conducted on
1661 each of the following persons, who shall be considered employees
1662 for the purposes of conducting screening under chapter 435:

1663 1. The facility owner if an individual, the administrator,
1664 and the financial officer.

1665 2. An officer or board member if the facility owner is a
1666 firm, corporation, partnership, or association, or any person
1667 owning 5 percent or more of the facility if the agency has
1668 probable cause to believe that such person has been convicted of
1669 any offense prohibited by s. 435.04. For each officer, board
1670 member, or person owning 5 percent or more who has been
1671 convicted of any such offense, the facility shall submit to the
1672 agency a description and explanation of the conviction at the
1673 time of license application. This subparagraph does not apply to
1674 a board member of a not-for-profit corporation or organization
1675 if the board member serves solely in a voluntary capacity, does
1676 not regularly take part in the day-to-day operational decisions
1677 of the corporation or organization, receives no remuneration for
1678 his or her services, and has no financial interest and has no
1679 family members with a financial interest in the corporation or
1680 organization, provided that the board member and facility submit

1681 a statement affirming that the board member's relationship to
 1682 the facility satisfies the requirements of this subparagraph.

1683 (b) Proof of compliance with level 2 screening standards
 1684 which has been submitted within the previous 5 years to meet any
 1685 facility or professional licensure requirements of the agency or
 1686 the Department of Health satisfies the requirements of this
 1687 subsection, provided that such proof is accompanied, under
 1688 penalty of perjury, by an affidavit of compliance with the
 1689 provisions of chapter 435. Proof of compliance with the
 1690 background screening requirements of the Financial Services
 1691 Commission and the Office of Insurance Regulation for applicants
 1692 for a certificate of authority to operate a continuing care
 1693 retirement community under chapter 651, submitted within the
 1694 last 5 years, satisfies the Department of Law Enforcement and
 1695 Federal Bureau of Investigation portions of a level 2 background
 1696 check.

1697 (c) The agency may grant a provisional license to a
 1698 facility applying for an initial license when each individual
 1699 required by this subsection to undergo screening has completed
 1700 the Department of Law Enforcement background checks, but has not
 1701 yet received results from the Federal Bureau of Investigation,
 1702 or when a request for an exemption from disqualification has
 1703 been submitted to the agency pursuant to s. 435.07, but a
 1704 response has not been issued.

1705 (2) The owner or administrator of an assisted living
 1706 facility must conduct level 1 background screening, as set forth
 1707 in chapter 435, on all employees hired on or after October 1,
 1708 1998, who perform personal services as defined in s. 429.02(17)

1709 ~~s. 400.402(17)~~. The agency may exempt an individual from
 1710 employment disqualification as set forth in chapter 435. Such
 1711 persons shall be considered as having met this requirement if:

1712 (a) Proof of compliance with level 1 screening
 1713 requirements obtained to meet any professional license
 1714 requirements in this state is provided and accompanied, under
 1715 penalty of perjury, by a copy of the person's current
 1716 professional license and an affidavit of current compliance with
 1717 the background screening requirements.

1718 (b) The person required to be screened has been
 1719 continuously employed in the same type of occupation for which
 1720 the person is seeking employment without a breach in service
 1721 which exceeds 180 days, and proof of compliance with the level 1
 1722 screening requirement which is no more than 2 years old is
 1723 provided. Proof of compliance shall be provided directly from
 1724 one employer or contractor to another, and not from the person
 1725 screened. Upon request, a copy of screening results shall be
 1726 provided by the employer retaining documentation of the
 1727 screening to the person screened.

1728 (c) The person required to be screened is employed by a
 1729 corporation or business entity or related corporation or
 1730 business entity that owns, operates, or manages more than one
 1731 facility or agency licensed under this chapter, and for whom a
 1732 level 1 screening was conducted by the corporation or business
 1733 entity as a condition of initial or continued employment.

1734 Section 41. Section 400.4176, Florida Statutes, is
 1735 renumbered as section 429.176, Florida Statutes, and amended to
 1736 read:

1737 429.176 ~~400.4176~~ Notice of change of administrator.--If,
 1738 during the period for which a license is issued, the owner
 1739 changes administrators, the owner must notify the agency of the
 1740 change within 10 days and provide documentation within 90 days
 1741 that the new administrator has completed the applicable core
 1742 educational requirements under s. 429.52 ~~s. 400.452~~. Background
 1743 screening shall be completed on any new administrator as
 1744 specified in s. 429.174 ~~s. 400.4174~~.

1745 Section 42. Section 400.4178, Florida Statutes, is
 1746 renumbered as section 429.178, Florida Statutes, and amended to
 1747 read:

1748 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
 1749 disease or other related disorders.--

1750 (1) A facility which advertises that it provides special
 1751 care for persons with Alzheimer's disease or other related
 1752 disorders must meet the following standards of operation:

- 1753 (a)1. If the facility has 17 or more residents, have an
 1754 awake staff member on duty at all hours of the day and night; or
 1755 2. If the facility has fewer than 17 residents, have an
 1756 awake staff member on duty at all hours of the day and night or
 1757 have mechanisms in place to monitor and ensure the safety of the
 1758 facility's residents.

1759 (b) Offer activities specifically designed for persons who
 1760 are cognitively impaired.

1761 (c) Have a physical environment that provides for the
 1762 safety and welfare of the facility's residents.

1763 (d) Employ staff who have completed the training and
 1764 continuing education required in subsection (2).

1765 (2)(a) An individual who is employed by a facility that
 1766 provides special care for residents with Alzheimer's disease or
 1767 other related disorders, and who has regular contact with such
 1768 residents, must complete up to 4 hours of initial dementia-
 1769 specific training developed or approved by the department. The
 1770 training shall be completed within 3 months after beginning
 1771 employment and shall satisfy the core training requirements of
 1772 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1773 (b) A direct caregiver who is employed by a facility that
 1774 provides special care for residents with Alzheimer's disease or
 1775 other related disorders, and who provides direct care to such
 1776 residents, must complete the required initial training and 4
 1777 additional hours of training developed or approved by the
 1778 department. The training shall be completed within 9 months
 1779 after beginning employment and shall satisfy the core training
 1780 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1781 (c) An individual who is employed by a facility that
 1782 provides special care for residents with Alzheimer's disease or
 1783 other related disorders, but who only has incidental contact
 1784 with such residents, must be given, at a minimum, general
 1785 information on interacting with individuals with Alzheimer's
 1786 disease or other related disorders, within 3 months after
 1787 beginning employment.

1788 (3) In addition to the training required under subsection
 1789 (2), a direct caregiver must participate in a minimum of 4
 1790 contact hours of continuing education each calendar year. The
 1791 continuing education must include one or more topics included in
 1792 the dementia-specific training developed or approved by the

1793 department, in which the caregiver has not received previous
 1794 training.

1795 (4) Upon completing any training listed in subsection (2),
 1796 the employee or direct caregiver shall be issued a certificate
 1797 that includes the name of the training provider, the topic
 1798 covered, and the date and signature of the training provider.
 1799 The certificate is evidence of completion of training in the
 1800 identified topic, and the employee or direct caregiver is not
 1801 required to repeat training in that topic if the employee or
 1802 direct caregiver changes employment to a different facility.
 1803 The employee or direct caregiver must comply with other
 1804 applicable continuing education requirements.

1805 (5) The department, or its designee, shall approve the
 1806 initial and continuing education courses and providers.

1807 (6) The department shall keep a current list of providers
 1808 who are approved to provide initial and continuing education for
 1809 staff of facilities that provide special care for persons with
 1810 Alzheimer's disease or other related disorders.

1811 (7) Any facility more than 90 percent of whose residents
 1812 receive monthly optional supplementation payments is not
 1813 required to pay for the training and education programs required
 1814 under this section. A facility that has one or more such
 1815 residents shall pay a reduced fee that is proportional to the
 1816 percentage of such residents in the facility. A facility that
 1817 does not have any residents who receive monthly optional
 1818 supplementation payments must pay a reasonable fee, as
 1819 established by the department, for such training and education
 1820 programs.

1821 (8) The department shall adopt rules to establish
 1822 standards for trainers and training and to implement this
 1823 section.

1824 Section 43. Section 400.418, Florida Statutes, is
 1825 renumbered as section 429.18, Florida Statutes, and amended to
 1826 read:

1827 429.18 ~~400.418~~ Disposition of fees and administrative
 1828 fines.--

1829 (1) Income from license fees, inspection fees, late fees,
 1830 and administrative fines generated pursuant to ss. 429.07,
 1831 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
 1832 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
 1833 Care Trust Fund administered by the agency. Such funds shall be
 1834 directed to and used by the agency for the following purposes:

1835 (a) Up to 50 percent of the trust funds accrued each
 1836 fiscal year under this part may be used to offset the expenses
 1837 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
 1838 determines that the income and assets of the facility are
 1839 insufficient to provide for adequate management and operation.

1840 (b) An amount of \$5,000 of the trust funds accrued each
 1841 year under this part shall be allocated to pay for inspection-
 1842 related physical and mental health examinations requested by the
 1843 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
 1844 either recipients of supplemental security income or have
 1845 monthly incomes not in excess of the maximum combined federal
 1846 and state cash subsidies available to supplemental security
 1847 income recipients, as provided for in s. 409.212. Such funds
 1848 shall only be used where the resident is ineligible for

1849 Medicaid.

1850 (c) Any trust funds accrued each year under this part and
 1851 not used for the purposes specified in paragraphs (a) and (b)
 1852 shall be used to offset the costs of the licensure program,
 1853 including the costs of conducting background investigations,
 1854 verifying information submitted, defraying the costs of
 1855 processing the names of applicants, and conducting inspections
 1856 and monitoring visits pursuant to this part.

1857 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
 1858 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
 1859 used to offset the costs of printing and postage.

1860 Section 44. Section 400.419, Florida Statutes, is
 1861 renumbered as section 429.19, Florida Statutes, and amended to
 1862 read:

1863 429.19 ~~400.419~~ Violations; imposition of administrative
 1864 fines; grounds.--

1865 (1) The agency shall impose an administrative fine in the
 1866 manner provided in chapter 120 for any of the actions or
 1867 violations as set forth within this section by an assisted
 1868 living facility, for the actions of any person subject to level
 1869 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
 1870 actions of any facility employee, or for an intentional or
 1871 negligent act seriously affecting the health, safety, or welfare
 1872 of a resident of the facility.

1873 (2) Each violation of this part and adopted rules shall be
 1874 classified according to the nature of the violation and the
 1875 gravity of its probable effect on facility residents. The agency
 1876 shall indicate the classification on the written notice of the

1877 violation as follows:

1878 (a) Class "I" violations are those conditions or
 1879 occurrences related to the operation and maintenance of a
 1880 facility or to the personal care of residents which the agency
 1881 determines present an imminent danger to the residents or guests
 1882 of the facility or a substantial probability that death or
 1883 serious physical or emotional harm would result therefrom. The
 1884 condition or practice constituting a class I violation shall be
 1885 abated or eliminated within 24 hours, unless a fixed period, as
 1886 determined by the agency, is required for correction. The agency
 1887 shall impose an administrative fine for a cited class I
 1888 violation in an amount not less than \$5,000 and not exceeding
 1889 \$10,000 for each violation. A fine may be levied notwithstanding
 1890 the correction of the violation.

1891 (b) Class "II" violations are those conditions or
 1892 occurrences related to the operation and maintenance of a
 1893 facility or to the personal care of residents which the agency
 1894 determines directly threaten the physical or emotional health,
 1895 safety, or security of the facility residents, other than class
 1896 I violations. The agency shall impose an administrative fine for
 1897 a cited class II violation in an amount not less than \$1,000 and
 1898 not exceeding \$5,000 for each violation. A fine shall be levied
 1899 notwithstanding the correction of the violation.

1900 (c) Class "III" violations are those conditions or
 1901 occurrences related to the operation and maintenance of a
 1902 facility or to the personal care of residents which the agency
 1903 determines indirectly or potentially threaten the physical or
 1904 emotional health, safety, or security of facility residents,

1905 other than class I or class II violations. The agency shall
1906 impose an administrative fine for a cited class III violation in
1907 an amount not less than \$500 and not exceeding \$1,000 for each
1908 violation. A citation for a class III violation must specify the
1909 time within which the violation is required to be corrected. If
1910 a class III violation is corrected within the time specified, no
1911 fine may be imposed, unless it is a repeated offense.

1912 (d) Class "IV" violations are those conditions or
1913 occurrences related to the operation and maintenance of a
1914 building or to required reports, forms, or documents that do not
1915 have the potential of negatively affecting residents. These
1916 violations are of a type that the agency determines do not
1917 threaten the health, safety, or security of residents of the
1918 facility. The agency shall impose an administrative fine for a
1919 cited class IV violation in an amount not less than \$100 and not
1920 exceeding \$200 for each violation. A citation for a class IV
1921 violation must specify the time within which the violation is
1922 required to be corrected. If a class IV violation is corrected
1923 within the time specified, no fine shall be imposed. Any class
1924 IV violation that is corrected during the time an agency survey
1925 is being conducted will be identified as an agency finding and
1926 not as a violation.

1927 (3) In determining if a penalty is to be imposed and in
1928 fixing the amount of the fine, the agency shall consider the
1929 following factors:

1930 (a) The gravity of the violation, including the
1931 probability that death or serious physical or emotional harm to
1932 a resident will result or has resulted, the severity of the

1933 | action or potential harm, and the extent to which the provisions
 1934 | of the applicable laws or rules were violated.

1935 | (b) Actions taken by the owner or administrator to correct
 1936 | violations.

1937 | (c) Any previous violations.

1938 | (d) The financial benefit to the facility of committing or
 1939 | continuing the violation.

1940 | (e) The licensed capacity of the facility.

1941 | (4) Each day of continuing violation after the date fixed
 1942 | for termination of the violation, as ordered by the agency,
 1943 | constitutes an additional, separate, and distinct violation.

1944 | (5) Any action taken to correct a violation shall be
 1945 | documented in writing by the owner or administrator of the
 1946 | facility and verified through followup visits by agency
 1947 | personnel. The agency may impose a fine and, in the case of an
 1948 | owner-operated facility, revoke or deny a facility's license
 1949 | when a facility administrator fraudulently misrepresents action
 1950 | taken to correct a violation.

1951 | (6) For fines that are upheld following administrative or
 1952 | judicial review, the violator shall pay the fine, plus interest
 1953 | at the rate as specified in s. 55.03, for each day beyond the
 1954 | date set by the agency for payment of the fine.

1955 | (7) Any unlicensed facility that continues to operate
 1956 | after agency notification is subject to a \$1,000 fine per day.

1957 | (8) Any licensed facility whose owner or administrator
 1958 | concurrently operates an unlicensed facility shall be subject to
 1959 | an administrative fine of \$5,000 per day.

1960 | (9) Any facility whose owner fails to apply for a change-

1961 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
 1962 operates the facility under the new ownership is subject to a
 1963 fine of \$5,000.

1964 (10) In addition to any administrative fines imposed, the
 1965 agency may assess a survey fee, equal to the lesser of one half
 1966 of the facility's biennial license and bed fee or \$500, to cover
 1967 the cost of conducting initial complaint investigations that
 1968 result in the finding of a violation that was the subject of the
 1969 complaint or monitoring visits conducted under s. 429.28(3)(c)
 1970 ~~s. 400.428(3)(e)~~ to verify the correction of the violations.

1971 (11) The agency, as an alternative to or in conjunction
 1972 with an administrative action against a facility for violations
 1973 of this part and adopted rules, shall make a reasonable attempt
 1974 to discuss each violation and recommended corrective action with
 1975 the owner or administrator of the facility, prior to written
 1976 notification. The agency, instead of fixing a period within
 1977 which the facility shall enter into compliance with standards,
 1978 may request a plan of corrective action from the facility which
 1979 demonstrates a good faith effort to remedy each violation by a
 1980 specific date, subject to the approval of the agency.

1981 (12) Administrative fines paid by any facility under this
 1982 section shall be deposited into the Health Care Trust Fund and
 1983 expended as provided in s. 429.18 ~~s. 400.418~~.

1984 (13) The agency shall develop and disseminate an annual
 1985 list of all facilities sanctioned or fined \$5,000 or more for
 1986 violations of state standards, the number and class of
 1987 violations involved, the penalties imposed, and the current
 1988 status of cases. The list shall be disseminated, at no charge,

1989 to the Department of Elderly Affairs, the Department of Health,
 1990 the Department of Children and Family Services, the area
 1991 agencies on aging, the Florida Statewide Advocacy Council, and
 1992 the state and local ombudsman councils. The Department of
 1993 Children and Family Services shall disseminate the list to
 1994 service providers under contract to the department who are
 1995 responsible for referring persons to a facility for residency.
 1996 The agency may charge a fee commensurate with the cost of
 1997 printing and postage to other interested parties requesting a
 1998 copy of this list.

1999 Section 45. Section 400.42, Florida Statutes, is
 2000 renumbered as section 429.20, Florida Statutes, and amended to
 2001 read:

2002 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
 2003 supplementation.--

2004 (1) A person may not, in connection with the solicitation
 2005 of contributions by or on behalf of an assisted living facility
 2006 or facilities, misrepresent or mislead any person, by any
 2007 manner, means, practice, or device whatsoever, to believe that
 2008 the receipts of such solicitation will be used for charitable
 2009 purposes, if that is not the fact.

2010 (2) Solicitation of contributions of any kind in a
 2011 threatening, coercive, or unduly forceful manner by or on behalf
 2012 of an assisted living facility or facilities by any agent,
 2013 employee, owner, or representative of any assisted living
 2014 facility or facilities is grounds for denial, suspension, or
 2015 revocation of the license of the assisted living facility or
 2016 facilities by or on behalf of which such contributions were

2017 | solicited.

2018 | (3) The admission or maintenance of assisted living
 2019 | facility residents whose care is supported, in whole or in part,
 2020 | by state funds may not be conditioned upon the receipt of any
 2021 | manner of contribution or donation from any person. The
 2022 | solicitation or receipt of contributions in violation of this
 2023 | subsection is grounds for denial, suspension, or revocation of
 2024 | license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
 2025 | living facility by or on behalf of which such contributions were
 2026 | solicited.

2027 | (4) An assisted living facility may accept additional
 2028 | supplementation from third parties on behalf of residents
 2029 | receiving optional state supplementation in accordance with s.
 2030 | 409.212.

2031 | Section 46. Section 400.422, Florida Statutes, is
 2032 | renumbered as section 429.22, Florida Statutes, and amended to
 2033 | read:

2034 | 429.22 ~~400.422~~ Receivership proceedings.--

2035 | (1) As an alternative to or in conjunction with an
 2036 | injunctive proceeding, the agency may petition a court of
 2037 | competent jurisdiction for the appointment of a receiver, if
 2038 | suitable alternate placements are not available, when any of the
 2039 | following conditions exist:

2040 | (a) The facility is operating without a license and
 2041 | refuses to make application for a license as required by ss.
 2042 | 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

2043 | (b) The facility is closing or has informed the agency
 2044 | that it intends to close and adequate arrangements have not been

2045 made for relocation of the residents within 7 days, exclusive of
2046 weekends and holidays, of the closing of the facility.

2047 (c) The agency determines there exist in the facility
2048 conditions which present an imminent danger to the health,
2049 safety, or welfare of the residents of the facility or a
2050 substantial probability that death or serious physical harm
2051 would result therefrom.

2052 (d) The facility cannot meet its financial obligation for
2053 providing food, shelter, care, and utilities.

2054 (2) Petitions for receivership shall take precedence over
2055 other court business unless the court determines that some other
2056 pending proceeding, having similar statutory precedence, shall
2057 have priority. A hearing shall be conducted within 5 days of
2058 the filing of the petition, at which time all interested parties
2059 shall have the opportunity to present evidence pertaining to the
2060 petition. The agency shall notify, by certified mail, the owner
2061 or administrator of the facility named in the petition and the
2062 facility resident or, if applicable, the resident's
2063 representative or designee, or the resident's surrogate,
2064 guardian, or attorney in fact, of its filing, the substance of
2065 the violation, and the date and place set for the hearing. The
2066 court shall grant the petition only upon finding that the
2067 health, safety, or welfare of facility residents would be
2068 threatened if a condition existing at the time the petition was
2069 filed is permitted to continue. A receiver shall not be
2070 appointed ex parte unless the court determines that one or more
2071 of the conditions in subsection (1) exist; that the facility
2072 owner or administrator cannot be found; that all reasonable

2073 means of locating the owner or administrator and notifying him
 2074 or her of the petition and hearing have been exhausted; or that
 2075 the owner or administrator after notification of the hearing
 2076 chooses not to attend. After such findings, the court may
 2077 appoint any qualified person as a receiver, except it may not
 2078 appoint any owner or affiliate of the facility which is in
 2079 receivership. The receiver may be selected from a list of
 2080 persons qualified to act as receivers developed by the agency
 2081 and presented to the court with each petition for receivership.

2082 Under no circumstances may the agency or designated agency
 2083 employee be appointed as a receiver for more than 60 days;
 2084 however, the receiver may petition the court, one time only, for
 2085 a 30-day extension. The court shall grant the extension upon a
 2086 showing of good cause.

2087 (3) The receiver must make provisions for the continued
 2088 health, safety, and welfare of all residents of the facility
 2089 and:

2090 (a) Shall exercise those powers and perform those duties
 2091 set out by the court.

2092 (b) Shall operate the facility in such a manner as to
 2093 assure safety and adequate health care for the residents.

2094 (c) Shall take such action as is reasonably necessary to
 2095 protect or conserve the assets or property of the facility for
 2096 which the receiver is appointed, or the proceeds from any
 2097 transfer thereof, and may use them only in the performance of
 2098 the powers and duties set forth in this section and by order of
 2099 the court.

2100 (d) May use the building, fixtures, furnishings, and any

2101 accompanying consumable goods in the provision of care and
2102 services to residents and to any other persons receiving
2103 services from the facility at the time the petition for
2104 receivership was filed. The receiver shall collect payments for
2105 all goods and services provided to residents or others during
2106 the period of the receivership at the same rate of payment
2107 charged by the owners at the time the petition for receivership
2108 was filed, or at a fair and reasonable rate otherwise approved
2109 by the court.

2110 (e) May correct or eliminate any deficiency in the
2111 structure or furnishings of the facility which endangers the
2112 safety or health of residents while they remain in the facility,
2113 if the total cost of correction does not exceed \$10,000. The
2114 court may order expenditures for this purpose in excess of
2115 \$10,000 on application from the receiver after notice to the
2116 owner and a hearing.

2117 (f) May let contracts and hire agents and employees to
2118 carry out the powers and duties of the receiver.

2119 (g) Shall honor all leases, mortgages, and secured
2120 transactions governing the building in which the facility is
2121 located and all goods and fixtures in the building of which the
2122 receiver has taken possession, but only to the extent of
2123 payments which, in the case of a rental agreement, are for the
2124 use of the property during the period of the receivership, or
2125 which, in the case of a purchase agreement, become due during
2126 the period of the receivership.

2127 (h) Shall have full power to direct and manage and to
2128 discharge employees of the facility, subject to any contract

2129 | rights they may have. The receiver shall pay employees at the
 2130 | rate of compensation, including benefits, approved by the court.

2131 | A receivership does not relieve the owner of any obligation to
 2132 | employees made prior to the appointment of a receiver and not
 2133 | carried out by the receiver.

2134 | (i) Shall be entitled to and take possession of all
 2135 | property or assets of residents which are in the possession of a
 2136 | facility or its owner. The receiver shall preserve all property,
 2137 | assets, and records of residents of which the receiver takes
 2138 | possession and shall provide for the prompt transfer of the
 2139 | property, assets, and records to the new placement of any
 2140 | transferred resident. An inventory list certified by the owner
 2141 | and receiver shall be made immediately at the time the receiver
 2142 | takes possession of the facility.

2143 | (4)(a) A person who is served with notice of an order of
 2144 | the court appointing a receiver and of the receiver's name and
 2145 | address shall be liable to pay the receiver for any goods or
 2146 | services provided by the receiver after the date of the order if
 2147 | the person would have been liable for the goods or services as
 2148 | supplied by the owner. The receiver shall give a receipt for
 2149 | each payment and shall keep a copy of each receipt on file. The
 2150 | receiver shall deposit accounts received in a separate account
 2151 | and shall use this account for all disbursements.

2152 | (b) The receiver may bring an action to enforce the
 2153 | liability created by paragraph (a).

2154 | (c) A payment to the receiver of any sum owing to the
 2155 | facility or its owner shall discharge any obligation to the
 2156 | facility to the extent of the payment.

2157 (5)(a) A receiver may petition the court that he or she
2158 not be required to honor any lease, mortgage, secured
2159 transaction, or other wholly or partially executory contract
2160 entered into by the owner of the facility if the rent, price, or
2161 rate of interest required to be paid under the agreement was
2162 substantially in excess of a reasonable rent, price, or rate of
2163 interest at the time the contract was entered into, or if any
2164 material provision of the agreement was unreasonable, when
2165 compared to contracts negotiated under similar conditions. Any
2166 relief in this form provided by the court shall be limited to
2167 the life of the receivership, unless otherwise determined by the
2168 court.

2169 (b) If the receiver is in possession of real estate or
2170 goods subject to a lease, mortgage, or security interest which
2171 the receiver has obtained a court order to avoid under paragraph
2172 (a), and if the real estate or goods are necessary for the
2173 continued operation of the facility under this section, the
2174 receiver may apply to the court to set a reasonable rental,
2175 price, or rate of interest to be paid by the receiver during the
2176 duration of the receivership. The court shall hold a hearing on
2177 the application within 15 days. The receiver shall send notice
2178 of the application to any known persons who own the property
2179 involved at least 10 days prior to the hearing. Payment by the
2180 receiver of the amount determined by the court to be reasonable
2181 is a defense to any action against the receiver for payment or
2182 for possession of the goods or real estate subject to the lease,
2183 security interest, or mortgage involved by any person who
2184 received such notice, but the payment does not relieve the owner

2185 of the facility of any liability for the difference between the
 2186 amount paid by the receiver and the amount due under the
 2187 original lease, security interest, or mortgage involved.

2188 (6) The court shall set the compensation of the receiver,
 2189 which will be considered a necessary expense of a receivership.

2190 (7) A receiver may be held liable in a personal capacity
 2191 only for the receiver's own gross negligence, intentional acts,
 2192 or breach of fiduciary duty.

2193 (8) The court may require a receiver to post a bond.

2194 (9) The court may direct the agency to allocate funds from
 2195 the Health Care Trust Fund to the receiver, subject to the
 2196 provisions of s. 429.18(1) ~~s. 400.418(1)~~.

2197 (10) The court may terminate a receivership when:

2198 (a) The court determines that the receivership is no
 2199 longer necessary because the conditions which gave rise to the
 2200 receivership no longer exist or the agency grants the facility a
 2201 new license; or

2202 (b) All of the residents in the facility have been
 2203 transferred or discharged.

2204 (11) Within 30 days after termination, the receiver shall
 2205 give the court a complete accounting of all property of which
 2206 the receiver has taken possession, of all funds collected, and
 2207 of the expenses of the receivership.

2208 (12) Nothing in this section shall be deemed to relieve
 2209 any owner, administrator, or employee of a facility placed in
 2210 receivership of any civil or criminal liability incurred, or any
 2211 duty imposed by law, by reason of acts or omissions of the
 2212 owner, administrator, or employee prior to the appointment of a

2213 receiver; nor shall anything contained in this section be
 2214 construed to suspend during the receivership any obligation of
 2215 the owner, administrator, or employee for payment of taxes or
 2216 other operating and maintenance expenses of the facility or of
 2217 the owner, administrator, employee, or any other person for the
 2218 payment of mortgages or liens. The owner shall retain the right
 2219 to sell or mortgage any facility under receivership, subject to
 2220 approval of the court which ordered the receivership.

2221 Section 47. Section 400.424, Florida Statutes, is
 2222 renumbered as section 429.24, Florida Statutes, and amended to
 2223 read:

2224 429.24 ~~400.424~~ Contracts.--

2225 (1) The presence of each resident in a facility shall be
 2226 covered by a contract, executed at the time of admission or
 2227 prior thereto, between the licensee and the resident or his or
 2228 her designee or legal representative. Each party to the contract
 2229 shall be provided with a duplicate original thereof, and the
 2230 licensee shall keep on file in the facility all such contracts.

2231 The licensee may not destroy or otherwise dispose of any such
 2232 contract until 5 years after its expiration.

2233 (2) Each contract must contain express provisions
 2234 specifically setting forth the services and accommodations to be
 2235 provided by the facility; the rates or charges; provision for at
 2236 least 30 days' written notice of a rate increase; the rights,
 2237 duties, and obligations of the residents, other than those
 2238 specified in s. 429.28 ~~s. 400.428~~; and other matters that the
 2239 parties deem appropriate. Whenever money is deposited or
 2240 advanced by a resident in a contract as security for performance

2241 of the contract agreement or as advance rent for other than the
 2242 next immediate rental period:

2243 (a) Such funds shall be deposited in a banking institution
 2244 in this state that is located, if possible, in the same
 2245 community in which the facility is located; shall be kept
 2246 separate from the funds and property of the facility; may not be
 2247 represented as part of the assets of the facility on financial
 2248 statements; and shall be used, or otherwise expended, only for
 2249 the account of the resident.

2250 (b) The licensee shall, within 30 days of receipt of
 2251 advance rent or a security deposit, notify the resident or
 2252 residents in writing of the manner in which the licensee is
 2253 holding the advance rent or security deposit and state the name
 2254 and address of the depository where the moneys are being held.
 2255 The licensee shall notify residents of the facility's policy on
 2256 advance deposits.

2257 (3)(a) The contract shall include a refund policy to be
 2258 implemented at the time of a resident's transfer, discharge, or
 2259 death. The refund policy shall provide that the resident or
 2260 responsible party is entitled to a prorated refund based on the
 2261 daily rate for any unused portion of payment beyond the
 2262 termination date after all charges, including the cost of
 2263 damages to the residential unit resulting from circumstances
 2264 other than normal use, have been paid to the licensee. For the
 2265 purpose of this paragraph, the termination date shall be the
 2266 date the unit is vacated by the resident and cleared of all
 2267 personal belongings. If the amount of belongings does not
 2268 preclude renting the unit, the facility may clear the unit and

2269 charge the resident or his or her estate for moving and storing
 2270 the items at a rate equal to the actual cost to the facility,
 2271 not to exceed 20 percent of the regular rate for the unit,
 2272 provided that 14 days' advance written notification is given.
 2273 If the resident's possessions are not claimed within 45 days
 2274 after notification, the facility may dispose of them. The
 2275 contract shall also specify any other conditions under which
 2276 claims will be made against the refund due the resident. Except
 2277 in the case of death or a discharge due to medical reasons, the
 2278 refunds shall be computed in accordance with the notice of
 2279 relocation requirements specified in the contract. However, a
 2280 resident may not be required to provide the licensee with more
 2281 than 30 days' notice of termination. If after a contract is
 2282 terminated, the facility intends to make a claim against a
 2283 refund due the resident, the facility shall notify the resident
 2284 or responsible party in writing of the claim and shall provide
 2285 said party with a reasonable time period of no less than 14
 2286 calendar days to respond. The facility shall provide a refund
 2287 to the resident or responsible party within 45 days after the
 2288 transfer, discharge, or death of the resident. The agency shall
 2289 impose a fine upon a facility that fails to comply with the
 2290 refund provisions of the paragraph, which fine shall be equal to
 2291 three times the amount due to the resident. One-half of the fine
 2292 shall be remitted to the resident or his or her estate, and the
 2293 other half to the Health Care Trust Fund to be used for the
 2294 purpose specified in s. 429.18 ~~s. 400.418~~.

2295 (b) If a licensee agrees to reserve a bed for a resident
 2296 who is admitted to a medical facility, including, but not

2297 | limited to, a nursing home, health care facility, or psychiatric
 2298 | facility, the resident or his or her responsible party shall
 2299 | notify the licensee of any change in status that would prevent
 2300 | the resident from returning to the facility. Until such notice
 2301 | is received, the agreed-upon daily rate may be charged by the
 2302 | licensee.

2303 | (c) The purpose of any advance payment and a refund policy
 2304 | for such payment, including any advance payment for housing,
 2305 | meals, or personal services, shall be covered in the contract.

2306 | (4) The contract shall state whether or not the facility
 2307 | is affiliated with any religious organization and, if so, which
 2308 | organization and its general responsibility to the facility.

2309 | (5) Neither the contract nor any provision thereof
 2310 | relieves any licensee of any requirement or obligation imposed
 2311 | upon it by this part or rules adopted under this part.

2312 | (6) In lieu of the provisions of this section, facilities
 2313 | certified under chapter 651 shall comply with the requirements
 2314 | of s. 651.055.

2315 | (7) Notwithstanding the provisions of this section,
 2316 | facilities which consist of 60 or more apartments may require
 2317 | refund policies and termination notices in accordance with the
 2318 | provisions of part II of chapter 83, provided that the lease is
 2319 | terminated automatically without financial penalty in the event
 2320 | of a resident's death or relocation due to psychiatric
 2321 | hospitalization or to medical reasons which necessitate services
 2322 | or care beyond which the facility is licensed to provide. The
 2323 | date of termination in such instances shall be the date the unit
 2324 | is fully vacated. A lease may be substituted for the contract

2325 if it meets the disclosure requirements of this section. For
 2326 the purpose of this section, the term "apartment" means a room
 2327 or set of rooms with a kitchen or kitchenette and lavatory
 2328 located within one or more buildings containing other similar or
 2329 like residential units.

2330 (8) The department may by rule clarify terms, establish
 2331 procedures, clarify refund policies and contract provisions, and
 2332 specify documentation as necessary to administer this section.

2333 Section 48. Section 400.4255, Florida Statutes, is
 2334 renumbered as section 429.255, Florida Statutes, and amended to
 2335 read:

2336 429.255 ~~400.4255~~ Use of personnel; emergency care.--

2337 (1)(a) Persons under contract to the facility, facility
 2338 staff, or volunteers, who are licensed according to part I of
 2339 chapter 464, or those persons exempt under s. 464.022(1), and
 2340 others as defined by rule, may administer medications to
 2341 residents, take residents' vital signs, manage individual weekly
 2342 pill organizers for residents who self-administer medication,
 2343 give prepackaged enemas ordered by a physician, observe
 2344 residents, document observations on the appropriate resident's
 2345 record, report observations to the resident's physician, and
 2346 contract or allow residents or a resident's representative,
 2347 designee, surrogate, guardian, or attorney in fact to contract
 2348 with a third party, provided residents meet the criteria for
 2349 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.

2350 Nursing assistants certified pursuant to part II of chapter 464
 2351 may take residents' vital signs as directed by a licensed nurse
 2352 or physician.

2353 (b) All staff in facilities licensed under this part shall
 2354 exercise their professional responsibility to observe residents,
 2355 to document observations on the appropriate resident's record,
 2356 and to report the observations to the resident's physician.
 2357 However, the owner or administrator of the facility shall be
 2358 responsible for determining that the resident receiving services
 2359 is appropriate for residence in the facility.

2360 (c) In an emergency situation, licensed personnel may
 2361 carry out their professional duties pursuant to part I of
 2362 chapter 464 until emergency medical personnel assume
 2363 responsibility for care.

2364 (2) In facilities licensed to provide extended congregate
 2365 care, persons under contract to the facility, facility staff, or
 2366 volunteers, who are licensed according to part I of chapter 464,
 2367 or those persons exempt under s. 464.022(1), or those persons
 2368 certified as nursing assistants pursuant to part II of chapter
 2369 464, may also perform all duties within the scope of their
 2370 license or certification, as approved by the facility
 2371 administrator and pursuant to this part.

2372 (3) Facility staff may withhold or withdraw
 2373 cardiopulmonary resuscitation if presented with an order not to
 2374 resuscitate executed pursuant to s. 401.45. The department shall
 2375 adopt rules providing for the implementation of such orders.
 2376 Facility staff and facilities shall not be subject to criminal
 2377 prosecution or civil liability, nor be considered to have
 2378 engaged in negligent or unprofessional conduct, for withholding
 2379 or withdrawing cardiopulmonary resuscitation pursuant to such an
 2380 order and rules adopted by the department. The absence of an

2381 order to resuscitate executed pursuant to s. 401.45 does not
 2382 preclude a physician from withholding or withdrawing
 2383 cardiopulmonary resuscitation as otherwise permitted by law.

2384 Section 49. Section 400.4256, Florida Statutes, is
 2385 renumbered as section 429.256, Florida Statutes, and amended to
 2386 read:

2387 429.256 ~~400.4256~~ Assistance with self-administration of
 2388 medication.--

2389 (1) For the purposes of this section, the term:

2390 (a) "Informed consent" means advising the resident, or the
 2391 resident's surrogate, guardian, or attorney in fact, that an
 2392 assisted living facility is not required to have a licensed
 2393 nurse on staff, that the resident may be receiving assistance
 2394 with self-administration of medication from an unlicensed
 2395 person, and that such assistance, if provided by an unlicensed
 2396 person, will or will not be overseen by a licensed nurse.

2397 (b) "Unlicensed person" means an individual not currently
 2398 licensed to practice nursing or medicine who is employed by or
 2399 under contract to an assisted living facility and who has
 2400 received training with respect to assisting with the self-
 2401 administration of medication in an assisted living facility as
 2402 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
 2403 assistance as described in this section.

2404 (2) Residents who are capable of self-administering their
 2405 own medications without assistance shall be encouraged and
 2406 allowed to do so. However, an unlicensed person may, consistent
 2407 with a dispensed prescription's label or the package directions
 2408 of an over-the-counter medication, assist a resident whose

2409 condition is medically stable with the self-administration of
2410 routine, regularly scheduled medications that are intended to be
2411 self-administered. Assistance with self-medication by an
2412 unlicensed person may occur only upon a documented request by,
2413 and the written informed consent of, a resident or the
2414 resident's surrogate, guardian, or attorney in fact. For the
2415 purposes of this section, self-administered medications include
2416 both legend and over-the-counter oral dosage forms, topical
2417 dosage forms and topical ophthalmic, otic, and nasal dosage
2418 forms including solutions, suspensions, sprays, and inhalers.

2419 (3) Assistance with self-administration of medication
2420 includes:

2421 (a) Taking the medication, in its previously dispensed,
2422 properly labeled container, from where it is stored, and
2423 bringing it to the resident.

2424 (b) In the presence of the resident, reading the label,
2425 opening the container, removing a prescribed amount of
2426 medication from the container, and closing the container.

2427 (c) Placing an oral dosage in the resident's hand or
2428 placing the dosage in another container and helping the resident
2429 by lifting the container to his or her mouth.

2430 (d) Applying topical medications.

2431 (e) Returning the medication container to proper storage.

2432 (f) Keeping a record of when a resident receives
2433 assistance with self-administration under this section.

2434 (4) Assistance with self-administration does not include:

2435 (a) Mixing, compounding, converting, or calculating
2436 medication doses, except for measuring a prescribed amount of

2437 liquid medication or breaking a scored tablet or crushing a
 2438 tablet as prescribed.

2439 (b) The preparation of syringes for injection or the
 2440 administration of medications by any injectable route.

2441 (c) Administration of medications through intermittent
 2442 positive pressure breathing machines or a nebulizer.

2443 (d) Administration of medications by way of a tube
 2444 inserted in a cavity of the body.

2445 (e) Administration of parenteral preparations.

2446 (f) Irrigations or debriding agents used in the treatment
 2447 of a skin condition.

2448 (g) Rectal, urethral, or vaginal preparations.

2449 (h) Medications ordered by the physician or health care
 2450 professional with prescriptive authority to be given "as
 2451 needed," unless the order is written with specific parameters
 2452 that preclude independent judgment on the part of the unlicensed
 2453 person, and at the request of a competent resident.

2454 (i) Medications for which the time of administration, the
 2455 amount, the strength of dosage, the method of administration, or
 2456 the reason for administration requires judgment or discretion on
 2457 the part of the unlicensed person.

2458 (5) Assistance with the self-administration of medication
 2459 by an unlicensed person as described in this section shall not
 2460 be considered administration as defined in s. 465.003.

2461 (6) The department may by rule establish facility
 2462 procedures and interpret terms as necessary to implement this
 2463 section.

2464 Section 50. Section 400.426, Florida Statutes, is

2465 | renumbered as section 429.26, Florida Statutes, and amended to
 2466 | read:

2467 | 429.26 ~~400.426~~ Appropriateness of placements; examinations
 2468 | of residents.--

2469 | (1) The owner or administrator of a facility is
 2470 | responsible for determining the appropriateness of admission of
 2471 | an individual to the facility and for determining the continued
 2472 | appropriateness of residence of an individual in the facility.
 2473 | A determination shall be based upon an assessment of the
 2474 | strengths, needs, and preferences of the resident, the care and
 2475 | services offered or arranged for by the facility in accordance
 2476 | with facility policy, and any limitations in law or rule related
 2477 | to admission criteria or continued residency for the type of
 2478 | license held by the facility under this part. A resident may
 2479 | not be moved from one facility to another without consultation
 2480 | with and agreement from the resident or, if applicable, the
 2481 | resident's representative or designee or the resident's family,
 2482 | guardian, surrogate, or attorney in fact. In the case of a
 2483 | resident who has been placed by the department or the Department
 2484 | of Children and Family Services, the administrator must notify
 2485 | the appropriate contact person in the applicable department.

2486 | (2) A physician or nurse practitioner who is employed by
 2487 | an assisted living facility to provide an initial examination
 2488 | for admission purposes may not have financial interest in the
 2489 | facility.

2490 | (3) Persons licensed under part I of chapter 464 who are
 2491 | employed by or under contract with a facility shall, on a
 2492 | routine basis or at least monthly, perform a nursing assessment

2493 of the residents for whom they are providing nursing services
 2494 ordered by a physician, except administration of medication, and
 2495 shall document such assessment, including any substantial
 2496 changes in a resident's status which may necessitate relocation
 2497 to a nursing home, hospital, or specialized health care
 2498 facility. Such records shall be maintained in the facility for
 2499 inspection by the agency and shall be forwarded to the
 2500 resident's case manager, if applicable.

2501 (4) If possible, each resident shall have been examined by
 2502 a licensed physician or a licensed nurse practitioner within 60
 2503 days before admission to the facility. The signed and completed
 2504 medical examination report shall be submitted to the owner or
 2505 administrator of the facility who shall use the information
 2506 contained therein to assist in the determination of the
 2507 appropriateness of the resident's admission and continued stay
 2508 in the facility. The medical examination report shall become a
 2509 permanent part of the record of the resident at the facility and
 2510 shall be made available to the agency during inspection or upon
 2511 request. An assessment that has been completed through the
 2512 Comprehensive Assessment and Review for Long-Term Care Services
 2513 (CARES) Program fulfills the requirements for a medical
 2514 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~
 2515 ~~400.407(3)(b)6.~~

2516 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
 2517 medical examination has not been completed within 60 days before
 2518 the admission of the resident to the facility, a licensed
 2519 physician or licensed nurse practitioner shall examine the
 2520 resident and complete a medical examination form provided by the

2521 agency within 30 days following the admission to the facility to
2522 enable the facility owner or administrator to determine the
2523 appropriateness of the admission. The medical examination form
2524 shall become a permanent part of the record of the resident at
2525 the facility and shall be made available to the agency during
2526 inspection by the agency or upon request.

2527 (6) Any resident accepted in a facility and placed by the
2528 department or the Department of Children and Family Services
2529 shall have been examined by medical personnel within 30 days
2530 before placement in the facility. The examination shall include
2531 an assessment of the appropriateness of placement in a facility.

2532 The findings of this examination shall be recorded on the
2533 examination form provided by the agency. The completed form
2534 shall accompany the resident and shall be submitted to the
2535 facility owner or administrator. Additionally, in the case of a
2536 mental health resident, the Department of Children and Family
2537 Services must provide documentation that the individual has been
2538 assessed by a psychiatrist, clinical psychologist, clinical
2539 social worker, or psychiatric nurse, or an individual who is
2540 supervised by one of these professionals, and determined to be
2541 appropriate to reside in an assisted living facility. The
2542 documentation must be in the facility within 30 days after the
2543 mental health resident has been admitted to the facility. An
2544 evaluation completed upon discharge from a state mental hospital
2545 meets the requirements of this subsection related to
2546 appropriateness for placement as a mental health resident
2547 providing it was completed within 90 days prior to admission to
2548 the facility. The applicable department shall provide to the

2549 facility administrator any information about the resident that
 2550 would help the administrator meet his or her responsibilities
 2551 under subsection (1). Further, department personnel shall
 2552 explain to the facility operator any special needs of the
 2553 resident and advise the operator whom to call should problems
 2554 arise. The applicable department shall advise and assist the
 2555 facility administrator where the special needs of residents who
 2556 are recipients of optional state supplementation require such
 2557 assistance.

2558 (7) The facility must notify a licensed physician when a
 2559 resident exhibits signs of dementia or cognitive impairment or
 2560 has a change of condition in order to rule out the presence of
 2561 an underlying physiological condition that may be contributing
 2562 to such dementia or impairment. The notification must occur
 2563 within 30 days after the acknowledgment of such signs by
 2564 facility staff. If an underlying condition is determined to
 2565 exist, the facility shall arrange, with the appropriate health
 2566 care provider, the necessary care and services to treat the
 2567 condition.

2568 (8) The Department of Children and Family Services may
 2569 require an examination for supplemental security income and
 2570 optional state supplementation recipients residing in facilities
 2571 at any time and shall provide the examination whenever a
 2572 resident's condition requires it. Any facility administrator;
 2573 personnel of the agency, the department, or the Department of
 2574 Children and Family Services; or long-term care ombudsman
 2575 council member who believes a resident needs to be evaluated
 2576 shall notify the resident's case manager, who shall take

2577 appropriate action. A report of the examination findings shall
 2578 be provided to the resident's case manager and the facility
 2579 administrator to help the administrator meet his or her
 2580 responsibilities under subsection (1).

2581 (9) If, at any time after admission to a facility, a
 2582 resident appears to need care beyond that which the facility is
 2583 licensed to provide, the agency shall require the resident to be
 2584 physically examined by a licensed physician or licensed nurse
 2585 practitioner. This examination shall, to the extent possible,
 2586 be performed by the resident's preferred physician or nurse
 2587 practitioner and shall be paid for by the resident with personal
 2588 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.
 2589 Following this examination, the examining physician or licensed
 2590 nurse practitioner shall complete and sign a medical form
 2591 provided by the agency. The completed medical form shall be
 2592 submitted to the agency within 30 days after the date the
 2593 facility owner or administrator is notified by the agency that
 2594 the physical examination is required. After consultation with
 2595 the physician or licensed nurse practitioner who performed the
 2596 examination, a medical review team designated by the agency
 2597 shall then determine whether the resident is appropriately
 2598 residing in the facility. The medical review team shall base
 2599 its decision on a comprehensive review of the resident's
 2600 physical and functional status, including the resident's
 2601 preferences, and not on an isolated health-related problem. In
 2602 the case of a mental health resident, if the resident appears to
 2603 have needs in addition to those identified in the community
 2604 living support plan, the agency may require an evaluation by a

2605 mental health professional, as determined by the Department of
 2606 Children and Family Services. A facility may not be required to
 2607 retain a resident who requires more services or care than the
 2608 facility is able to provide in accordance with its policies and
 2609 criteria for admission and continued residency. Members of the
 2610 medical review team making the final determination may not
 2611 include the agency personnel who initially questioned the
 2612 appropriateness of a resident's placement. Such determination is
 2613 final and binding upon the facility and the resident. Any
 2614 resident who is determined by the medical review team to be
 2615 inappropriately residing in a facility shall be given 30 days'
 2616 written notice to relocate by the owner or administrator, unless
 2617 the resident's continued residence in the facility presents an
 2618 imminent danger to the health, safety, or welfare of the
 2619 resident or a substantial probability exists that death or
 2620 serious physical harm would result to the resident if allowed to
 2621 remain in the facility.

2622 (10) A terminally ill resident who no longer meets the
 2623 criteria for continued residency may remain in the facility if
 2624 the arrangement is mutually agreeable to the resident and the
 2625 facility; additional care is rendered through a licensed
 2626 hospice, and the resident is under the care of a physician who
 2627 agrees that the physical needs of the resident are being met.

2628 (11) Facilities licensed to provide extended congregate
 2629 care services shall promote aging in place by determining
 2630 appropriateness of continued residency based on a comprehensive
 2631 review of the resident's physical and functional status; the
 2632 ability of the facility, family members, friends, or any other

2633 | pertinent individuals or agencies to provide the care and
 2634 | services required; and documentation that a written service plan
 2635 | consistent with facility policy has been developed and
 2636 | implemented to ensure that the resident's needs and preferences
 2637 | are addressed.

2638 | (12) No resident who requires 24-hour nursing supervision,
 2639 | except for a resident who is an enrolled hospice patient
 2640 | pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
 2641 | a facility licensed under this part.

2642 | Section 51. Section 400.427, Florida Statutes, is
 2643 | renumbered as section 429.27, Florida Statutes, and amended to
 2644 | read:

2645 | 429.27 ~~400.427~~ Property and personal affairs of
 2646 | residents.--

2647 | (1)(a) A resident shall be given the option of using his
 2648 | or her own belongings, as space permits; choosing his or her
 2649 | roommate; and, whenever possible, unless the resident is
 2650 | adjudicated incompetent or incapacitated under state law,
 2651 | managing his or her own affairs.

2652 | (b) The admission of a resident to a facility and his or
 2653 | her presence therein shall not confer on the facility or its
 2654 | owner, administrator, employees, or representatives any
 2655 | authority to manage, use, or dispose of any property of the
 2656 | resident; nor shall such admission or presence confer on any of
 2657 | such persons any authority or responsibility for the personal
 2658 | affairs of the resident, except that which may be necessary for
 2659 | the safe management of the facility or for the safety of the
 2660 | resident.

2661 (2) A facility, or an owner, administrator, employee, or
 2662 representative thereof, may not act as the guardian, trustee, or
 2663 conservator for any resident of the assisted living facility or
 2664 any of such resident's property. An owner, administrator, or
 2665 staff member, or representative thereof, may not act as a
 2666 competent resident's payee for social security, veteran's, or
 2667 railroad benefits without the consent of the resident. Any
 2668 facility whose owner, administrator, or staff, or representative
 2669 thereof, serves as representative payee for any resident of the
 2670 facility shall file a surety bond with the agency in an amount
 2671 equal to twice the average monthly aggregate income or personal
 2672 funds due to residents, or expendable for their account, which
 2673 are received by a facility. Any facility whose owner,
 2674 administrator, or staff, or a representative thereof, is granted
 2675 power of attorney for any resident of the facility shall file a
 2676 surety bond with the agency for each resident for whom such
 2677 power of attorney is granted. The surety bond shall be in an
 2678 amount equal to twice the average monthly income of the
 2679 resident, plus the value of any resident's property under the
 2680 control of the attorney in fact. The bond shall be executed by
 2681 the facility as principal and a licensed surety company. The
 2682 bond shall be conditioned upon the faithful compliance of the
 2683 facility with this section and shall run to the agency for the
 2684 benefit of any resident who suffers a financial loss as a result
 2685 of the misuse or misappropriation by a facility of funds held
 2686 pursuant to this subsection. Any surety company that cancels or
 2687 does not renew the bond of any licensee shall notify the agency
 2688 in writing not less than 30 days in advance of such action,

2689 giving the reason for the cancellation or nonrenewal. Any
 2690 facility owner, administrator, or staff, or representative
 2691 thereof, who is granted power of attorney for any resident of
 2692 the facility shall, on a monthly basis, be required to provide
 2693 the resident a written statement of any transaction made on
 2694 behalf of the resident pursuant to this subsection, and a copy
 2695 of such statement given to the resident shall be retained in
 2696 each resident's file and available for agency inspection.

2697 (3) A facility, upon mutual consent with the resident,
 2698 shall provide for the safekeeping in the facility of personal
 2699 effects not in excess of \$500 and funds of the resident not in
 2700 excess of \$200 cash, and shall keep complete and accurate
 2701 records of all such funds and personal effects received. If a
 2702 resident is absent from a facility for 24 hours or more, the
 2703 facility may provide for the safekeeping of the resident's
 2704 personal effects in excess of \$500.

2705 (4) Any funds or other property belonging to or due to a
 2706 resident, or expendable for his or her account, which is
 2707 received by a facility shall be trust funds which shall be kept
 2708 separate from the funds and property of the facility and other
 2709 residents or shall be specifically credited to such resident.
 2710 Such trust funds shall be used or otherwise expended only for
 2711 the account of the resident. At least once every 3 months,
 2712 unless upon order of a court of competent jurisdiction, the
 2713 facility shall furnish the resident and his or her guardian,
 2714 trustee, or conservator, if any, a complete and verified
 2715 statement of all funds and other property to which this
 2716 subsection applies, detailing the amount and items received,

2717 together with their sources and disposition. In any event, the
2718 facility shall furnish such statement annually and upon the
2719 discharge or transfer of a resident. Any governmental agency or
2720 private charitable agency contributing funds or other property
2721 to the account of a resident shall also be entitled to receive
2722 such statement annually and upon the discharge or transfer of
2723 the resident.

2724 (5) Any personal funds available to facility residents may
2725 be used by residents as they choose to obtain clothing, personal
2726 items, leisure activities, and other supplies and services for
2727 their personal use. A facility may not demand, require, or
2728 contract for payment of all or any part of the personal funds in
2729 satisfaction of the facility rate for supplies and services
2730 beyond that amount agreed to in writing and may not levy an
2731 additional charge to the individual or the account for any
2732 supplies or services that the facility has agreed by contract to
2733 provide as part of the standard monthly rate. Any service or
2734 supplies provided by the facility which are charged separately
2735 to the individual or the account may be provided only with the
2736 specific written consent of the individual, who shall be
2737 furnished in advance of the provision of the services or
2738 supplies with an itemized written statement to be attached to
2739 the contract setting forth the charges for the services or
2740 supplies.

2741 (6)(a) In addition to any damages or civil penalties to
2742 which a person is subject, any person who:

2743 1. Intentionally withholds a resident's personal funds,
2744 personal property, or personal needs allowance, or who demands,

2745 | beneficially receives, or contracts for payment of all or any
 2746 | part of a resident's personal property or personal needs
 2747 | allowance in satisfaction of the facility rate for supplies and
 2748 | services; or

2749 | 2. Borrows from or pledges any personal funds of a
 2750 | resident, other than the amount agreed to by written contract
 2751 | under s. 429.24 ~~s. 400.424~~,

2752 |
 2753 | commits a misdemeanor of the first degree, punishable as
 2754 | provided in s. 775.082 or s. 775.083.

2755 | (b) Any facility owner, administrator, or staff, or
 2756 | representative thereof, who is granted power of attorney for any
 2757 | resident of the facility and who misuses or misappropriates
 2758 | funds obtained through this power commits a felony of the third
 2759 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2760 | 775.084.

2761 | (7) In the event of the death of a resident, a licensee
 2762 | shall return all refunds, funds, and property held in trust to
 2763 | the resident's personal representative, if one has been
 2764 | appointed at the time the facility disburses such funds, and, if
 2765 | not, to the resident's spouse or adult next of kin named in a
 2766 | beneficiary designation form provided by the facility to the
 2767 | resident. If the resident has no spouse or adult next of kin or
 2768 | such person cannot be located, funds due the resident shall be
 2769 | placed in an interest-bearing account, and all property held in
 2770 | trust by the facility shall be safeguarded until such time as
 2771 | the funds and property are disbursed pursuant to the Florida
 2772 | Probate Code. Such funds shall be kept separate from the funds

2773 and property of the facility and other residents of the
 2774 facility. If the funds of the deceased resident are not
 2775 disbursed pursuant to the Florida Probate Code within 2 years
 2776 after the resident's death, the funds shall be deposited in the
 2777 Health Care Trust Fund administered by the agency.

2778 (8) The department may by rule clarify terms and specify
 2779 procedures and documentation necessary to administer the
 2780 provisions of this section relating to the proper management of
 2781 residents' funds and personal property and the execution of
 2782 surety bonds.

2783 Section 52. Section 400.428, Florida Statutes, is
 2784 renumbered as section 429.28, Florida Statutes, and amended to
 2785 read:

2786 429.28 ~~400.428~~ Resident bill of rights.--

2787 (1) No resident of a facility shall be deprived of any
 2788 civil or legal rights, benefits, or privileges guaranteed by
 2789 law, the Constitution of the State of Florida, or the
 2790 Constitution of the United States as a resident of a facility.
 2791 Every resident of a facility shall have the right to:

2792 (a) Live in a safe and decent living environment, free
 2793 from abuse and neglect.

2794 (b) Be treated with consideration and respect and with due
 2795 recognition of personal dignity, individuality, and the need for
 2796 privacy.

2797 (c) Retain and use his or her own clothes and other
 2798 personal property in his or her immediate living quarters, so as
 2799 to maintain individuality and personal dignity, except when the
 2800 facility can demonstrate that such would be unsafe, impractical,

2801 or an infringement upon the rights of other residents.

2802 (d) Unrestricted private communication, including
 2803 receiving and sending unopened correspondence, access to a
 2804 telephone, and visiting with any person of his or her choice, at
 2805 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
 2806 Upon request, the facility shall make provisions to extend
 2807 visiting hours for caregivers and out-of-town guests, and in
 2808 other similar situations.

2809 (e) Freedom to participate in and benefit from community
 2810 services and activities and to achieve the highest possible
 2811 level of independence, autonomy, and interaction within the
 2812 community.

2813 (f) Manage his or her financial affairs unless the
 2814 resident or, if applicable, the resident's representative,
 2815 designee, surrogate, guardian, or attorney in fact authorizes
 2816 the administrator of the facility to provide safekeeping for
 2817 funds as provided in s. 429.27 ~~s. 400.427~~.

2818 (g) Share a room with his or her spouse if both are
 2819 residents of the facility.

2820 (h) Reasonable opportunity for regular exercise several
 2821 times a week and to be outdoors at regular and frequent
 2822 intervals except when prevented by inclement weather.

2823 (i) Exercise civil and religious liberties, including the
 2824 right to independent personal decisions. No religious beliefs
 2825 or practices, nor any attendance at religious services, shall be
 2826 imposed upon any resident.

2827 (j) Access to adequate and appropriate health care
 2828 consistent with established and recognized standards within the

2829 community.

2830 (k) At least 45 days' notice of relocation or termination
 2831 of residency from the facility unless, for medical reasons, the
 2832 resident is certified by a physician to require an emergency
 2833 relocation to a facility providing a more skilled level of care
 2834 or the resident engages in a pattern of conduct that is harmful
 2835 or offensive to other residents. In the case of a resident who
 2836 has been adjudicated mentally incapacitated, the guardian shall
 2837 be given at least 45 days' notice of a nonemergency relocation
 2838 or residency termination. Reasons for relocation shall be set
 2839 forth in writing. In order for a facility to terminate the
 2840 residency of an individual without notice as provided herein,
 2841 the facility shall show good cause in a court of competent
 2842 jurisdiction.

2843 (l) Present grievances and recommend changes in policies,
 2844 procedures, and services to the staff of the facility, governing
 2845 officials, or any other person without restraint, interference,
 2846 coercion, discrimination, or reprisal. Each facility shall
 2847 establish a grievance procedure to facilitate the residents'
 2848 exercise of this right. This right includes access to ombudsman
 2849 volunteers and advocates and the right to be a member of, to be
 2850 active in, and to associate with advocacy or special interest
 2851 groups.

2852 (2) The administrator of a facility shall ensure that a
 2853 written notice of the rights, obligations, and prohibitions set
 2854 forth in this part is posted in a prominent place in each
 2855 facility and read or explained to residents who cannot read.
 2856 This notice shall include the name, address, and telephone

2857 numbers of the local ombudsman council and central abuse hotline
2858 and, when applicable, the Advocacy Center for Persons with
2859 Disabilities, Inc., and the Florida local advocacy council,
2860 where complaints may be lodged. The facility must ensure a
2861 resident's access to a telephone to call the local ombudsman
2862 council, central abuse hotline, Advocacy Center for Persons with
2863 Disabilities, Inc., and the Florida local advocacy council.

2864 (3)(a) The agency shall conduct a survey to determine
2865 general compliance with facility standards and compliance with
2866 residents' rights as a prerequisite to initial licensure or
2867 licensure renewal.

2868 (b) In order to determine whether the facility is
2869 adequately protecting residents' rights, the biennial survey
2870 shall include private informal conversations with a sample of
2871 residents and consultation with the ombudsman council in the
2872 planning and service area in which the facility is located to
2873 discuss residents' experiences within the facility.

2874 (c) During any calendar year in which no survey is
2875 conducted, the agency shall conduct at least one monitoring
2876 visit of each facility cited in the previous year for a class I
2877 or class II violation, or more than three uncorrected class III
2878 violations.

2879 (d) The agency may conduct periodic followup inspections
2880 as necessary to monitor the compliance of facilities with a
2881 history of any class I, class II, or class III violations that
2882 threaten the health, safety, or security of residents.

2883 (e) The agency may conduct complaint investigations as
2884 warranted to investigate any allegations of noncompliance with

2885 requirements required under this part or rules adopted under
 2886 this part.

2887 (4) The facility shall not hamper or prevent residents
 2888 from exercising their rights as specified in this section.

2889 (5) No facility or employee of a facility may serve notice
 2890 upon a resident to leave the premises or take any other
 2891 retaliatory action against any person who:

2892 (a) Exercises any right set forth in this section.

2893 (b) Appears as a witness in any hearing, inside or outside
 2894 the facility.

2895 (c) Files a civil action alleging a violation of the
 2896 provisions of this part or notifies a state attorney or the
 2897 Attorney General of a possible violation of such provisions.

2898 (6) Any facility which terminates the residency of an
 2899 individual who participated in activities specified in
 2900 subsection (5) shall show good cause in a court of competent
 2901 jurisdiction.

2902 (7) Any person who submits or reports a complaint
 2903 concerning a suspected violation of the provisions of this part
 2904 or concerning services and conditions in facilities, or who
 2905 testifies in any administrative or judicial proceeding arising
 2906 from such a complaint, shall have immunity from any civil or
 2907 criminal liability therefor, unless such person has acted in bad
 2908 faith or with malicious purpose or the court finds that there
 2909 was a complete absence of a justiciable issue of either law or
 2910 fact raised by the losing party.

2911 Section 53. Section 400.429, Florida Statutes, is
 2912 renumbered as section 429.29, Florida Statutes, and amended to

2913 read:

2914 429.29 ~~400.429~~ Civil actions to enforce rights.--

2915 (1) Any person or resident whose rights as specified in
 2916 this part are violated shall have a cause of action. The action
 2917 may be brought by the resident or his or her guardian, or by a
 2918 person or organization acting on behalf of a resident with the
 2919 consent of the resident or his or her guardian, or by the
 2920 personal representative of the estate of a deceased resident
 2921 regardless of the cause of death. If the action alleges a claim
 2922 for the resident's rights or for negligence that caused the
 2923 death of the resident, the claimant shall be required to elect
 2924 either survival damages pursuant to s. 46.021 or wrongful death
 2925 damages pursuant to s. 768.21. If the action alleges a claim for
 2926 the resident's rights or for negligence that did not cause the
 2927 death of the resident, the personal representative of the estate
 2928 may recover damages for the negligence that caused injury to the
 2929 resident. The action may be brought in any court of competent
 2930 jurisdiction to enforce such rights and to recover actual
 2931 damages, and punitive damages for violation of the rights of a
 2932 resident or negligence. Any resident who prevails in seeking
 2933 injunctive relief or a claim for an administrative remedy is
 2934 entitled to recover the costs of the action and a reasonable
 2935 attorney's fee assessed against the defendant not to exceed
 2936 \$25,000. Fees shall be awarded solely for the injunctive or
 2937 administrative relief and not for any claim or action for
 2938 damages whether such claim or action is brought together with a
 2939 request for an injunction or administrative relief or as a
 2940 separate action, except as provided under s. 768.79 or the

2941 Florida Rules of Civil Procedure. Sections 429.29-429.298
 2942 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
 2943 action for recovery of damages for the personal injury or death
 2944 of a resident arising out of negligence or a violation of rights
 2945 specified in s. 429.28 ~~s. 400.428~~. This section does not
 2946 preclude theories of recovery not arising out of negligence or
 2947 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
 2948 agency. The provisions of chapter 766 do not apply to any cause
 2949 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.

2950 (2) In any claim brought pursuant to this part alleging a
 2951 violation of resident's rights or negligence causing injury to
 2952 or the death of a resident, the claimant shall have the burden
 2953 of proving, by a preponderance of the evidence, that:

- 2954 (a) The defendant owed a duty to the resident;
- 2955 (b) The defendant breached the duty to the resident;
- 2956 (c) The breach of the duty is a legal cause of loss,
 2957 injury, death, or damage to the resident; and
- 2958 (d) The resident sustained loss, injury, death, or damage
 2959 as a result of the breach.

2960
 2961 Nothing in this part shall be interpreted to create strict
 2962 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
 2963 ~~400.428~~ or in any other standard or guidelines specified in this
 2964 part or in any applicable administrative standard or guidelines
 2965 of this state or a federal regulatory agency shall be evidence
 2966 of negligence but shall not be considered negligence per se.

2967 (3) In any claim brought pursuant to this section, a
 2968 licensee, person, or entity shall have a duty to exercise

2969 reasonable care. Reasonable care is that degree of care which a
 2970 reasonably careful licensee, person, or entity would use under
 2971 like circumstances.

2972 (4) In any claim for resident's rights violation or
 2973 negligence by a nurse licensed under part I of chapter 464, such
 2974 nurse shall have the duty to exercise care consistent with the
 2975 prevailing professional standard of care for a nurse. The
 2976 prevailing professional standard of care for a nurse shall be
 2977 that level of care, skill, and treatment which, in light of all
 2978 relevant surrounding circumstances, is recognized as acceptable
 2979 and appropriate by reasonably prudent similar nurses.

2980 (5) Discovery of financial information for the purpose of
 2981 determining the value of punitive damages may not be had unless
 2982 the plaintiff shows the court by proffer or evidence in the
 2983 record that a reasonable basis exists to support a claim for
 2984 punitive damages.

2985 (6) In addition to any other standards for punitive
 2986 damages, any award of punitive damages must be reasonable in
 2987 light of the actual harm suffered by the resident and the
 2988 egregiousness of the conduct that caused the actual harm to the
 2989 resident.

2990 (7) The resident or the resident's legal representative
 2991 shall serve a copy of any complaint alleging in whole or in part
 2992 a violation of any rights specified in this part to the Agency
 2993 for Health Care Administration at the time of filing the initial
 2994 complaint with the clerk of the court for the county in which
 2995 the action is pursued. The requirement of providing a copy of
 2996 the complaint to the agency does not impair the resident's legal

2997 | rights or ability to seek relief for his or her claim.

2998 | Section 54. Section 400.4293, Florida Statutes, is
 2999 | renumbered as section 429.293, Florida Statutes, and amended to
 3000 | read:

3001 | 429.293 ~~400.4293~~ Presuit notice; investigation;
 3002 | notification of violation of residents' rights or alleged
 3003 | negligence; claims evaluation procedure; informal discovery;
 3004 | review; settlement offer; mediation.--

3005 | (1) As used in this section, the term:

3006 | (a) "Claim for residents' rights violation or negligence"
 3007 | means a negligence claim alleging injury to or the death of a
 3008 | resident arising out of an asserted violation of the rights of a
 3009 | resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
 3010 | from the applicable standard of care.

3011 | (b) "Insurer" means any self-insurer authorized under s.
 3012 | 627.357, liability insurance carrier, joint underwriting
 3013 | association, or uninsured prospective defendant.

3014 | (2) Prior to filing a claim for a violation of a
 3015 | resident's rights or a claim for negligence, a claimant alleging
 3016 | injury to or the death of a resident shall notify each
 3017 | prospective defendant by certified mail, return receipt
 3018 | requested, of an asserted violation of a resident's rights
 3019 | provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
 3020 | of care. Such notification shall include an identification of
 3021 | the rights the prospective defendant has violated and the
 3022 | negligence alleged to have caused the incident or incidents and
 3023 | a brief description of the injuries sustained by the resident
 3024 | which are reasonably identifiable at the time of notice. The

3025 notice shall contain a certificate of counsel that counsel's
3026 reasonable investigation gave rise to a good faith belief that
3027 grounds exist for an action against each prospective defendant.

3028 (3)(a) No suit may be filed for a period of 75 days after
3029 notice is mailed to any prospective defendant. During the 75-day
3030 period, the prospective defendants or their insurers shall
3031 conduct an evaluation of the claim to determine the liability of
3032 each defendant and to evaluate the damages of the claimants.
3033 Each defendant or insurer of the defendant shall have a
3034 procedure for the prompt evaluation of claims during the 75-day
3035 period. The procedure shall include one or more of the
3036 following:

3037 1. Internal review by a duly qualified facility risk
3038 manager or claims adjuster;

3039 2. Internal review by counsel for each prospective
3040 defendant;

3041 3. A quality assurance committee authorized under any
3042 applicable state or federal statutes or regulations; or

3043 4. Any other similar procedure that fairly and promptly
3044 evaluates the claims.

3045
3046 Each defendant or insurer of the defendant shall evaluate the
3047 claim in good faith.

3048 (b) At or before the end of the 75 days, the defendant or
3049 insurer of the defendant shall provide the claimant with a
3050 written response:

3051 1. Rejecting the claim; or

3052 2. Making a settlement offer.

3053 (c) The response shall be delivered to the claimant if not
3054 represented by counsel or to the claimant's attorney, by
3055 certified mail, return receipt requested. Failure of the
3056 prospective defendant or insurer of the defendant to reply to
3057 the notice within 75 days after receipt shall be deemed a
3058 rejection of the claim for purposes of this section.

3059 (4) The notification of a violation of a resident's rights
3060 or alleged negligence shall be served within the applicable
3061 statute of limitations period; however, during the 75-day
3062 period, the statute of limitations is tolled as to all
3063 prospective defendants. Upon stipulation by the parties, the 75-
3064 day period may be extended and the statute of limitations is
3065 tolled during any such extension. Upon receiving written notice
3066 by certified mail, return receipt requested, of termination of
3067 negotiations in an extended period, the claimant shall have 60
3068 days or the remainder of the period of the statute of
3069 limitations, whichever is greater, within which to file suit.

3070 (5) No statement, discussion, written document, report, or
3071 other work product generated by presuit claims evaluation
3072 procedures under this section is discoverable or admissible in
3073 any civil action for any purpose by the opposing party. All
3074 participants, including, but not limited to, physicians,
3075 investigators, witnesses, and employees or associates of the
3076 defendant, are immune from civil liability arising from
3077 participation in the presuit claims evaluation procedure. Any
3078 licensed physician or registered nurse may be retained by either
3079 party to provide an opinion regarding the reasonable basis of
3080 the claim. The presuit opinions of the expert are not

3081 discoverable or admissible in any civil action for any purpose
3082 by the opposing party.

3083 (6) Upon receipt by a prospective defendant of a notice of
3084 claim, the parties shall make discoverable information available
3085 without formal discovery as provided in subsection (7).

3086 (7) Informal discovery may be used by a party to obtain
3087 unsworn statements and the production of documents or things, as
3088 follows:

3089 (a) Unsworn statements.--Any party may require other
3090 parties to appear for the taking of an unsworn statement. Such
3091 statements may be used only for the purpose of claims evaluation
3092 and are not discoverable or admissible in any civil action for
3093 any purpose by any party. A party seeking to take the unsworn
3094 statement of any party must give reasonable notice in writing to
3095 all parties. The notice must state the time and place for taking
3096 the statement and the name and address of the party to be
3097 examined. Unless otherwise impractical, the examination of any
3098 party must be done at the same time by all other parties. Any
3099 party may be represented by counsel at the taking of an unsworn
3100 statement. An unsworn statement may be recorded electronically,
3101 stenographically, or on videotape. The taking of unsworn
3102 statements is subject to the provisions of the Florida Rules of
3103 Civil Procedure and may be terminated for abuses.

3104 (b) Documents or things.--Any party may request discovery
3105 of relevant documents or things. The documents or things must be
3106 produced, at the expense of the requesting party, within 20 days
3107 after the date of receipt of the request. A party is required to
3108 produce relevant and discoverable documents or things within

3109 that party's possession or control, if in good faith it can
3110 reasonably be done within the timeframe of the claims evaluation
3111 process.

3112 (8) Each request for and notice concerning informal
3113 discovery pursuant to this section must be in writing, and a
3114 copy thereof must be sent to all parties. Such a request or
3115 notice must bear a certificate of service identifying the name
3116 and address of the person to whom the request or notice is
3117 served, the date of the request or notice, and the manner of
3118 service thereof.

3119 (9) If a prospective defendant makes a written settlement
3120 offer, the claimant shall have 15 days from the date of receipt
3121 to accept the offer. An offer shall be deemed rejected unless
3122 accepted by delivery of a written notice of acceptance.

3123 (10) To the extent not inconsistent with this part, the
3124 provisions of the Florida Mediation Code, Florida Rules of Civil
3125 Procedure, shall be applicable to such proceedings.

3126 (11) Within 30 days after the claimant's receipt of
3127 defendant's response to the claim, the parties or their
3128 designated representatives shall meet in mediation to discuss
3129 the issues of liability and damages in accordance with the
3130 mediation rules of practice and procedures adopted by the
3131 Supreme Court. Upon stipulation of the parties, this 30-day
3132 period may be extended and the statute of limitations is tolled
3133 during the mediation and any such extension. At the conclusion
3134 of mediation, the claimant shall have 60 days or the remainder
3135 of the period of the statute of limitations, whichever is
3136 greater, within which to file suit.

3137 Section 55. Section 400.431, Florida Statutes, is
 3138 renumbered as section 429.31, Florida Statutes, and amended to
 3139 read:

3140 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

3141 (1) Whenever a facility voluntarily discontinues
 3142 operation, it shall inform the agency in writing at least 90
 3143 days prior to the discontinuance of operation. The facility
 3144 shall also inform each resident or the next of kin, legal
 3145 representative, or agency acting on each resident's behalf, of
 3146 the fact and the proposed time of such discontinuance, following
 3147 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
 3148 ~~400.428(1)(k)~~. In the event a resident has no person to
 3149 represent him or her, the facility shall be responsible for
 3150 referral to an appropriate social service agency for placement.

3151 (2) Immediately upon the notice by the agency of the
 3152 voluntary or involuntary termination of such operation, the
 3153 agency shall monitor the transfer of residents to other
 3154 facilities and ensure that residents' rights are being
 3155 protected. The department, in consultation with the Department
 3156 of Children and Family Services, shall specify procedures for
 3157 ensuring that all residents who receive services are
 3158 appropriately relocated.

3159 (3) All charges shall be prorated as of the date on which
 3160 the facility discontinues operation, and if any payments have
 3161 been made in advance, the payments for services not received
 3162 shall be refunded to the resident or the resident's guardian
 3163 within 10 working days of voluntary or involuntary closure of
 3164 the facility, whether or not such refund is requested by the

3165 resident or guardian.

3166 (4) Immediately upon discontinuance of the operation of a
 3167 facility, the owner shall surrender the license therefor to the
 3168 agency, and the license shall be canceled.

3169 (5) The agency may levy a fine in an amount no greater
 3170 than \$5,000 upon each person or business entity that owns any
 3171 interest in a facility that terminates operation without
 3172 providing notice to the agency and the residents of the facility
 3173 at least 30 days before operation ceases. This fine shall not
 3174 be levied against any facility involuntarily closed at the
 3175 initiation of the agency. The agency shall use the proceeds of
 3176 the fines to operate the facility until all residents of the
 3177 facility are relocated and shall deposit any balance of the
 3178 proceeds into the Health Care Trust Fund established pursuant to
 3179 s. 429.18 ~~s. 400.418~~.

3180 Section 56. Section 400.441, Florida Statutes, is
 3181 renumbered as section 429.41, Florida Statutes, and amended to
 3182 read:

3183 429.41 ~~400.441~~ Rules establishing standards.--

3184 (1) It is the intent of the Legislature that rules
 3185 published and enforced pursuant to this section shall include
 3186 criteria by which a reasonable and consistent quality of
 3187 resident care and quality of life may be ensured and the results
 3188 of such resident care may be demonstrated. Such rules shall
 3189 also ensure a safe and sanitary environment that is residential
 3190 and noninstitutional in design or nature. It is further
 3191 intended that reasonable efforts be made to accommodate the
 3192 needs and preferences of residents to enhance the quality of

3193 life in a facility. In order to provide safe and sanitary
3194 facilities and the highest quality of resident care
3195 accommodating the needs and preferences of residents, the
3196 department, in consultation with the agency, the Department of
3197 Children and Family Services, and the Department of Health,
3198 shall adopt rules, policies, and procedures to administer this
3199 part, which must include reasonable and fair minimum standards
3200 in relation to:

3201 (a) The requirements for and maintenance of facilities,
3202 not in conflict with the provisions of chapter 553, relating to
3203 plumbing, heating, cooling, lighting, ventilation, living space,
3204 and other housing conditions, which will ensure the health,
3205 safety, and comfort of residents and protection from fire
3206 hazard, including adequate provisions for fire alarm and other
3207 fire protection suitable to the size of the structure. Uniform
3208 firesafety standards shall be established and enforced by the
3209 State Fire Marshal in cooperation with the agency, the
3210 department, and the Department of Health.

3211 1. Evacuation capability determination.--

3212 a. The provisions of the National Fire Protection
3213 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3214 for determining the ability of the residents, with or without
3215 staff assistance, to relocate from or within a licensed facility
3216 to a point of safety as provided in the fire codes adopted
3217 herein. An evacuation capability evaluation for initial
3218 licensure shall be conducted within 6 months after the date of
3219 licensure. For existing licensed facilities that are not
3220 equipped with an automatic fire sprinkler system, the

3221 administrator shall evaluate the evacuation capability of
 3222 residents at least annually. The evacuation capability
 3223 evaluation for each facility not equipped with an automatic fire
 3224 sprinkler system shall be validated, without liability, by the
 3225 State Fire Marshal, by the local fire marshal, or by the local
 3226 authority having jurisdiction over firesafety, before the
 3227 license renewal date. If the State Fire Marshal, local fire
 3228 marshal, or local authority having jurisdiction over firesafety
 3229 has reason to believe that the evacuation capability of a
 3230 facility as reported by the administrator may have changed, it
 3231 may, with assistance from the facility administrator, reevaluate
 3232 the evacuation capability through timed exiting drills.

3233 Translation of timed fire exiting drills to evacuation
 3234 capability may be determined:

3235 (I) Three minutes or less: prompt.

3236 (II) More than 3 minutes, but not more than 13 minutes:
 3237 slow.

3238 (III) More than 13 minutes: impractical.

3239 b. The Office of the State Fire Marshal shall provide or
 3240 cause the provision of training and education on the proper
 3241 application of Chapter 5, NFPA 101A, 1995 edition, to its
 3242 employees, to staff of the Agency for Health Care Administration
 3243 who are responsible for regulating facilities under this part,
 3244 and to local governmental inspectors. The Office of the State
 3245 Fire Marshal shall provide or cause the provision of this
 3246 training within its existing budget, but may charge a fee for
 3247 this training to offset its costs. The initial training must be
 3248 delivered within 6 months after July 1, 1995, and as needed

3249 thereafter.

3250 c. The Office of the State Fire Marshal, in cooperation
 3251 with provider associations, shall provide or cause the provision
 3252 of a training program designed to inform facility operators on
 3253 how to properly review bid documents relating to the
 3254 installation of automatic fire sprinklers. The Office of the
 3255 State Fire Marshal shall provide or cause the provision of this
 3256 training within its existing budget, but may charge a fee for
 3257 this training to offset its costs. The initial training must be
 3258 delivered within 6 months after July 1, 1995, and as needed
 3259 thereafter.

3260 d. The administrator of a licensed facility shall sign an
 3261 affidavit verifying the number of residents occupying the
 3262 facility at the time of the evacuation capability evaluation.

3263 2. Firesafety requirements.--

3264 a. Except for the special applications provided herein,
 3265 effective January 1, 1996, the provisions of the National Fire
 3266 Protection Association, Life Safety Code, NFPA 101, 1994
 3267 edition, Chapter 22 for new facilities and Chapter 23 for
 3268 existing facilities shall be the uniform fire code applied by
 3269 the State Fire Marshal for assisted living facilities, pursuant
 3270 to s. 633.022.

3271 b. Any new facility, regardless of size, that applies for
 3272 a license on or after January 1, 1996, must be equipped with an
 3273 automatic fire sprinkler system. The exceptions as provided in
 3274 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
 3275 apply to any new facility housing eight or fewer residents. On
 3276 July 1, 1995, local governmental entities responsible for the

3277 issuance of permits for construction shall inform, without
 3278 liability, any facility whose permit for construction is
 3279 obtained prior to January 1, 1996, of this automatic fire
 3280 sprinkler requirement. As used in this part, the term "a new
 3281 facility" does not mean an existing facility that has undergone
 3282 change of ownership.

3283 c. Notwithstanding any provision of s. 633.022 or of the
 3284 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
 3285 edition, to the contrary, any existing facility housing eight or
 3286 fewer residents is not required to install an automatic fire
 3287 sprinkler system, nor to comply with any other requirement in
 3288 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
 3289 requirements of NFPA 101, 1988 edition, that applies to this
 3290 size facility, unless the facility has been classified as
 3291 impractical to evacuate. Any existing facility housing eight or
 3292 fewer residents that is classified as impractical to evacuate
 3293 must install an automatic fire sprinkler system within the
 3294 timeframes granted in this section.

3295 d. Any existing facility that is required to install an
 3296 automatic fire sprinkler system under this paragraph need not
 3297 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
 3298 edition, which exceed the provisions of NFPA 101, 1988 edition.
 3299 The mandate contained in this paragraph which requires certain
 3300 facilities to install an automatic fire sprinkler system
 3301 supersedes any other requirement.

3302 e. This paragraph does not supersede the exceptions
 3303 granted in NFPA 101, 1988 edition or 1994 edition.

3304 f. This paragraph does not exempt facilities from other

3305 firesafety provisions adopted under s. 633.022 and local
3306 building code requirements in effect before July 1, 1995.

3307 g. A local government may charge fees only in an amount
3308 not to exceed the actual expenses incurred by local government
3309 relating to the installation and maintenance of an automatic
3310 fire sprinkler system in an existing and properly licensed
3311 assisted living facility structure as of January 1, 1996.

3312 h. If a licensed facility undergoes major reconstruction
3313 or addition to an existing building on or after January 1, 1996,
3314 the entire building must be equipped with an automatic fire
3315 sprinkler system. Major reconstruction of a building means
3316 repair or restoration that costs in excess of 50 percent of the
3317 value of the building as reported on the tax rolls, excluding
3318 land, before reconstruction. Multiple reconstruction projects
3319 within a 5-year period the total costs of which exceed 50
3320 percent of the initial value of the building at the time the
3321 first reconstruction project was permitted are to be considered
3322 as major reconstruction. Application for a permit for an
3323 automatic fire sprinkler system is required upon application for
3324 a permit for a reconstruction project that creates costs that go
3325 over the 50-percent threshold.

3326 i. Any facility licensed before January 1, 1996, that is
3327 required to install an automatic fire sprinkler system shall
3328 ensure that the installation is completed within the following
3329 timeframes based upon evacuation capability of the facility as
3330 determined under subparagraph 1.:

3331 (I) Impractical evacuation capability, 24 months.

3332 (II) Slow evacuation capability, 48 months.

3333 (III) Prompt evacuation capability, 60 months.

3334
 3335 The beginning date from which the deadline for the automatic
 3336 fire sprinkler installation requirement must be calculated is
 3337 upon receipt of written notice from the local fire official that
 3338 an automatic fire sprinkler system must be installed. The local
 3339 fire official shall send a copy of the document indicating the
 3340 requirement of a fire sprinkler system to the Agency for Health
 3341 Care Administration.

3342 j. It is recognized that the installation of an automatic
 3343 fire sprinkler system may create financial hardship for some
 3344 facilities. The appropriate local fire official shall, without
 3345 liability, grant two 1-year extensions to the timeframes for
 3346 installation established herein, if an automatic fire sprinkler
 3347 installation cost estimate and proof of denial from two
 3348 financial institutions for a construction loan to install the
 3349 automatic fire sprinkler system are submitted. However, for any
 3350 facility with a class I or class II, or a history of uncorrected
 3351 class III, firesafety deficiencies, an extension must not be
 3352 granted. The local fire official shall send a copy of the
 3353 document granting the time extension to the Agency for Health
 3354 Care Administration.

3355 k. A facility owner whose facility is required to be
 3356 equipped with an automatic fire sprinkler system under Chapter
 3357 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
 3358 any potential buyer of the facility that an installation of an
 3359 automatic fire sprinkler requirement exists. The sale of the
 3360 facility does not alter the timeframe for the installation of

3361 the automatic fire sprinkler system.

3362 1. Existing facilities required to install an automatic
 3363 fire sprinkler system as a result of construction-type
 3364 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
 3365 herein, or evacuation capability requirements shall be notified
 3366 by the local fire official in writing of the automatic fire
 3367 sprinkler requirement, as well as the appropriate date for final
 3368 compliance as provided in this subparagraph. The local fire
 3369 official shall send a copy of the document to the Agency for
 3370 Health Care Administration.

3371 m. Except in cases of life-threatening fire hazards, if an
 3372 existing facility experiences a change in the evacuation
 3373 capability, or if the local authority having jurisdiction
 3374 identifies a construction-type restriction, such that an
 3375 automatic fire sprinkler system is required, it shall be
 3376 afforded time for installation as provided in this subparagraph.

3377
 3378 Facilities that are fully sprinkled and in compliance with other
 3379 firesafety standards are not required to conduct more than one
 3380 of the required fire drills between the hours of 11 p.m. and 7
 3381 a.m., per year. In lieu of the remaining drills, staff
 3382 responsible for residents during such hours may be required to
 3383 participate in a mock drill that includes a review of evacuation
 3384 procedures. Such standards must be included or referenced in the
 3385 rules adopted by the State Fire Marshal. Pursuant to s.
 3386 633.022(1)(b), the State Fire Marshal is the final
 3387 administrative authority for firesafety standards established
 3388 and enforced pursuant to this section. All licensed facilities

3389 must have an annual fire inspection conducted by the local fire
 3390 marshal or authority having jurisdiction.

3391 3. Resident elopement requirements.--Facilities are
 3392 required to conduct a minimum of two resident elopement
 3393 prevention and response drills per year. All administrators and
 3394 direct care staff must participate in the drills which shall
 3395 include a review of procedures to address resident elopement.
 3396 Facilities must document the implementation of the drills and
 3397 ensure that the drills are conducted in a manner consistent with
 3398 the facility's resident elopement policies and procedures.

3399 (b) The preparation and annual update of a comprehensive
 3400 emergency management plan. Such standards must be included in
 3401 the rules adopted by the department after consultation with the
 3402 Department of Community Affairs. At a minimum, the rules must
 3403 provide for plan components that address emergency evacuation
 3404 transportation; adequate sheltering arrangements; postdisaster
 3405 activities, including provision of emergency power, food, and
 3406 water; postdisaster transportation; supplies; staffing;
 3407 emergency equipment; individual identification of residents and
 3408 transfer of records; communication with families; and responses
 3409 to family inquiries. The comprehensive emergency management
 3410 plan is subject to review and approval by the local emergency
 3411 management agency. During its review, the local emergency
 3412 management agency shall ensure that the following agencies, at a
 3413 minimum, are given the opportunity to review the plan: the
 3414 Department of Elderly Affairs, the Department of Health, the
 3415 Agency for Health Care Administration, and the Department of
 3416 Community Affairs. Also, appropriate volunteer organizations

3417 must be given the opportunity to review the plan. The local
 3418 emergency management agency shall complete its review within 60
 3419 days and either approve the plan or advise the facility of
 3420 necessary revisions.

3421 (c) The number, training, and qualifications of all
 3422 personnel having responsibility for the care of residents. The
 3423 rules must require adequate staff to provide for the safety of
 3424 all residents. Facilities licensed for 17 or more residents are
 3425 required to maintain an alert staff for 24 hours per day.

3426 (d) All sanitary conditions within the facility and its
 3427 surroundings which will ensure the health and comfort of
 3428 residents. The rules must clearly delineate the
 3429 responsibilities of the agency's licensure and survey staff, the
 3430 county health departments, and the local authority having
 3431 jurisdiction over fire safety and ensure that inspections are
 3432 not duplicative. The agency may collect fees for food service
 3433 inspections conducted by the county health departments and
 3434 transfer such fees to the Department of Health.

3435 (e) License application and license renewal, transfer of
 3436 ownership, proper management of resident funds and personal
 3437 property, surety bonds, resident contracts, refund policies,
 3438 financial ability to operate, and facility and staff records.

3439 (f) Inspections, complaint investigations, moratoriums,
 3440 classification of deficiencies, levying and enforcement of
 3441 penalties, and use of income from fees and fines.

3442 (g) The enforcement of the resident bill of rights
 3443 specified in s. 429.28 ~~s. 400.428~~.

3444 (h) The care and maintenance of residents, which must

3445 include, but is not limited to:

3446 1. The supervision of residents;

3447 2. The provision of personal services;

3448 3. The provision of, or arrangement for, social and

3449 leisure activities;

3450 4. The arrangement for appointments and transportation to

3451 appropriate medical, dental, nursing, or mental health services,

3452 as needed by residents;

3453 5. The management of medication;

3454 6. The nutritional needs of residents;

3455 7. Resident records; and

3456 8. Internal risk management and quality assurance.

3457 (i) Facilities holding a limited nursing, extended

3458 congregate care, or limited mental health license.

3459 (j) The establishment of specific criteria to define

3460 appropriateness of resident admission and continued residency in

3461 a facility holding a standard, limited nursing, extended

3462 congregate care, and limited mental health license.

3463 (k) The use of physical or chemical restraints. The use

3464 of physical restraints is limited to half-bed rails as

3465 prescribed and documented by the resident's physician with the

3466 consent of the resident or, if applicable, the resident's

3467 representative or designee or the resident's surrogate,

3468 guardian, or attorney in fact. The use of chemical restraints

3469 is limited to prescribed dosages of medications authorized by

3470 the resident's physician and must be consistent with the

3471 resident's diagnosis. Residents who are receiving medications

3472 that can serve as chemical restraints must be evaluated by their

3473 physician at least annually to assess:

3474 1. The continued need for the medication.

3475 2. The level of the medication in the resident's blood.

3476 3. The need for adjustments in the prescription.

3477 (1) The establishment of specific policies and procedures

3478 on resident elopement. Facilities shall conduct a minimum of two

3479 resident elopement drills each year. All administrators and

3480 direct care staff shall participate in the drills. Facilities

3481 shall document the drills.

3482 (2) In adopting any rules pursuant to this part, the

3483 department, in conjunction with the agency, shall make distinct

3484 standards for facilities based upon facility size; the types of

3485 care provided; the physical and mental capabilities and needs of

3486 residents; the type, frequency, and amount of services and care

3487 offered; and the staffing characteristics of the facility. Rules

3488 developed pursuant to this section shall not restrict the use of

3489 shared staffing and shared programming in facilities that are

3490 part of retirement communities that provide multiple levels of

3491 care and otherwise meet the requirements of law and rule.

3492 Except for uniform firesafety standards, the department shall

3493 adopt by rule separate and distinct standards for facilities

3494 with 16 or fewer beds and for facilities with 17 or more beds.

3495 The standards for facilities with 16 or fewer beds shall be

3496 appropriate for a noninstitutional residential environment,

3497 provided that the structure is no more than two stories in

3498 height and all persons who cannot exit the facility unassisted

3499 in an emergency reside on the first floor. The department, in

3500 conjunction with the agency, may make other distinctions among

3501 types of facilities as necessary to enforce the provisions of
3502 this part. Where appropriate, the agency shall offer alternate
3503 solutions for complying with established standards, based on
3504 distinctions made by the department and the agency relative to
3505 the physical characteristics of facilities and the types of care
3506 offered therein.

3507 (3) The department shall submit a copy of proposed rules
3508 to the Speaker of the House of Representatives, the President of
3509 the Senate, and appropriate committees of substance for review
3510 and comment prior to the promulgation thereof.

3511 (a) Rules promulgated by the department shall encourage
3512 the development of homelike facilities which promote the
3513 dignity, individuality, personal strengths, and decisionmaking
3514 ability of residents.

3515 (b) The agency, in consultation with the department, may
3516 waive rules promulgated pursuant to this part in order to
3517 demonstrate and evaluate innovative or cost-effective congregate
3518 care alternatives which enable individuals to age in place.
3519 Such waivers may be granted only in instances where there is
3520 reasonable assurance that the health, safety, or welfare of
3521 residents will not be endangered. To apply for a waiver, the
3522 licensee shall submit to the agency a written description of the
3523 concept to be demonstrated, including goals, objectives, and
3524 anticipated benefits; the number and types of residents who will
3525 be affected, if applicable; a brief description of how the
3526 demonstration will be evaluated; and any other information
3527 deemed appropriate by the agency. Any facility granted a waiver
3528 shall submit a report of findings to the agency and the

3529 department within 12 months. At such time, the agency may renew
3530 or revoke the waiver or pursue any regulatory or statutory
3531 changes necessary to allow other facilities to adopt the same
3532 practices. The department may by rule clarify terms and
3533 establish waiver application procedures, criteria for reviewing
3534 waiver proposals, and procedures for reporting findings, as
3535 necessary to implement this subsection.

3536 (4) The agency may use an abbreviated biennial standard
3537 licensure inspection that consists of a review of key quality-
3538 of-care standards in lieu of a full inspection in facilities
3539 which have a good record of past performance. However, a full
3540 inspection shall be conducted in facilities which have had a
3541 history of class I or class II violations, uncorrected class III
3542 violations, confirmed ombudsman council complaints, or confirmed
3543 licensure complaints, within the previous licensure period
3544 immediately preceding the inspection or when a potentially
3545 serious problem is identified during the abbreviated inspection.

3546 The agency, in consultation with the department, shall develop
3547 the key quality-of-care standards with input from the State
3548 Long-Term Care Ombudsman Council and representatives of provider
3549 groups for incorporation into its rules. The department, in
3550 consultation with the agency, shall report annually to the
3551 Legislature concerning its implementation of this subsection.
3552 The report shall include, at a minimum, the key quality-of-care
3553 standards which have been developed; the number of facilities
3554 identified as being eligible for the abbreviated inspection; the
3555 number of facilities which have received the abbreviated
3556 inspection and, of those, the number that were converted to full

3557 inspection; the number and type of subsequent complaints
 3558 received by the agency or department on facilities which have
 3559 had abbreviated inspections; any recommendations for
 3560 modification to this subsection; any plans by the agency to
 3561 modify its implementation of this subsection; and any other
 3562 information which the department believes should be reported.

3563 (5) A fee shall be charged by the department to any person
 3564 requesting a copy of this part or rules promulgated under this
 3565 part. Such fees shall not exceed the actual cost of duplication
 3566 and postage.

3567 Section 57. Section 400.442, Florida Statutes, is
 3568 renumbered as section 429.42, Florida Statutes, and amended to
 3569 read:

3570 429.42 ~~400.442~~ Pharmacy and dietary services.--

3571 (1) Any assisted living facility in which the agency has
 3572 documented a class I or class II deficiency or uncorrected class
 3573 III deficiencies regarding medicinal drugs or over-the-counter
 3574 preparations, including their storage, use, delivery, or
 3575 administration, or dietary services, or both, during a biennial
 3576 survey or a monitoring visit or an investigation in response to
 3577 a complaint, shall, in addition to or as an alternative to any
 3578 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
 3579 employ the consultant services of a licensed pharmacist, a
 3580 licensed registered nurse, or a registered or licensed
 3581 dietitian, as applicable. The consultant shall, at a minimum,
 3582 provide onsite quarterly consultation until the inspection team
 3583 from the agency determines that such consultation services are
 3584 no longer required.

3585 (2) A corrective action plan for deficiencies related to
 3586 assistance with the self-administration of medication or the
 3587 administration of medication must be developed and implemented
 3588 by the facility within 48 hours after notification of such
 3589 deficiency, or sooner if the deficiency is determined by the
 3590 agency to be life-threatening.

3591 (3) The agency shall employ at least two pharmacists
 3592 licensed pursuant to chapter 465 among its personnel who
 3593 biennially inspect assisted living facilities licensed under
 3594 this part, to participate in biennial inspections or consult
 3595 with the agency regarding deficiencies relating to medicinal
 3596 drugs or over-the-counter preparations.

3597 (4) The department may by rule establish procedures and
 3598 specify documentation as necessary to implement this section.

3599 Section 58. Section 400.444, Florida Statutes, is
 3600 renumbered as section 429.44, Florida Statutes, and amended to
 3601 read:

3602 429.44 ~~400.444~~ Construction and renovation;
 3603 requirements.--

3604 (1) The requirements for the construction and renovation
 3605 of a facility shall comply with the provisions of chapter 553
 3606 which pertain to building construction standards, including
 3607 plumbing, electrical code, glass, manufactured buildings,
 3608 accessibility for persons with disabilities, and the state
 3609 minimum building code and with the provisions of s. 633.022,
 3610 which pertain to uniform firesafety standards.

3611 (2) Upon notification by the local authority having
 3612 jurisdiction over life-threatening violations which seriously

3613 threaten the health, safety, or welfare of a resident of a
 3614 facility, the agency shall take action as specified in s. 429.14
 3615 ~~s. 400.414~~.

3616 (3) The department may adopt rules to establish procedures
 3617 and specify the documentation necessary to implement this
 3618 section.

3619 Section 59. Section 400.447, Florida Statutes, is
 3620 renumbered as section 429.47, Florida Statutes, and amended to
 3621 read:

3622 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--

3623 (1) It is unlawful for any person or public body to offer
 3624 or advertise to the public, in any way by any medium whatever,
 3625 personal services as defined in this act, without obtaining a
 3626 valid current license. It is unlawful for any holder of a
 3627 license issued pursuant to the provisions of this act to
 3628 advertise or hold out to the public that it holds a license for
 3629 a facility other than that for which it actually holds a
 3630 license.

3631 (2) It is unlawful for any holder of a license issued
 3632 pursuant to the provisions of this act to withhold from the
 3633 agency any evidence of financial instability, including, but not
 3634 limited to, bad checks, delinquent accounts, nonpayment of
 3635 withholding taxes, unpaid utility expenses, nonpayment for
 3636 essential services, or adverse court action concerning the
 3637 financial viability of the facility or any other facility
 3638 licensed under this part or under part II of chapter 400 ~~or part~~
 3639 ~~III of this chapter~~ which is owned by the licensee.

3640 (3) Any person found guilty of violating subsection (1) or

3641 subsection (2) commits a misdemeanor of the second degree,
 3642 punishable as provided in s. 775.083. Each day of continuing
 3643 violation shall be considered a separate offense.

3644 (4) While a facility is under construction, the owner may
 3645 advertise to the public prior to obtaining a license. Facilities
 3646 that are certified under chapter 651 shall comply with the
 3647 advertising provisions of s. 651.095 rather than those provided
 3648 for in this subsection.

3649 (5) A freestanding facility shall not advertise or imply
 3650 that any part of it is a nursing home. For the purpose of this
 3651 subsection, "freestanding facility" means a facility that is not
 3652 operated in conjunction with a nursing home to which residents
 3653 of the facility are given priority when nursing care is
 3654 required. A person who violates this subsection is subject to
 3655 fine as specified in s. 429.19 ~~s. 400.419~~.

3656 (6) Any facility which is affiliated with any religious
 3657 organization or which has a name implying religious affiliation
 3658 shall include in its advertising whether or not it is affiliated
 3659 with any religious organization and, if so, which organization.

3660 (7) A facility licensed under this part which is not part
 3661 of a facility authorized under chapter 651 shall include the
 3662 facility's license number as given by the agency in all
 3663 advertising. A company or person owning more than one facility
 3664 shall include at least one license number per advertisement.
 3665 All advertising shall include the term "assisted living
 3666 facility" before the license number.

3667 Section 60. Section 400.452, Florida Statutes, is
 3668 renumbered as section 429.52, Florida Statutes, and amended to

3669 read:

3670 429.52 ~~400.452~~ Staff training and educational programs;
 3671 core educational requirement.--

3672 (1) Administrators and other assisted living facility
 3673 staff must meet minimum training and education requirements
 3674 established by the Department of Elderly Affairs by rule. This
 3675 training and education is intended to assist facilities to
 3676 appropriately respond to the needs of residents, to maintain
 3677 resident care and facility standards, and to meet licensure
 3678 requirements.

3679 (2) The department shall establish a competency test and a
 3680 minimum required score to indicate successful completion of the
 3681 training and educational requirements. The competency test must
 3682 be developed by the department in conjunction with the agency
 3683 and providers. The required training and education must cover at
 3684 least the following topics:

3685 (a) State law and rules relating to assisted living
 3686 facilities.

3687 (b) Resident rights and identifying and reporting abuse,
 3688 neglect, and exploitation.

3689 (c) Special needs of elderly persons, persons with mental
 3690 illness, and persons with developmental disabilities and how to
 3691 meet those needs.

3692 (d) Nutrition and food service, including acceptable
 3693 sanitation practices for preparing, storing, and serving food.

3694 (e) Medication management, recordkeeping, and proper
 3695 techniques for assisting residents with self-administered
 3696 medication.

3697 (f) Firesafety requirements, including fire evacuation
 3698 drill procedures and other emergency procedures.

3699 (g) Care of persons with Alzheimer's disease and related
 3700 disorders.

3701 (3) Effective January 1, 2004, a new facility
 3702 administrator must complete the required training and education,
 3703 including the competency test, within a reasonable time after
 3704 being employed as an administrator, as determined by the
 3705 department. Failure to do so is a violation of this part and
 3706 subjects the violator to an administrative fine as prescribed in
 3707 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with
 3708 chapter 468, part II, are exempt from this requirement. Other
 3709 licensed professionals may be exempted, as determined by the
 3710 department by rule.

3711 (4) Administrators are required to participate in
 3712 continuing education for a minimum of 12 contact hours every 2
 3713 years.

3714 (5) Staff involved with the management of medications and
 3715 assisting with the self-administration of medications under s.
 3716 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
 3717 hours of training provided by a registered nurse, licensed
 3718 pharmacist, or department staff. The department shall establish
 3719 by rule the minimum requirements of this additional training.

3720 (6) Other facility staff shall participate in training
 3721 relevant to their job duties as specified by rule of the
 3722 department.

3723 (7) If the department or the agency determines that there
 3724 are problems in a facility that could be reduced through

3725 specific staff training or education beyond that already
 3726 required under this section, the department or the agency may
 3727 require, and provide, or cause to be provided, the training or
 3728 education of any personal care staff in the facility.

3729 (8) The department shall adopt rules related to these
 3730 training requirements, the competency test, necessary
 3731 procedures, and competency test fees.

3732 Section 61. Subsections (1), (10), and (18) of section
 3733 400.462, Florida Statutes, are amended to read:

3734 400.462 Definitions.--As used in this part, the term:

3735 (1) "Administrator" means a direct employee, as defined in
 3736 subsection (9). The administrator must be a licensed physician,
 3737 physician assistant, or registered nurse licensed to practice in
 3738 this state or an individual having at least 1 year of
 3739 supervisory or administrative experience in home health care or
 3740 in a facility licensed under chapter 395, ~~or~~ under part II ~~or~~
 3741 ~~part III~~ of this chapter, or under part I of chapter 429. An
 3742 administrator may manage a maximum of five licensed home health
 3743 agencies located within one agency service district or within an
 3744 immediately contiguous county. If the home health agency is
 3745 licensed under this chapter and is part of a retirement
 3746 community that provides multiple levels of care, an employee of
 3747 the retirement community may administer the home health agency
 3748 and up to a maximum of four entities licensed under this chapter
 3749 or under part I of chapter 429 that are owned, operated, or
 3750 managed by the same corporate entity. An administrator shall
 3751 designate, in writing, for each licensed entity, a qualified
 3752 alternate administrator to serve during absences.

3753 (10) "Director of nursing" means a registered nurse who is
 3754 a direct employee, as defined in subsection (9), of the agency
 3755 and who is a graduate of an approved school of nursing and is
 3756 licensed in this state; who has at least 1 year of supervisory
 3757 experience as a registered nurse; and who is responsible for
 3758 overseeing the professional nursing and home health aid delivery
 3759 of services of the agency. A director of nursing may be the
 3760 director of a maximum of five licensed home health agencies
 3761 operated by a related business entity and located within one
 3762 agency service district or within an immediately contiguous
 3763 county. If the home health agency is licensed under this chapter
 3764 and is part of a retirement community that provides multiple
 3765 levels of care, an employee of the retirement community may
 3766 serve as the director of nursing of the home health agency and
 3767 of up to four entities licensed under this chapter or under part
 3768 I of chapter 429 which are owned, operated, or managed by the
 3769 same corporate entity.

3770 (18) "Nurse registry" means any person that procures,
 3771 offers, promises, or attempts to secure health-care-related
 3772 contracts for registered nurses, licensed practical nurses,
 3773 certified nursing assistants, home health aides, companions, or
 3774 homemakers, who are compensated by fees as independent
 3775 contractors, including, but not limited to, contracts for the
 3776 provision of services to patients and contracts to provide
 3777 private duty or staffing services to health care facilities
 3778 licensed under chapter 395, under ~~or~~ this chapter, or under part
 3779 I of chapter 429 or other business entities.

3780 Section 62. Paragraphs (h), (i), and (n) of subsection (5)

3781 of section 400.464, Florida Statutes, are amended to read:
 3782 400.464 Home health agencies to be licensed; expiration of
 3783 license; exemptions; unlawful acts; penalties.--

3784 (5) The following are exempt from the licensure
 3785 requirements of this part:

3786 (h) The delivery of assisted living facility services for
 3787 which the assisted living facility is licensed under part I ~~III~~
 3788 of ~~this~~ chapter 429, to serve its residents in its facility.

3789 (i) The delivery of hospice services for which the hospice
 3790 is licensed under part IV ~~VI~~ of this chapter, to serve hospice
 3791 patients admitted to its service.

3792 (n) The delivery of adult family care home services for
 3793 which the adult family care home is licensed under part II ~~VII~~
 3794 of ~~this~~ chapter 429, to serve the residents in its facility.

3795 Section 63. Subsection (2) of section 400.497, Florida
 3796 Statutes, is amended to read:

3797 400.497 Rules establishing minimum standards.--The agency
 3798 shall adopt, publish, and enforce rules to implement this part,
 3799 including, as applicable, ss. 400.506 and 400.509, which must
 3800 provide reasonable and fair minimum standards relating to:

3801 (2) Shared staffing. The agency shall allow shared
 3802 staffing if the home health agency is part of a retirement
 3803 community that provides multiple levels of care, is located on
 3804 one campus, is licensed under this chapter or chapter 429, and
 3805 otherwise meets the requirements of law and rule.

3806 Section 64. Section 400.552, Florida Statutes, is
 3807 renumbered as section 429.903, Florida Statutes, and amended to
 3808 read:

3809 429.903 ~~400.552~~ Applicability.--Any facility that comes
 3810 within the definition of an adult day care center which is not
 3811 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
 3812 agency as an adult day care center.

3813 Section 65. Section 400.555, Florida Statutes, is
 3814 renumbered as section 429.909, Florida Statutes, and amended to
 3815 read:

3816 429.909 ~~400.555~~ Application for license.--

3817 (1) An application for a license to operate an adult day
 3818 care center must be made to the agency on forms furnished by the
 3819 agency and must be accompanied by the appropriate license fee
 3820 unless the applicant is exempt from payment of the fee as
 3821 provided in s. 429.907(4) ~~s. 400.554(4)~~.

3822 (2) The applicant for licensure must furnish:

3823 (a) A description of the physical and mental capabilities
 3824 and needs of the participants to be served and the availability,
 3825 frequency, and intensity of basic services and of supportive and
 3826 optional services to be provided;

3827 (b) Satisfactory proof of financial ability to operate and
 3828 conduct the center in accordance with the requirements of this
 3829 part, which must include, in the case of an initial application,
 3830 a 1-year operating plan and proof of a 3-month operating reserve
 3831 fund; and

3832 (c) Proof of adequate liability insurance coverage.

3833 (d) Proof of compliance with level 2 background screening
 3834 as required under s. 429.919 ~~s. 400.5572~~.

3835 (e) A description and explanation of any exclusions,
 3836 permanent suspensions, or terminations of the application from

3837 the Medicare or Medicaid programs. Proof of compliance with
 3838 disclosure of ownership and control interest requirements of the
 3839 Medicare or Medicaid programs shall be accepted in lieu of this
 3840 submission.

3841 Section 66. Section 400.556, Florida Statutes, is
 3842 renumbered as section 429.911, Florida Statutes, and amended to
 3843 read:

3844 429.911 ~~400.556~~ Denial, suspension, revocation of license;
 3845 administrative fines; investigations and inspections.--

3846 (1) The agency may deny, revoke, or suspend a license
 3847 under this part or may impose an administrative fine against the
 3848 owner of an adult day care center or its operator or employee in
 3849 the manner provided in chapter 120.

3850 (2) Each of the following actions by the owner of an adult
 3851 day care center or by its operator or employee is a ground for
 3852 action by the agency against the owner of the center or its
 3853 operator or employee:

3854 (a) An intentional or negligent act materially affecting
 3855 the health or safety of center participants.

3856 (b) A violation of this part or of any standard or rule
 3857 under this part.

3858 (c) A failure of persons subject to level 2 background
 3859 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
 3860 screening standards of s. 435.04, or the retention by the center
 3861 of an employee subject to level 1 background screening standards
 3862 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the
 3863 screening standards of s. 435.03 and for whom exemptions from
 3864 disqualification have not been provided by the agency.

3865 (d) Failure to follow the criteria and procedures provided
 3866 under part I of chapter 394 relating to the transportation,
 3867 voluntary admission, and involuntary examination of center
 3868 participants.

3869 (e) Multiple or repeated violations of this part or of any
 3870 standard or rule adopted under this part.

3871 (f) Exclusion, permanent suspension, or termination of the
 3872 owner, if an individual, officer, or board member of the adult
 3873 day care center, if the owner is a firm, corporation,
 3874 partnership, or association, or any person owning 5 percent or
 3875 more of the center, from the Medicare or Medicaid program.

3876 (3) The agency is responsible for all investigations and
 3877 inspections conducted pursuant to this part.

3878 Section 67. Section 400.557, Florida Statutes, is
 3879 renumbered as section 429.915, Florida Statutes, and amended to
 3880 read:

3881 429.915 ~~400.557~~ Expiration of license; renewal;
 3882 conditional license or permit.--

3883 (1) A license issued for the operation of an adult day
 3884 care center, unless sooner suspended or revoked, expires 2 years
 3885 after the date of issuance. The agency shall notify a licensee
 3886 at least 120 days before the expiration date that license
 3887 renewal is required to continue operation. The notification must
 3888 be provided electronically or by mail delivery. At least 90 days
 3889 prior to the expiration date, an application for renewal must be
 3890 submitted to the agency. A license shall be renewed, upon the
 3891 filing of an application on forms furnished by the agency, if
 3892 the applicant has first met the requirements of this part and of

3893 | the rules adopted under this part. The applicant must file with
 3894 | the application satisfactory proof of financial ability to
 3895 | operate the center in accordance with the requirements of this
 3896 | part and in accordance with the needs of the participants to be
 3897 | served and an affidavit of compliance with the background
 3898 | screening requirements of s. 429.919 ~~s. 400.5572~~.

3899 | (2) A licensee against whom a revocation or suspension
 3900 | proceeding is pending at the time for license renewal may be
 3901 | issued a conditional license effective until final disposition
 3902 | by the agency of the proceeding. If judicial relief is sought
 3903 | from the final disposition, the court having jurisdiction may
 3904 | issue a conditional permit effective for the duration of the
 3905 | judicial proceeding.

3906 | (3) The agency may issue a conditional license to an
 3907 | applicant for license renewal or change of ownership if the
 3908 | applicant fails to meet all standards and requirements for
 3909 | licensure. A conditional license issued under this subsection
 3910 | must be limited to a specific period not exceeding 6 months, as
 3911 | determined by the agency, and must be accompanied by an approved
 3912 | plan of correction.

3913 | Section 68. Section 400.5572, Florida Statutes, is
 3914 | renumbered as section 429.919, Florida Statutes, and amended to
 3915 | read:

3916 | 429.919 ~~400.5572~~ Background screening.--

3917 | (1)(a) Level 2 background screening must be conducted on
 3918 | each of the following persons, who shall be considered employees
 3919 | for the purposes of conducting screening under chapter 435:

3920 | 1. The adult day care center owner if an individual, the

3921 operator, and the financial officer.

3922 2. An officer or board member if the owner of the adult
 3923 day care center is a firm, corporation, partnership, or
 3924 association, or any person owning 5 percent or more of the
 3925 facility, if the agency has probable cause to believe that such
 3926 person has been convicted of any offense prohibited by s.
 3927 435.04. For each officer, board member, or person owning 5
 3928 percent or more who has been convicted of any such offense, the
 3929 facility shall submit to the agency a description and
 3930 explanation of the conviction at the time of license
 3931 application. This subparagraph does not apply to a board member
 3932 of a not-for-profit corporation or organization if the board
 3933 member serves solely in a voluntary capacity, does not regularly
 3934 take part in the day-to-day operational decisions of the
 3935 corporation or organization, receives no remuneration for his or
 3936 her services, and has no financial interest and has no family
 3937 members with a financial interest in the corporation or
 3938 organization, provided that the board member and facility submit
 3939 a statement affirming that the board member's relationship to
 3940 the facility satisfies the requirements of this subparagraph.

3941 (b) Proof of compliance with level 2 screening standards
 3942 which has been submitted within the previous 5 years to meet any
 3943 facility or professional licensure requirements of the agency or
 3944 the Department of Health satisfies the requirements of this
 3945 subsection.

3946 (c) The agency may grant a provisional license to an adult
 3947 day care center applying for an initial license when each
 3948 individual required by this subsection to undergo screening has

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3949 completed the Department of Law Enforcement background check,
3950 but has not yet received results from the Federal Bureau of
3951 Investigation, or when a request for an exemption from
3952 disqualification has been submitted to the agency pursuant to s.
3953 435.07, but a response has not been issued.

3954 (2) The owner or administrator of an adult day care center
3955 must conduct level 1 background screening as set forth in
3956 chapter 435 on all employees hired on or after October 1, 1998,
3957 who provide basic services or supportive and optional services
3958 to the participants. Such persons satisfy this requirement if:

3959 (a) Proof of compliance with level 1 screening
3960 requirements obtained to meet any professional license
3961 requirements in this state is provided and accompanied, under
3962 penalty of perjury, by a copy of the person's current
3963 professional license and an affidavit of current compliance with
3964 the background screening requirements.

3965 (b) The person required to be screened has been
3966 continuously employed, without a breach in service that exceeds
3967 180 days, in the same type of occupation for which the person is
3968 seeking employment and provides proof of compliance with the
3969 level 1 screening requirement which is no more than 2 years old.
3970 Proof of compliance must be provided directly from one employer
3971 or contractor to another, and not from the person screened. Upon
3972 request, a copy of screening results shall be provided to the
3973 person screened by the employer retaining documentation of the
3974 screening.

3975 (c) The person required to be screened is employed by a
3976 corporation or business entity or related corporation or

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3977 business entity that owns, operates, or manages more than one
 3978 facility or agency licensed under this chapter or under chapter
 3979 400, and for whom a level 1 screening was conducted by the
 3980 corporation or business entity as a condition of initial or
 3981 continued employment.

3982 Section 69. Subsection (5) of section 400.601, Florida
 3983 Statutes, is amended to read:

3984 400.601 Definitions.--As used in this part, the term:

3985 (5) "Hospice residential unit" means a homelike living
 3986 facility, other than a facility licensed under other parts of
 3987 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
 3988 is operated by a hospice for the benefit of its patients and is
 3989 considered by a patient who lives there to be his or her primary
 3990 residence.

3991 Section 70. Section 400.618, Florida Statutes, is
 3992 renumbered as section 429.65, Florida Statutes, and amended to
 3993 read:

3994 429.65 ~~400.618~~ Definitions.--As used in this part, the
 3995 term:

3996 (1) "Activities of daily living" means functions and tasks
 3997 for self-care, including eating, bathing, grooming, dressing,
 3998 ambulating, and other similar tasks.

3999 (2) "Adult family-care home" means a full-time, family-
 4000 type living arrangement, in a private home, under which a person
 4001 who owns or rents the home provides room, board, and personal
 4002 care, on a 24-hour basis, for no more than five disabled adults
 4003 or frail elders who are not relatives. The following family-type
 4004 living arrangements are not required to be licensed as an adult

4005 family-care home:

4006 (a) An arrangement whereby the person who owns or rents
 4007 the home provides room, board, and personal services for not
 4008 more than two adults who do not receive optional state
 4009 supplementation under s. 409.212. The person who provides the
 4010 housing, meals, and personal care must own or rent the home and
 4011 reside therein.

4012 (b) An arrangement whereby the person who owns or rents
 4013 the home provides room, board, and personal services only to his
 4014 or her relatives.

4015 (c) An establishment that is licensed as an assisted
 4016 living facility under this chapter ~~part III~~.

4017 (3) "Agency" means the Agency for Health Care
 4018 Administration.

4019 (4) "Aging in place" means remaining in a noninstitutional
 4020 living environment despite the physical or mental changes that
 4021 may occur in a person who is aging. For aging in place to occur,
 4022 needed services are added, increased, or adjusted to compensate
 4023 for a person's physical or mental changes.

4024 (5) "Appropriate placement" means that the resident's
 4025 needs can be met by the adult family-care home or can be met by
 4026 services arranged by the adult family-care home or the resident.

4027 (6) "Chemical restraint" means a pharmacologic drug that
 4028 physically limits, restricts, or deprives an individual of
 4029 movement or mobility, and is used for discipline or convenience
 4030 and not required for the treatment of medical symptoms.

4031 (7) "Department" means the Department of Elderly Affairs.

4032 (8) "Disabled adult" means any person between 18 and 59

4033 | years of age, inclusive, who is a resident of the state and who
 4034 | has one or more permanent physical or mental limitations that
 4035 | restrict the person's ability to perform the normal activities
 4036 | of daily living.

4037 | (9) "Frail elder" means a functionally impaired elderly
 4038 | person who is 60 years of age or older and who has physical or
 4039 | mental limitations that restrict the person's ability to perform
 4040 | the normal activities of daily living and that impede the
 4041 | person's capacity to live independently.

4042 | (10) "Personal services" or "personal care" includes
 4043 | individual assistance with or supervision of the activities of
 4044 | daily living and the self-administration of medication, and
 4045 | other similar services.

4046 | (11) "Provider" means a person who is licensed to operate
 4047 | an adult family-care home.

4048 | (12) "Relative" means an individual who is the father,
 4049 | mother, son, daughter, brother, sister, grandfather,
 4050 | grandmother, great-grandfather, great-grandmother, uncle, aunt,
 4051 | first cousin, nephew, niece, husband, wife, father-in-law,
 4052 | mother-in-law, son-in-law, daughter-in-law, brother-in-law,
 4053 | sister-in-law, stepfather, stepmother, stepson, stepdaughter,
 4054 | stepbrother, stepsister, half brother, or half sister of a
 4055 | provider.

4056 | (13) "Relief person" means an adult designated by the
 4057 | provider to supervise the residents during the provider's
 4058 | absence.

4059 | (14) "Resident" means a person receiving room, board, and
 4060 | personal care in an adult family-care home.

4061 Section 71. Section 400.6194, Florida Statutes, is
 4062 renumbered as section 429.69, Florida Statutes, and amended to
 4063 read:

4064 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
 4065 license.--The agency may deny, suspend, or revoke a license for
 4066 any of the following reasons:

4067 (1) Failure of any of the persons required to undergo
 4068 background screening under s. 429.67 ~~s. 400.619~~ to meet the
 4069 level 1 screening standards of s. 435.03, unless an exemption
 4070 from disqualification has been provided by the agency.

4071 (2) An intentional or negligent act materially affecting
 4072 the health, safety, or welfare of the adult family-care home
 4073 residents.

4074 (3) Submission of fraudulent information or omission of
 4075 any material fact on a license application or any other document
 4076 required by the agency.

4077 (4) Failure to pay an administrative fine assessed under
 4078 this part.

4079 (5) A violation of this part or adopted rules which
 4080 results in conditions or practices that directly threaten the
 4081 physical or emotional health, safety, or welfare of residents.

4082 (6) Failure to correct cited fire code violations that
 4083 threaten the health, safety, or welfare of residents.

4084 (7) Failure to submit a completed initial license
 4085 application or to complete an application for license renewal
 4086 within the specified timeframes.

4087 (8) Exclusion, permanent suspension, or termination of the
 4088 provider from the Medicare or Medicaid program.

4089 Section 72. Section 400.621, Florida Statutes, is
 4090 renumbered as section 429.73, Florida Statutes, and amended to
 4091 read:

4092 429.73 ~~400.621~~ Rules and standards relating to adult
 4093 family-care homes.--

4094 (1) The department, in consultation with the Department of
 4095 Health, the Department of Children and Family Services, and the
 4096 agency shall, by rule, establish minimum standards to ensure the
 4097 health, safety, and well-being of each resident in the adult
 4098 family-care home. The rules must address:

4099 (a) Requirements for the physical site of the facility and
 4100 facility maintenance.

4101 (b) Services that must be provided to all residents of an
 4102 adult family-care home and standards for such services, which
 4103 must include, but need not be limited to:

- 4104 1. Room and board.
- 4105 2. Assistance necessary to perform the activities of daily
 4106 living.
- 4107 3. Assistance necessary to administer medication.
- 4108 4. Supervision of residents.
- 4109 5. Health monitoring.
- 4110 6. Social and leisure activities.

4111 (c) Standards and procedures for license application and
 4112 annual license renewal, advertising, proper management of each
 4113 resident's funds and personal property and personal affairs,
 4114 financial ability to operate, medication management,
 4115 inspections, complaint investigations, and facility, staff, and
 4116 resident records.

4117 (d) Qualifications, training, standards, and
 4118 responsibilities for providers and staff.

4119 (e) Compliance with chapter 419, relating to community
 4120 residential homes.

4121 (f) Criteria and procedures for determining the
 4122 appropriateness of a resident's placement and continued
 4123 residency in an adult family-care home. A resident who requires
 4124 24-hour nursing supervision may not be retained in an adult
 4125 family-care home unless such resident is an enrolled hospice
 4126 patient and the resident's continued residency is mutually
 4127 agreeable to the resident and the provider.

4128 (g) Procedures for providing notice and assuring the least
 4129 possible disruption of residents' lives when residents are
 4130 relocated, an adult family-care home is closed, or the ownership
 4131 of an adult family-care home is transferred.

4132 (h) Procedures to protect the residents' rights as
 4133 provided in s. 429.85 ~~s. 400.628~~.

4134 (i) Procedures to promote the growth of adult family-care
 4135 homes as a component of a long-term care system.

4136 (j) Procedures to promote the goal of aging in place for
 4137 residents of adult family-care homes.

4138 (2) The department shall by rule provide minimum standards
 4139 and procedures for emergencies. Pursuant to s. 633.022, the
 4140 State Fire Marshal, in consultation with the department and the
 4141 agency, shall adopt uniform firesafety standards for adult
 4142 family-care homes.

4143 (3) The department shall adopt rules providing for the
 4144 implementation of orders not to resuscitate. The provider may

4145 withhold or withdraw cardiopulmonary resuscitation if presented
 4146 with an order not to resuscitate executed pursuant to s. 401.45.
 4147 The provider shall not be subject to criminal prosecution or
 4148 civil liability, nor be considered to have engaged in negligent
 4149 or unprofessional conduct, for withholding or withdrawing
 4150 cardiopulmonary resuscitation pursuant to such an order and
 4151 rules adopted by the department.

4152 (4) The provider of any adult family-care home that is in
 4153 operation at the time any rules are adopted or amended under
 4154 this part may be given a reasonable time, not exceeding 6
 4155 months, within which to comply with the new or revised rules and
 4156 standards.

4157 Section 73. Section 400.628, Florida Statutes, is
 4158 renumbered as section 429.85, Florida Statutes, and amended to
 4159 read:

4160 429.85 ~~400.628~~ Residents' bill of rights.--

4161 (1) A resident of an adult family-care home may not be
 4162 deprived of any civil or legal rights, benefits, or privileges
 4163 guaranteed by law, the State Constitution, or the Constitution
 4164 of the United States solely by reason of status as a resident of
 4165 the home. Each resident has the right to:

4166 (a) Live in a safe and decent living environment, free
 4167 from abuse and neglect.

4168 (b) Be treated with consideration and respect and with due
 4169 recognition of personal dignity, individuality, and privacy.

4170 (c) Keep and use the resident's own clothes and other
 4171 personal property in the resident's immediate living quarters,
 4172 so as to maintain individuality and personal dignity, except

4173 when the provider can demonstrate that to do so would be unsafe
 4174 or an infringement upon the rights of other residents.

4175 (d) Have unrestricted private communication, including
 4176 receiving and sending unopened correspondence, having access to
 4177 a telephone, and visiting with any person of his or her choice,
 4178 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

4179 (e) Be free to participate in and benefit from community
 4180 services and activities and to achieve the highest possible
 4181 level of independence, autonomy, and interaction within the
 4182 community.

4183 (f) Manage the resident's own financial affairs unless the
 4184 resident or the resident's guardian authorizes the provider to
 4185 provide safekeeping for funds in accordance with procedures
 4186 equivalent to those provided in s. 429.27 ~~s. 400.427~~.

4187 (g) Share a room with the resident's spouse if both are
 4188 residents of the home.

4189 (h) Have reasonable opportunity for regular exercise
 4190 several times a week and to be outdoors at regular and frequent
 4191 intervals.

4192 (i) Exercise civil and religious liberties, including the
 4193 right to independent personal decisions. Religious beliefs or
 4194 practices and attendance at religious services may not be
 4195 imposed upon a resident.

4196 (j) Have access to adequate and appropriate health care.

4197 (k) Be free from chemical and physical restraints.

4198 (l) Have at least 30 days' notice of relocation or
 4199 termination of residency from the home unless, for medical
 4200 reasons, the resident is certified by a physician to require an

4201 emergency relocation to a facility providing a more skilled
 4202 level of care or the resident engages in a pattern of conduct
 4203 that is harmful or offensive to other residents. If a resident
 4204 has been adjudicated mentally incompetent, the resident's
 4205 guardian must be given at least 30 days' notice, except in an
 4206 emergency, of the relocation of a resident or of the termination
 4207 of a residency. The reasons for relocating a resident must be
 4208 set forth in writing.

4209 (m) Present grievances and recommend changes to the
 4210 provider, to staff, or to any other person without restraint,
 4211 interference, coercion, discrimination, or reprisal. This right
 4212 includes the right to have access to ombudsman volunteers and
 4213 advocates and the right to be a member of, to be active in, and
 4214 to associate with advocacy or special interest groups.

4215 (2) The provider shall ensure that residents and their
 4216 legal representatives are made aware of the rights, obligations,
 4217 and prohibitions set forth in this part. Residents must also be
 4218 given the names, addresses, and telephone numbers of the local
 4219 ombudsman council and the central abuse hotline where they may
 4220 lodge complaints.

4221 (3) The adult family-care home may not hamper or prevent
 4222 residents from exercising the rights specified in this section.

4223 (4) A provider or staff of an adult family-care home may
 4224 not serve notice upon a resident to leave the premises or take
 4225 any other retaliatory action against any person who:

4226 (a) Exercises any right set forth in this section.

4227 (b) Appears as a witness in any hearing, in or out of the
 4228 adult family-care home.

4229 (c) Files a civil action alleging a violation of this part
 4230 or notifies a state attorney or the Attorney General of a
 4231 possible violation of this part.

4232 (5) Any adult family-care home that terminates the
 4233 residency of an individual who has participated in activities
 4234 specified in subsection (4) must show good cause for the
 4235 termination in a court of competent jurisdiction.

4236 (6) Any person who reports a complaint concerning a
 4237 suspected violation of this part or the services and conditions
 4238 in an adult family-care home, or who testifies in any
 4239 administrative or judicial proceeding arising from such a
 4240 complaint, is immune from any civil or criminal liability
 4241 therefor, unless the person acted in bad faith or with malicious
 4242 purpose or the court finds that there was a complete absence of
 4243 a justiciable issue of either law or fact raised by the losing
 4244 party.

4245 Section 74. Paragraphs (c), (d), (e), and (f) of
 4246 subsection (5) of section 400.93, Florida Statutes, are amended
 4247 to read:

4248 400.93 Licensure required; exemptions; unlawful acts;
 4249 penalties.--

4250 (5) The following are exempt from home medical equipment
 4251 provider licensure, unless they have a separate company,
 4252 corporation, or division that is in the business of providing
 4253 home medical equipment and services for sale or rent to
 4254 consumers at their regular or temporary place of residence
 4255 pursuant to the provisions of this part:

4256 (c) Assisted living facilities licensed under chapter 429

4257 ~~part III~~, when serving their residents.

4258 (d) Home health agencies licensed under part III ~~IV~~.

4259 (e) Hospices licensed under part IV ~~VI~~.

4260 (f) Intermediate care facilities, homes for special
4261 services, and transitional living facilities licensed under part
4262 V ~~VIII~~.

4263 Section 75. Subsection (3) and paragraph (c) of subsection
4264 (10) of section 400.962, Florida Statutes, are amended to read:

4265 400.962 License required; license application.--

4266 (3) The basic license fee collected shall be deposited in
4267 the Health Care Trust Fund, established for carrying out the
4268 purposes of this chapter or chapter 429.

4269 (10)

4270 (c) Proof of compliance with the level 2 background
4271 screening requirements of chapter 435 which has been submitted
4272 within the previous 5 years in compliance with any other
4273 licensure requirements under this chapter or chapter 429
4274 satisfies the requirements of paragraph (a). Proof of compliance
4275 with background screening which has been submitted within the
4276 previous 5 years to fulfill the requirements of the Financial
4277 Services Commission and the Office of Insurance Regulation under
4278 chapter 651 as part of an application for a certificate of
4279 authority to operate a continuing care retirement community
4280 satisfies the requirements for the Department of Law Enforcement
4281 and Federal Bureau of Investigation background checks.

4282 Section 76. Paragraph (b) of subsection (1) of section
4283 400.980, Florida Statutes, is amended to read:

4284 400.980 Health care services pools.--

4285 (1) As used in this section, the term:

4286 (b) "Health care services pool" means any person, firm,
 4287 corporation, partnership, or association engaged for hire in the
 4288 business of providing temporary employment in health care
 4289 facilities, residential facilities, and agencies for licensed,
 4290 certified, or trained health care personnel including, without
 4291 limitation, nursing assistants, nurses' aides, and orderlies.
 4292 However, the term does not include nursing registries, a
 4293 facility licensed under this chapter or chapter 429 ~~400~~, a
 4294 health care services pool established within a health care
 4295 facility to provide services only within the confines of such
 4296 facility, or any individual contractor directly providing
 4297 temporary services to a health care facility without use or
 4298 benefit of a contracting agent.

4299 Section 77. Paragraphs (a), (b), (c), and (d) of
 4300 subsection (4) of section 400.9905, Florida Statutes, are
 4301 amended to read:

4302 400.9905 Definitions.--

4303 (4) "Clinic" means an entity at which health care services
 4304 are provided to individuals and which tenders charges for
 4305 reimbursement for such services, including a mobile clinic and a
 4306 portable equipment provider. For purposes of this part, the term
 4307 does not include and the licensure requirements of this part do
 4308 not apply to:

4309 (a) Entities licensed or registered by the state under
 4310 chapter 395; or entities licensed or registered by the state and
 4311 providing only health care services within the scope of services
 4312 authorized under their respective licenses granted under ss.

4313 383.30-383.335, chapter 390, chapter 394, chapter 397, this
 4314 chapter except part ~~X XIII~~, chapter 429, chapter 463, chapter
 4315 465, chapter 466, chapter 478, part I of chapter 483, chapter
 4316 484, or chapter 651; end-stage renal disease providers
 4317 authorized under 42 C.F.R. part 405, subpart U; or providers
 4318 certified under 42 C.F.R. part 485, subpart B or subpart H; or
 4319 any entity that provides neonatal or pediatric hospital-based
 4320 health care services by licensed practitioners solely within a
 4321 hospital licensed under chapter 395.

4322 (b) Entities that own, directly or indirectly, entities
 4323 licensed or registered by the state pursuant to chapter 395; or
 4324 entities that own, directly or indirectly, entities licensed or
 4325 registered by the state and providing only health care services
 4326 within the scope of services authorized pursuant to their
 4327 respective licenses granted under ss. 383.30-383.335, chapter
 4328 390, chapter 394, chapter 397, this chapter except part ~~X XIII~~,
 4329 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 4330 part I of chapter 483, chapter 484, chapter 651; end-stage renal
 4331 disease providers authorized under 42 C.F.R. part 405, subpart
 4332 U; or providers certified under 42 C.F.R. part 485, subpart B or
 4333 subpart H; or any entity that provides neonatal or pediatric
 4334 hospital-based health care services by licensed practitioners
 4335 solely within a hospital licensed under chapter 395.

4336 (c) Entities that are owned, directly or indirectly, by an
 4337 entity licensed or registered by the state pursuant to chapter
 4338 395; or entities that are owned, directly or indirectly, by an
 4339 entity licensed or registered by the state and providing only
 4340 health care services within the scope of services authorized

4341 pursuant to their respective licenses granted under ss. 383.30-
 4342 383.335, chapter 390, chapter 394, chapter 397, this chapter
 4343 except part ~~X XIII~~, chapter 429, chapter 463, chapter 465,
 4344 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
 4345 chapter 651; end-stage renal disease providers authorized under
 4346 42 C.F.R. part 405, subpart U; or providers certified under 42
 4347 C.F.R. part 485, subpart B or subpart H; or any entity that
 4348 provides neonatal or pediatric hospital-based health care
 4349 services by licensed practitioners solely within a hospital
 4350 under chapter 395.

4351 (d) Entities that are under common ownership, directly or
 4352 indirectly, with an entity licensed or registered by the state
 4353 pursuant to chapter 395; or entities that are under common
 4354 ownership, directly or indirectly, with an entity licensed or
 4355 registered by the state and providing only health care services
 4356 within the scope of services authorized pursuant to their
 4357 respective licenses granted under ss. 383.30-383.335, chapter
 4358 390, chapter 394, chapter 397, this chapter except part ~~X XIII~~,
 4359 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 4360 part I of chapter 483, chapter 484, or chapter 651; end-stage
 4361 renal disease providers authorized under 42 C.F.R. part 405,
 4362 subpart U; or providers certified under 42 C.F.R. part 485,
 4363 subpart B or subpart H; or any entity that provides neonatal or
 4364 pediatric hospital-based health care services by licensed
 4365 practitioners solely within a hospital licensed under chapter
 4366 395.

4367 Section 78. Subsection (6) of section 400.9935, Florida
 4368 Statutes, is amended to read:

4369 400.9935 Clinic responsibilities.--

4370 (6) Any licensed health care provider who violates this
 4371 part is subject to discipline in accordance with this chapter or
 4372 chapter 429 and his or her respective practice act.

4373 Section 79. Subsection (12) of section 401.23, Florida
 4374 Statutes, is amended to read:

4375 401.23 Definitions.--As used in this part, the term:

4376 (12) "Interfacility transfer" means the transportation by
 4377 ambulance of a patient between two facilities licensed under
 4378 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
 4379 pursuant to this part.

4380 Section 80. Paragraph (b) of subsection (2) of section
 4381 402.164, Florida Statutes, is amended to read:

4382 402.164 Legislative intent; definitions.--

4383 (2) As used in ss. 402.164-402.167, the term:

4384 (b) "Client" means a client as defined in s. 393.063, s.
 4385 394.67, s. 397.311, or s. 400.960, a forensic client or client
 4386 as defined in s. 916.106, a child or youth as defined in s.
 4387 39.01, a child as defined in s. 827.01, a family as defined in
 4388 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
 4389 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
 4390 recipient or recipient as defined in s. 409.901, a child
 4391 receiving child care as defined in s. 402.302, a disabled adult
 4392 as defined in s. 410.032 or s. 410.603, or a victim as defined
 4393 in s. 39.01 or s. 415.102 as each definition applies within its
 4394 respective chapter.

4395 Section 81. Subsection (10) of section 408.032, Florida
 4396 Statutes, is amended to read:

4397 408.032 Definitions relating to Health Facility and
 4398 Services Development Act.--As used in ss. 408.031-408.045, the
 4399 term:

4400 (10) "Hospice" or "hospice program" means a hospice as
 4401 defined in part IV ~~VI~~ of chapter 400.

4402 Section 82. Paragraph (b) of subsection (2) of section
 4403 408.033, Florida Statutes, is amended to read:

4404 408.033 Local and state health planning.--

4405 (2) FUNDING.--

4406 (b)1. A hospital licensed under chapter 395, a nursing
 4407 home licensed under chapter 400, and an assisted living facility
 4408 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
 4409 based on number of beds.

4410 2. All other facilities and organizations listed in
 4411 paragraph (a) shall each be assessed an annual fee of \$150.

4412 3. Facilities operated by the Department of Children and
 4413 Family Services, the Department of Health, or the Department of
 4414 Corrections and any hospital which meets the definition of rural
 4415 hospital pursuant to s. 395.602 are exempt from the assessment
 4416 required in this subsection.

4417 Section 83. Subsection (2) of section 408.034, Florida
 4418 Statutes, is amended to read:

4419 408.034 Duties and responsibilities of agency; rules.--

4420 (2) In the exercise of its authority to issue licenses to
 4421 health care facilities and health service providers, as provided
 4422 under chapters 393 and ~~7~~ 395 ~~7~~ and parts II and IV ~~VI~~ of chapter
 4423 400, the agency may not issue a license to any health care
 4424 facility or health service provider that fails to receive a

4425 certificate of need or an exemption for the licensed facility or
 4426 service.

4427 Section 84. Subsections (28) and (29) of section 408.07,
 4428 Florida Statutes, are amended to read:

4429 408.07 Definitions.--As used in this chapter, with the
 4430 exception of ss. 408.031-408.045, the term:

4431 (28) "Home health agency" means an organization licensed
 4432 under part III ~~IV~~ of chapter 400.

4433 (29) "Hospice" means an organization licensed under part
 4434 IV ~~VI~~ of chapter 400.

4435 Section 85. Subsection (3) of section 408.831, Florida
 4436 Statutes, is amended to read:

4437 408.831 Denial, suspension, or revocation of a license,
 4438 registration, certificate, or application.--

4439 (3) This section provides standards of enforcement
 4440 applicable to all entities licensed or regulated by the Agency
 4441 for Health Care Administration. This section controls over any
 4442 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
 4443 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
 4444 pursuant to those chapters.

4445 Section 86. Subsection (2) of section 409.212, Florida
 4446 Statutes, is amended to read:

4447 409.212 Optional supplementation.--

4448 (2) The base rate of payment for optional state
 4449 supplementation shall be established by the department within
 4450 funds appropriated. Additional amounts may be provided for
 4451 mental health residents in facilities designed to provide
 4452 limited mental health services as provided for in s. 429.075 ~~s.~~

4453 | ~~400.4075~~. The base rate of payment does not include the personal
 4454 | needs allowance.

4455 | Section 87. Paragraph (e) of subsection (4) of section
 4456 | 409.221, Florida Statutes, is amended to read:

4457 | 409.221 Consumer-directed care program.--

4458 | (4) CONSUMER-DIRECTED CARE.--

4459 | (e) Services.--Consumers shall use the budget allowance
 4460 | only to pay for home and community-based services that meet the
 4461 | consumer's long-term care needs and are a cost-efficient use of
 4462 | funds. Such services may include, but are not limited to, the
 4463 | following:

4464 | 1. Personal care.

4465 | 2. Homemaking and chores, including housework, meals,
 4466 | shopping, and transportation.

4467 | 3. Home modifications and assistive devices which may
 4468 | increase the consumer's independence or make it possible to
 4469 | avoid institutional placement.

4470 | 4. Assistance in taking self-administered medication.

4471 | 5. Day care and respite care services, including those
 4472 | provided by nursing home facilities pursuant to s. 400.141(6) or
 4473 | by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
 4474 | ~~400.554~~.

4475 | 6. Personal care and support services provided in an
 4476 | assisted living facility.

4477 | Section 88. Subsection (4) of section 409.905, Florida
 4478 | Statutes, is amended to read:

4479 | 409.905 Mandatory Medicaid services.--The agency may make
 4480 | payments for the following services, which are required of the

4481 state by Title XIX of the Social Security Act, furnished by
 4482 Medicaid providers to recipients who are determined to be
 4483 eligible on the dates on which the services were provided. Any
 4484 service under this section shall be provided only when medically
 4485 necessary and in accordance with state and federal law.
 4486 Mandatory services rendered by providers in mobile units to
 4487 Medicaid recipients may be restricted by the agency. Nothing in
 4488 this section shall be construed to prevent or limit the agency
 4489 from adjusting fees, reimbursement rates, lengths of stay,
 4490 number of visits, number of services, or any other adjustments
 4491 necessary to comply with the availability of moneys and any
 4492 limitations or directions provided for in the General
 4493 Appropriations Act or chapter 216.

4494 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
 4495 nursing and home health aide services, supplies, appliances, and
 4496 durable medical equipment, necessary to assist a recipient
 4497 living at home. An entity that provides services pursuant to
 4498 this subsection shall be licensed under part III ~~IV~~ of chapter
 4499 400. These services, equipment, and supplies, or reimbursement
 4500 therefor, may be limited as provided in the General
 4501 Appropriations Act and do not include services, equipment, or
 4502 supplies provided to a person residing in a hospital or nursing
 4503 facility.

4504 (a) In providing home health care services, the agency may
 4505 require prior authorization of care based on diagnosis.

4506 (b) The agency shall implement a comprehensive utilization
 4507 management program that requires prior authorization of all
 4508 private duty nursing services, an individualized treatment plan

4509 that includes information about medication and treatment orders,
 4510 treatment goals, methods of care to be used, and plans for care
 4511 coordination by nurses and other health professionals. The
 4512 utilization management program shall also include a process for
 4513 periodically reviewing the ongoing use of private duty nursing
 4514 services. The assessment of need shall be based on a child's
 4515 condition, family support and care supplements, a family's
 4516 ability to provide care, and a family's and child's schedule
 4517 regarding work, school, sleep, and care for other family
 4518 dependents. When implemented, the private duty nursing
 4519 utilization management program shall replace the current
 4520 authorization program used by the Agency for Health Care
 4521 Administration and the Children's Medical Services program of
 4522 the Department of Health. The agency may competitively bid on a
 4523 contract to select a qualified organization to provide
 4524 utilization management of private duty nursing services. The
 4525 agency is authorized to seek federal waivers to implement this
 4526 initiative.

4527 Section 89. Subsection (14) of section 409.906, Florida
 4528 Statutes, is amended to read:

4529 409.906 Optional Medicaid services.--Subject to specific
 4530 appropriations, the agency may make payments for services which
 4531 are optional to the state under Title XIX of the Social Security
 4532 Act and are furnished by Medicaid providers to recipients who
 4533 are determined to be eligible on the dates on which the services
 4534 were provided. Any optional service that is provided shall be
 4535 provided only when medically necessary and in accordance with
 4536 state and federal law. Optional services rendered by providers

4537 in mobile units to Medicaid recipients may be restricted or
 4538 prohibited by the agency. Nothing in this section shall be
 4539 construed to prevent or limit the agency from adjusting fees,
 4540 reimbursement rates, lengths of stay, number of visits, or
 4541 number of services, or making any other adjustments necessary to
 4542 comply with the availability of moneys and any limitations or
 4543 directions provided for in the General Appropriations Act or
 4544 chapter 216. If necessary to safeguard the state's systems of
 4545 providing services to elderly and disabled persons and subject
 4546 to the notice and review provisions of s. 216.177, the Governor
 4547 may direct the Agency for Health Care Administration to amend
 4548 the Medicaid state plan to delete the optional Medicaid service
 4549 known as "Intermediate Care Facilities for the Developmentally
 4550 Disabled." Optional services may include:

4551 (14) HOSPICE CARE SERVICES.--The agency may pay for all
 4552 reasonable and necessary services for the palliation or
 4553 management of a recipient's terminal illness, if the services
 4554 are provided by a hospice that is licensed under part IV ~~VI~~ of
 4555 chapter 400 and meets Medicare certification requirements.

4556 Section 90. Subsection (7) and paragraph (a) of subsection
 4557 (8) of section 409.907, Florida Statutes, are amended to read:

4558 409.907 Medicaid provider agreements.--The agency may make
 4559 payments for medical assistance and related services rendered to
 4560 Medicaid recipients only to an individual or entity who has a
 4561 provider agreement in effect with the agency, who is performing
 4562 services or supplying goods in accordance with federal, state,
 4563 and local law, and who agrees that no person shall, on the
 4564 grounds of handicap, race, color, or national origin, or for any

4565 other reason, be subjected to discrimination under any program
4566 or activity for which the provider receives payment from the
4567 agency.

4568 (7) The agency may require, as a condition of
4569 participating in the Medicaid program and before entering into
4570 the provider agreement, that the provider submit information, in
4571 an initial and any required renewal applications, concerning the
4572 professional, business, and personal background of the provider
4573 and permit an onsite inspection of the provider's service
4574 location by agency staff or other personnel designated by the
4575 agency to perform this function. The agency shall perform a
4576 random onsite inspection, within 60 days after receipt of a
4577 fully complete new provider's application, of the provider's
4578 service location prior to making its first payment to the
4579 provider for Medicaid services to determine the applicant's
4580 ability to provide the services that the applicant is proposing
4581 to provide for Medicaid reimbursement. The agency is not
4582 required to perform an onsite inspection of a provider or
4583 program that is licensed by the agency, that provides services
4584 under waiver programs for home and community-based services, or
4585 that is licensed as a medical foster home by the Department of
4586 Children and Family Services. As a continuing condition of
4587 participation in the Medicaid program, a provider shall
4588 immediately notify the agency of any current or pending
4589 bankruptcy filing. Before entering into the provider agreement,
4590 or as a condition of continuing participation in the Medicaid
4591 program, the agency may also require that Medicaid providers
4592 reimbursed on a fee-for-services basis or fee schedule basis

4593 | which is not cost-based, post a surety bond not to exceed
 4594 | \$50,000 or the total amount billed by the provider to the
 4595 | program during the current or most recent calendar year,
 4596 | whichever is greater. For new providers, the amount of the
 4597 | surety bond shall be determined by the agency based on the
 4598 | provider's estimate of its first year's billing. If the
 4599 | provider's billing during the first year exceeds the bond
 4600 | amount, the agency may require the provider to acquire an
 4601 | additional bond equal to the actual billing level of the
 4602 | provider. A provider's bond shall not exceed \$50,000 if a
 4603 | physician or group of physicians licensed under chapter 458,
 4604 | chapter 459, or chapter 460 has a 50 percent or greater
 4605 | ownership interest in the provider or if the provider is an
 4606 | assisted living facility licensed under ~~part III of chapter 429~~
 4607 | 400. The bonds permitted by this section are in addition to the
 4608 | bonds referenced in s. 400.179(5)(d). If the provider is a
 4609 | corporation, partnership, association, or other entity, the
 4610 | agency may require the provider to submit information concerning
 4611 | the background of that entity and of any principal of the
 4612 | entity, including any partner or shareholder having an ownership
 4613 | interest in the entity equal to 5 percent or greater, and any
 4614 | treating provider who participates in or intends to participate
 4615 | in Medicaid through the entity. The information must include:
 4616 | (a) Proof of holding a valid license or operating
 4617 | certificate, as applicable, if required by the state or local
 4618 | jurisdiction in which the provider is located or if required by
 4619 | the Federal Government.
 4620 | (b) Information concerning any prior violation, fine,

4621 suspension, termination, or other administrative action taken
 4622 under the Medicaid laws, rules, or regulations of this state or
 4623 of any other state or the Federal Government; any prior
 4624 violation of the laws, rules, or regulations relating to the
 4625 Medicare program; any prior violation of the rules or
 4626 regulations of any other public or private insurer; and any
 4627 prior violation of the laws, rules, or regulations of any
 4628 regulatory body of this or any other state.

4629 (c) Full and accurate disclosure of any financial or
 4630 ownership interest that the provider, or any principal, partner,
 4631 or major shareholder thereof, may hold in any other Medicaid
 4632 provider or health care related entity or any other entity that
 4633 is licensed by the state to provide health or residential care
 4634 and treatment to persons.

4635 (d) If a group provider, identification of all members of
 4636 the group and attestation that all members of the group are
 4637 enrolled in or have applied to enroll in the Medicaid program.

4638 (8)(a) Each provider, or each principal of the provider if
 4639 the provider is a corporation, partnership, association, or
 4640 other entity, seeking to participate in the Medicaid program
 4641 must submit a complete set of his or her fingerprints to the
 4642 agency for the purpose of conducting a criminal history record
 4643 check. Principals of the provider include any officer,
 4644 director, billing agent, managing employee, or affiliated
 4645 person, or any partner or shareholder who has an ownership
 4646 interest equal to 5 percent or more in the provider. However, a
 4647 director of a not-for-profit corporation or organization is not
 4648 a principal for purposes of a background investigation as

4649 required by this section if the director: serves solely in a
 4650 voluntary capacity for the corporation or organization, does not
 4651 regularly take part in the day-to-day operational decisions of
 4652 the corporation or organization, receives no remuneration from
 4653 the not-for-profit corporation or organization for his or her
 4654 service on the board of directors, has no financial interest in
 4655 the not-for-profit corporation or organization, and has no
 4656 family members with a financial interest in the not-for-profit
 4657 corporation or organization; and if the director submits an
 4658 affidavit, under penalty of perjury, to this effect to the
 4659 agency and the not-for-profit corporation or organization
 4660 submits an affidavit, under penalty of perjury, to this effect
 4661 to the agency as part of the corporation's or organization's
 4662 Medicaid provider agreement application. Notwithstanding the
 4663 above, the agency may require a background check for any person
 4664 reasonably suspected by the agency to have been convicted of a
 4665 crime. This subsection shall not apply to:

- 4666 1. A hospital licensed under chapter 395;
- 4667 2. A nursing home licensed under chapter 400;
- 4668 3. A hospice licensed under chapter 400;
- 4669 4. An assisted living facility licensed under chapter 429;
- 4670 ~~400~~;
- 4671 5. A unit of local government, except that requirements of
 4672 this subsection apply to nongovernmental providers and entities
 4673 when contracting with the local government to provide Medicaid
 4674 services. The actual cost of the state and national criminal
 4675 history record checks must be borne by the nongovernmental
 4676 provider or entity; or

4677 6. Any business that derives more than 50 percent of its
 4678 revenue from the sale of goods to the final consumer, and the
 4679 business or its controlling parent either is required to file a
 4680 form 10-K or other similar statement with the Securities and
 4681 Exchange Commission or has a net worth of \$50 million or more.

4682 Section 91. Paragraph (c) of subsection (5) of section
 4683 409.912, Florida Statutes, is amended to read:

4684 409.912 Cost-effective purchasing of health care.--The
 4685 agency shall purchase goods and services for Medicaid recipients
 4686 in the most cost-effective manner consistent with the delivery
 4687 of quality medical care. To ensure that medical services are
 4688 effectively utilized, the agency may, in any case, require a
 4689 confirmation or second physician's opinion of the correct
 4690 diagnosis for purposes of authorizing future services under the
 4691 Medicaid program. This section does not restrict access to
 4692 emergency services or poststabilization care services as defined
 4693 in 42 C.F.R. part 438.114. Such confirmation or second opinion
 4694 shall be rendered in a manner approved by the agency. The agency
 4695 shall maximize the use of prepaid per capita and prepaid
 4696 aggregate fixed-sum basis services when appropriate and other
 4697 alternative service delivery and reimbursement methodologies,
 4698 including competitive bidding pursuant to s. 287.057, designed
 4699 to facilitate the cost-effective purchase of a case-managed
 4700 continuum of care. The agency shall also require providers to
 4701 minimize the exposure of recipients to the need for acute
 4702 inpatient, custodial, and other institutional care and the
 4703 inappropriate or unnecessary use of high-cost services. The
 4704 agency shall contract with a vendor to monitor and evaluate the

4705 clinical practice patterns of providers in order to identify
4706 trends that are outside the normal practice patterns of a
4707 provider's professional peers or the national guidelines of a
4708 provider's professional association. The vendor must be able to
4709 provide information and counseling to a provider whose practice
4710 patterns are outside the norms, in consultation with the agency,
4711 to improve patient care and reduce inappropriate utilization.
4712 The agency may mandate prior authorization, drug therapy
4713 management, or disease management participation for certain
4714 populations of Medicaid beneficiaries, certain drug classes, or
4715 particular drugs to prevent fraud, abuse, overuse, and possible
4716 dangerous drug interactions. The Pharmaceutical and Therapeutics
4717 Committee shall make recommendations to the agency on drugs for
4718 which prior authorization is required. The agency shall inform
4719 the Pharmaceutical and Therapeutics Committee of its decisions
4720 regarding drugs subject to prior authorization. The agency is
4721 authorized to limit the entities it contracts with or enrolls as
4722 Medicaid providers by developing a provider network through
4723 provider credentialing. The agency may competitively bid single-
4724 source-provider contracts if procurement of goods or services
4725 results in demonstrated cost savings to the state without
4726 limiting access to care. The agency may limit its network based
4727 on the assessment of beneficiary access to care, provider
4728 availability, provider quality standards, time and distance
4729 standards for access to care, the cultural competence of the
4730 provider network, demographic characteristics of Medicaid
4731 beneficiaries, practice and provider-to-beneficiary standards,
4732 appointment wait times, beneficiary use of services, provider

4733 turnover, provider profiling, provider licensure history,
4734 previous program integrity investigations and findings, peer
4735 review, provider Medicaid policy and billing compliance records,
4736 clinical and medical record audits, and other factors. Providers
4737 shall not be entitled to enrollment in the Medicaid provider
4738 network. The agency shall determine instances in which allowing
4739 Medicaid beneficiaries to purchase durable medical equipment and
4740 other goods is less expensive to the Medicaid program than long-
4741 term rental of the equipment or goods. The agency may establish
4742 rules to facilitate purchases in lieu of long-term rentals in
4743 order to protect against fraud and abuse in the Medicaid program
4744 as defined in s. 409.913. The agency may seek federal waivers
4745 necessary to administer these policies.

4746 (5) By December 1, 2005, the Agency for Health Care
4747 Administration, in partnership with the Department of Elderly
4748 Affairs, shall create an integrated, fixed-payment delivery
4749 system for Medicaid recipients who are 60 years of age or older.
4750 The Agency for Health Care Administration shall implement the
4751 integrated system initially on a pilot basis in two areas of the
4752 state. In one of the areas enrollment shall be on a voluntary
4753 basis. The program must transfer all Medicaid services for
4754 eligible elderly individuals who choose to participate into an
4755 integrated-care management model designed to serve Medicaid
4756 recipients in the community. The program must combine all
4757 funding for Medicaid services provided to individuals 60 years
4758 of age or older into the integrated system, including funds for
4759 Medicaid home and community-based waiver services; all Medicaid
4760 services authorized in ss. 409.905 and 409.906, excluding funds

4761 for Medicaid nursing home services unless the agency is able to
 4762 demonstrate how the integration of the funds will improve
 4763 coordinated care for these services in a less costly manner; and
 4764 Medicare coinsurance and deductibles for persons dually eligible
 4765 for Medicaid and Medicare as prescribed in s. 409.908(13).

4766 (c) The agency must ensure that the capitation-rate-
 4767 setting methodology for the integrated system is actuarially
 4768 sound and reflects the intent to provide quality care in the
 4769 least restrictive setting. The agency must also require
 4770 integrated-system providers to develop a credentialing system
 4771 for service providers and to contract with all Gold Seal nursing
 4772 homes, where feasible, and exclude, where feasible, chronically
 4773 poor-performing facilities and providers as defined by the
 4774 agency. The integrated system must provide that if the recipient
 4775 resides in a noncontracted residential facility licensed under
 4776 chapter 400 or chapter 429 at the time the integrated system is
 4777 initiated, the recipient must be permitted to continue to reside
 4778 in the noncontracted facility as long as the recipient desires.
 4779 The integrated system must also provide that, in the absence of
 4780 a contract between the integrated-system provider and the
 4781 residential facility licensed under chapter 400 or chapter 429,
 4782 current Medicaid rates must prevail. The agency and the
 4783 Department of Elderly Affairs must jointly develop procedures to
 4784 manage the services provided through the integrated system in
 4785 order to ensure quality and recipient choice.

4786 Section 92. Section 410.031, Florida Statutes, is amended
 4787 to read:

4788 410.031 Legislative intent.--It is the intent of the

4789 Legislature to encourage the provision of care for disabled
 4790 adults in family-type living arrangements in private homes as an
 4791 alternative to institutional or nursing home care for such
 4792 persons. The provisions of ss. 410.031-410.036 are intended to
 4793 be supplemental to the provisions of chapters ~~chapter~~ 400 and
 4794 429, relating to the licensing and regulation of nursing homes
 4795 and assisted living facilities, and do not exempt any person who
 4796 is otherwise subject to regulation under chapter 400 or chapter
 4797 429.

4798 Section 93. Section 410.034, Florida Statutes, is amended
 4799 to read:

4800 410.034 Department determination of fitness to provide
 4801 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
 4802 caring for an adult who is related to such person by blood or
 4803 marriage is not subject to the Assisted Living Facilities Act.
 4804 If, however, the person who plans to provide home care under
 4805 this act is found by the department to be unable to provide this
 4806 care, the department shall notify the person wishing to provide
 4807 home care of this determination, and the person shall not be
 4808 eligible for subsidy payments under ss. 410.031-410.036.

4809 Section 94. Subsection (31) of section 413.20, Florida
 4810 Statutes, is amended to read:

4811 413.20 Definitions.--As used in this part, the term:

4812 (31) "Transitional living facility" means a state-approved
 4813 facility as defined and licensed pursuant to chapter 400 or
 4814 chapter 429 and division-approved in accord with this part.

4815 Section 95. Section 415.1111, Florida Statutes, is amended
 4816 to read:

4817 415.1111 Civil actions.--A vulnerable adult who has been
 4818 abused, neglected, or exploited as specified in this chapter has
 4819 a cause of action against any perpetrator and may recover actual
 4820 and punitive damages for such abuse, neglect, or exploitation.
 4821 The action may be brought by the vulnerable adult, or that
 4822 person's guardian, by a person or organization acting on behalf
 4823 of the vulnerable adult with the consent of that person or that
 4824 person's guardian, or by the personal representative of the
 4825 estate of a deceased victim without regard to whether the cause
 4826 of death resulted from the abuse, neglect, or exploitation. The
 4827 action may be brought in any court of competent jurisdiction to
 4828 enforce such action and to recover actual and punitive damages
 4829 for any deprivation of or infringement on the rights of a
 4830 vulnerable adult. A party who prevails in any such action may be
 4831 entitled to recover reasonable attorney's fees, costs of the
 4832 action, and damages. The remedies provided in this section are
 4833 in addition to and cumulative with other legal and
 4834 administrative remedies available to a vulnerable adult.
 4835 Notwithstanding the foregoing, any civil action for damages
 4836 against any licensee or entity who establishes, controls,
 4837 conducts, manages, or operates a facility licensed under part II
 4838 of chapter 400 relating to its operation of the licensed
 4839 facility shall be brought pursuant to s. 400.023, or against any
 4840 licensee or entity who establishes, controls, conducts, manages,
 4841 or operates a facility licensed under part I ~~III~~ of chapter 429
 4842 ~~400~~ relating to its operation of the licensed facility shall be
 4843 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
 4844 entity shall not be vicariously liable for the acts or omissions

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4845 of its employees or agents or any other third party in an action
 4846 brought under this section.

4847 Section 96. Paragraph (d) of subsection (1) of section
 4848 419.001, Florida Statutes, is amended to read:

4849 419.001 Site selection of community residential homes.--

4850 (1) For the purposes of this section, the following
 4851 definitions shall apply:

4852 (d) "Resident" means any of the following: a frail elder
 4853 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
 4854 handicapped person as defined in s. 760.22(7)(a); a
 4855 developmentally disabled person as defined in s. 393.063; a
 4856 nondangerous mentally ill person as defined in s. 394.455(18);
 4857 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
 4858 s. 985.03(8).

4859 Section 97. Section 430.601, Florida Statutes, is amended
 4860 to read:

4861 430.601 Home care for the elderly; legislative intent.--It
 4862 is the intent of the Legislature to encourage the provision of
 4863 care for the elderly in family-type living arrangements in
 4864 private homes as an alternative to institutional or nursing home
 4865 care for such persons. The provisions of ss. 430.601-430.606 are
 4866 intended to be supplemental to the provisions of chapters
 4867 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
 4868 nursing homes and assisted living facilities, and do not exempt
 4869 any person who is otherwise subject to regulation under those
 4870 chapters ~~the provisions of that chapter~~.

4871 Section 98. Subsection (7) of section 430.703, Florida
 4872 Statutes, is amended to read:

4873 430.703 Definitions.--As used in this act, the term:
 4874 (7) "Other qualified provider" means an entity licensed
 4875 under chapter 400 or chapter 429 that demonstrates a long-term
 4876 care continuum and meets all requirements pursuant to an
 4877 interagency agreement between the agency and the department.

4878 Section 99. Paragraph (a) of subsection (3) of section
 4879 435.03, Florida Statutes, is amended to read:

4880 435.03 Level 1 screening standards.--

4881 (3) Standards must also ensure that the person:

4882 (a) For employees and employers licensed or registered
 4883 pursuant to chapter 400 or chapter 429, and for employees and
 4884 employers of developmental services institutions as defined in
 4885 s. 393.063, intermediate care facilities for the developmentally
 4886 disabled as defined in s. 393.063, and mental health treatment
 4887 facilities as defined in s. 394.455, meets the requirements of
 4888 this chapter.

4889 Section 100. Paragraph (a) of subsection (4) of section
 4890 435.04, Florida Statutes, is amended to read:

4891 435.04 Level 2 screening standards.--

4892 (4) Standards must also ensure that the person:

4893 (a) For employees or employers licensed or registered
 4894 pursuant to chapter 400 or chapter 429, does not have a
 4895 confirmed report of abuse, neglect, or exploitation as defined
 4896 in s. 415.102(6), which has been uncontested or upheld under s.
 4897 415.103.

4898 Section 101. Paragraph (g) of subsection (1) of section
 4899 440.13, Florida Statutes, is amended to read:

4900 440.13 Medical services and supplies; penalty for

4901 violations; limitations.--

4902 (1) DEFINITIONS.--As used in this section, the term:

4903 (g) "Health care facility" means any hospital licensed
 4904 under chapter 395 and any health care institution licensed under
 4905 chapter 400 or chapter 429.

4906 Section 102. Subsection (8) of section 468.1685, Florida
 4907 Statutes, is amended to read:

4908 468.1685 Powers and duties of board and department.--It is
 4909 the function and duty of the board, together with the
 4910 department, to:

4911 (8) Set up procedures by rule for advising and acting
 4912 together with the Department of Health and other boards of other
 4913 health professions in matters affecting procedures and methods
 4914 for effectively enforcing the purpose of this part and the
 4915 administration of chapters ~~chapter~~ 400 and 429.

4916 Section 103. Paragraph (k) of subsection (1) of section
 4917 468.505, Florida Statutes, is amended to read:

4918 468.505 Exemptions; exceptions.--

4919 (1) Nothing in this part may be construed as prohibiting
 4920 or restricting the practice, services, or activities of:

4921 (k) A person employed by a hospital licensed under chapter
 4922 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
 4923 under part II ~~or part III~~ of chapter 400, by an assisted living
 4924 facility licensed under chapter 429, or by a continuing care
 4925 facility certified under chapter 651, if the person is employed
 4926 in compliance with the laws and rules adopted thereunder
 4927 regarding the operation of its dietetic department.

4928 Section 104. Subsection (11) of section 477.025, Florida

4929 Statutes, is amended to read:

4930 477.025 Cosmetology salons; specialty salons; requisites;
4931 licensure; inspection; mobile cosmetology salons.--

4932 (11) Facilities licensed under part II ~~or part III~~ of
4933 chapter 400 or under chapter 429 are ~~shall be~~ exempt from the
4934 ~~provisions of~~ this section, and a cosmetologist licensed
4935 pursuant to s. 477.019 may provide salon services exclusively
4936 for facility residents.

4937 Section 105. Subsection (5) of section 483.285, Florida
4938 Statutes, is amended to read:

4939 483.285 Application of part; exemptions.--This part
4940 applies to all multiphasic health testing centers within the
4941 state, but does not apply to:

4942 (5) A home health agency licensed under part III ~~IV~~ of
4943 chapter 400.

4944 Section 106. Paragraph (a) of subsection (2) of section
4945 509.032, Florida Statutes, is amended to read:

4946 509.032 Duties.--

4947 (2) INSPECTION OF PREMISES.--

4948 (a) The division has responsibility and jurisdiction for
4949 all inspections required by this chapter. The division has
4950 responsibility for quality assurance. Each licensed
4951 establishment shall be inspected at least biannually, except for
4952 transient and nontransient apartments, which shall be inspected
4953 at least annually, and shall be inspected at such other times as
4954 the division determines is necessary to ensure the public's
4955 health, safety, and welfare. The division shall establish a
4956 system to determine inspection frequency. Public lodging units

4957 classified as resort condominiums or resort dwellings are not
4958 subject to this requirement, but shall be made available to the
4959 division upon request. If, during the inspection of a public
4960 lodging establishment classified for renting to transient or
4961 nontransient tenants, an inspector identifies vulnerable adults
4962 who appear to be victims of neglect, as defined in s. 415.102,
4963 or, in the case of a building that is not equipped with
4964 automatic sprinkler systems, tenants or clients who may be
4965 unable to self-preserve in an emergency, the division shall
4966 convene meetings with the following agencies as appropriate to
4967 the individual situation: the Department of Health, the
4968 Department of Elderly Affairs, the area agency on aging, the
4969 local fire marshal, the landlord and affected tenants and
4970 clients, and other relevant organizations, to develop a plan
4971 which improves the prospects for safety of affected residents
4972 and, if necessary, identifies alternative living arrangements
4973 such as facilities licensed under part II ~~or part III~~ of chapter
4974 400 or under chapter 429.

4975 Section 107. Subsection (1) of section 509.241, Florida
4976 Statutes, is amended to read:

4977 509.241 Licenses required; exceptions.--

4978 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
4979 establishment and public food service establishment shall obtain
4980 a license from the division. Such license may not be transferred
4981 from one place or individual to another. It shall be a
4982 misdemeanor of the second degree, punishable as provided in s.
4983 775.082 or s. 775.083, for such an establishment to operate
4984 without a license. Local law enforcement shall provide immediate

4985 assistance in pursuing an illegally operating establishment. The
 4986 division may refuse a license, or a renewal thereof, to any
 4987 establishment that is not constructed and maintained in
 4988 accordance with law and with the rules of the division. The
 4989 division may refuse to issue a license, or a renewal thereof, to
 4990 any establishment an operator of which, within the preceding 5
 4991 years, has been adjudicated guilty of, or has forfeited a bond
 4992 when charged with, any crime reflecting on professional
 4993 character, including soliciting for prostitution, pandering,
 4994 letting premises for prostitution, keeping a disorderly place,
 4995 or illegally dealing in controlled substances as defined in
 4996 chapter 893, whether in this state or in any other jurisdiction
 4997 within the United States, or has had a license denied, revoked,
 4998 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
 4999 renewed annually, and the division shall adopt a rule
 5000 establishing a staggered schedule for license renewals. If any
 5001 license expires while administrative charges are pending against
 5002 the license, the proceedings against the license shall continue
 5003 to conclusion as if the license were still in effect.

5004 Section 108. Subsection (1) of section 627.6617, Florida
 5005 Statutes, is amended to read:

5006 627.6617 Coverage for home health care services.--

5007 (1) Any group health insurance policy providing coverage
 5008 on an expense-incurred basis shall provide coverage for home
 5009 health care by a home health care agency licensed pursuant to
 5010 part III ~~IV~~ of chapter 400. Such coverage may be limited to home
 5011 health care under a plan of treatment prescribed by a licensed
 5012 physician. Services may be performed by a registered graduate

5013 nurse, a licensed practical nurse, a physical therapist, a
 5014 speech therapist, an occupational therapist, or a home health
 5015 aide. Provisions for utilization review may be imposed, provided
 5016 that similar provisions apply to all other types of health care
 5017 services.

5018 Section 109. Subsection (1) of section 627.732, Florida
 5019 Statutes, is amended to read:

5020 627.732 Definitions.--As used in ss. 627.730-627.7405, the
 5021 term:

5022 (1) "Broker" means any person not possessing a license
 5023 under chapter 395, chapter 400, chapter 429, chapter 458,
 5024 chapter 459, chapter 460, chapter 461, or chapter 641 who
 5025 charges or receives compensation for any use of medical
 5026 equipment and is not the 100-percent owner or the 100-percent
 5027 lessee of such equipment. For purposes of this section, such
 5028 owner or lessee may be an individual, a corporation, a
 5029 partnership, or any other entity and any of its 100-percent-
 5030 owned affiliates and subsidiaries. For purposes of this
 5031 subsection, the term "lessee" means a long-term lessee under a
 5032 capital or operating lease, but does not include a part-time
 5033 lessee. The term "broker" does not include a hospital or
 5034 physician management company whose medical equipment is
 5035 ancillary to the practices managed, a debt collection agency, or
 5036 an entity that has contracted with the insurer to obtain a
 5037 discounted rate for such services; nor does the term include a
 5038 management company that has contracted to provide general
 5039 management services for a licensed physician or health care
 5040 facility and whose compensation is not materially affected by

5041 the usage or frequency of usage of medical equipment or an
 5042 entity that is 100-percent owned by one or more hospitals or
 5043 physicians. The term "broker" does not include a person or
 5044 entity that certifies, upon request of an insurer, that:

- 5045 (a) It is a clinic licensed under ss. 400.990-400.995;
- 5046 (b) It is a 100-percent owner of medical equipment; and
- 5047 (c) The owner's only part-time lease of medical equipment
 5048 for personal injury protection patients is on a temporary basis
 5049 not to exceed 30 days in a 12-month period, and such lease is
 5050 solely for the purposes of necessary repair or maintenance of
 5051 the 100-percent-owned medical equipment or pending the arrival
 5052 and installation of the newly purchased or a replacement for the
 5053 100-percent-owned medical equipment, or for patients for whom,
 5054 because of physical size or claustrophobia, it is determined by
 5055 the medical director or clinical director to be medically
 5056 necessary that the test be performed in medical equipment that
 5057 is open-style. The leased medical equipment cannot be used by
 5058 patients who are not patients of the registered clinic for
 5059 medical treatment of services. Any person or entity making a
 5060 false certification under this subsection commits insurance
 5061 fraud as defined in s. 817.234. However, the 30-day period
 5062 provided in this paragraph may be extended for an additional 60
 5063 days as applicable to magnetic resonance imaging equipment if
 5064 the owner certifies that the extension otherwise complies with
 5065 this paragraph.

5066 Section 110. Subsection (2) of section 651.011, Florida
 5067 Statutes, is amended to read:

5068 651.011 Definitions.--For the purposes of this chapter,

5069 the term:

5070 (2) "Continuing care" or "care" means furnishing pursuant
 5071 to a contract shelter and either nursing care or personal
 5072 services as defined in s. 429.02 ~~s. 400.402~~, whether such
 5073 nursing care or personal services are provided in the facility
 5074 or in another setting designated by the contract for continuing
 5075 care, to an individual not related by consanguinity or affinity
 5076 to the provider furnishing such care, upon payment of an
 5077 entrance fee. Other personal services provided shall be
 5078 designated in the continuing care contract. Contracts to provide
 5079 continuing care include agreements to provide care for any
 5080 duration, including contracts that are terminable by either
 5081 party.

5082 Section 111. Paragraph (c) of subsection (2) of section
 5083 651.022, Florida Statutes, is amended to read:

5084 651.022 Provisional certificate of authority;
 5085 application.--

5086 (2) The application for a provisional certificate of
 5087 authority shall be on a form prescribed by the commission and
 5088 shall contain the following information:

5089 (c)1. Evidence that the applicant is reputable and of
 5090 responsible character. If the applicant is a firm, association,
 5091 organization, partnership, business trust, corporation, or
 5092 company, the form shall require evidence that the members or
 5093 shareholders are reputable and of responsible character, and the
 5094 person in charge of providing care under a certificate of
 5095 authority shall likewise be required to produce evidence of
 5096 being reputable and of responsible character.

5097 2. Evidence satisfactory to the office of the ability of
 5098 the applicant to comply with the provisions of this chapter and
 5099 with rules adopted by the commission pursuant to this chapter.

5100 3. A statement of whether a person identified in the
 5101 application for a provisional certificate of authority or the
 5102 administrator or manager of the facility, if such person has
 5103 been designated, or any such person living in the same location:

5104 a. Has been convicted of a felony or has pleaded nolo
 5105 contendere to a felony charge, or has been held liable or has
 5106 been enjoined in a civil action by final judgment, if the felony
 5107 or civil action involved fraud, embezzlement, fraudulent
 5108 conversion, or misappropriation of property.

5109 b. Is subject to a currently effective injunctive or
 5110 restrictive order or federal or state administrative order
 5111 relating to business activity or health care as a result of an
 5112 action brought by a public agency or department, including,
 5113 without limitation, an action affecting a license under chapter
 5114 400 or chapter 429.

5115
 5116 The statement shall set forth the court or agency, the date of
 5117 conviction or judgment, and the penalty imposed or damages
 5118 assessed, or the date, nature, and issuer of the order. Before
 5119 determining whether a provisional certificate of authority is to
 5120 be issued, the office may make an inquiry to determine the
 5121 accuracy of the information submitted pursuant to subparagraphs
 5122 1. and 2.

5123 Section 112. Subsection (6) of section 651.023, Florida
 5124 Statutes, is amended to read:

5125 651.023 Certificate of authority; application.--
 5126 (6) The timeframes provided under s. 651.022(5) and (6)
 5127 apply to applications submitted under s. 651.021(2). The office
 5128 may not issue a certificate of authority under this chapter to
 5129 any facility which does not have a component which is to be
 5130 licensed pursuant to part II ~~or part III~~ of chapter 400 or
 5131 chapter 429 or which will not offer personal services or nursing
 5132 services through written contractual agreement. Any written
 5133 contractual agreement must be disclosed in the continuing care
 5134 contract and is subject to the provisions of s. 651.1151,
 5135 relating to administrative, vendor, and management contracts.

5136 Section 113. Subsection (8) of section 651.055, Florida
 5137 Statutes, is amended to read:

5138 651.055 Contracts; right to rescind.--

5139 (8) The provisions of this section shall control over any
 5140 conflicting provisions contained in part II ~~or part III~~ of
 5141 chapter 400 or in chapter 429.

5142 Section 114. Subsection (5) of section 651.095, Florida
 5143 Statutes, is amended to read:

5144 651.095 Advertisements; requirements; penalties.--

5145 (5) The provisions of this section shall control over any
 5146 conflicting provisions contained in part II ~~or part III~~ of
 5147 chapter 400 or in chapter 429.

5148 Section 115. Subsections (1), (4), (6), (7), and (8) of
 5149 section 651.118, Florida Statutes, are amended to read:

5150 651.118 Agency for Health Care Administration;
 5151 certificates of need; sheltered beds; community beds.--

5152 (1) The provisions of this section shall control in the

5153 | case of conflict with the provisions of the Health Facility and
 5154 | Services Development Act, ss. 408.031-408.045; the provisions of
 5155 | chapter 395; ~~or the provisions of part II parts II and III of~~
 5156 | chapter 400; or the provisions of chapter 429.

5157 | (4) The Agency for Health Care Administration shall
 5158 | approve one sheltered nursing home bed for every four proposed
 5159 | residential units, including those that are licensed under
 5160 | chapter 429 ~~part III of chapter 400~~, in the continuing care
 5161 | facility unless the provider demonstrates the need for a lesser
 5162 | number of sheltered nursing home beds based on proposed
 5163 | utilization by prospective residents or demonstrates the need
 5164 | for additional sheltered nursing home beds based on actual
 5165 | utilization and demand by current residents.

5166 | (6) Unless the provider already has a component that is to
 5167 | be a part of the continuing care facility and that is licensed
 5168 | under chapter 395, ~~or part II or part III of chapter 400, or~~
 5169 | chapter 429 at the time of construction of the continuing care
 5170 | facility, the provider must construct the nonnursing home
 5171 | portion of the facility and the nursing home portion of the
 5172 | facility at the same time. If a provider constructs less than
 5173 | the number of residential units approved in the certificate of
 5174 | authority, the number of licensed sheltered nursing home beds
 5175 | shall be reduced by a proportionate share.

5176 | (7) Notwithstanding the provisions of subsection (2), at
 5177 | the discretion of the continuing care provider, sheltered
 5178 | nursing home beds may be used for persons who are not residents
 5179 | of the continuing care facility and who are not parties to a
 5180 | continuing care contract for a period of up to 5 years after the

5181 date of issuance of the initial nursing home license. A provider
5182 whose 5-year period has expired or is expiring may request the
5183 Agency for Health Care Administration for an extension, not to
5184 exceed 30 percent of the total sheltered nursing home beds, if
5185 the utilization by residents of the nursing home facility in the
5186 sheltered beds will not generate sufficient income to cover
5187 nursing home facility expenses, as evidenced by one of the
5188 following:

5189 (a) The nursing home facility has a net loss for the most
5190 recent fiscal year as determined under generally accepted
5191 accounting principles, excluding the effects of extraordinary or
5192 unusual items, as demonstrated in the most recently audited
5193 financial statement; or

5194 (b) The nursing home facility would have had a pro forma
5195 loss for the most recent fiscal year, excluding the effects of
5196 extraordinary or unusual items, if revenues were reduced by the
5197 amount of revenues from persons in sheltered beds who were not
5198 residents, as reported on by a certified public accountant.

5199
5200 The agency shall be authorized to grant an extension to the
5201 provider based on the evidence required in this subsection. The
5202 agency may request a continuing care facility to use up to 25
5203 percent of the patient days generated by new admissions of
5204 nonresidents during the extension period to serve Medicaid
5205 recipients for those beds authorized for extended use if there
5206 is a demonstrated need in the respective service area and if
5207 funds are available. A provider who obtains an extension is
5208 prohibited from applying for additional sheltered beds under the

5209 provision of subsection (2), unless additional residential units
 5210 are built or the provider can demonstrate need by continuing
 5211 care facility residents to the Agency for Health Care
 5212 Administration. The 5-year limit does not apply to up to five
 5213 sheltered beds designated for inpatient hospice care as part of
 5214 a contractual arrangement with a hospice licensed under part IV
 5215 ~~VI~~ of chapter 400. A continuing care facility that uses such
 5216 beds after the 5-year period shall report such use to the Agency
 5217 for Health Care Administration. For purposes of this subsection,
 5218 "resident" means a person who, upon admission to the continuing
 5219 care facility, initially resides in a part of the continuing
 5220 care facility not licensed under part II of chapter 400.

5221 (8) A provider may petition the Agency for Health Care
 5222 Administration to use a designated number of sheltered nursing
 5223 home beds to provide extended congregate care as defined in s.
 5224 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
 5225 nursing home which can be adapted to meet the requirements for
 5226 extended congregate care. The provider may subsequently use such
 5227 beds as sheltered beds after notifying the agency of the
 5228 intended change. Any sheltered beds used to provide extended
 5229 congregate care pursuant to this subsection may not qualify for
 5230 funding under the Medicaid waiver. Any sheltered beds used to
 5231 provide extended congregate care pursuant to this subsection may
 5232 share common areas, services, and staff with beds designated for
 5233 nursing home care, provided that all of the beds are under
 5234 common ownership. For the purposes of this subsection, fire and
 5235 life safety codes applicable to nursing home facilities shall
 5236 apply.

5237 Section 116. Subsection (2) of section 765.1103, Florida
 5238 Statutes, is amended to read:

5239 765.1103 Pain management and palliative care.--

5240 (2) Health care providers and practitioners regulated
 5241 under chapter 458, chapter 459, or chapter 464 must, as
 5242 appropriate, comply with a request for pain management or
 5243 palliative care from a patient under their care or, for an
 5244 incapacitated patient under their care, from a surrogate, proxy,
 5245 guardian, or other representative permitted to make health care
 5246 decisions for the incapacitated patient. Facilities regulated
 5247 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
 5248 with the pain management or palliative care measures ordered by
 5249 the patient's physician.

5250 Section 117. Subsection (2) of section 765.205, Florida
 5251 Statutes, is amended to read:

5252 765.205 Responsibility of the surrogate.--

5253 (2) The surrogate may authorize the release of information
 5254 and medical records to appropriate persons to ensure the
 5255 continuity of the principal's health care and may authorize the
 5256 admission, discharge, or transfer of the principal to or from a
 5257 health care facility or other facility or program licensed under
 5258 chapter 400 or chapter 429.

5259 Section 118. Subsection (1) of section 768.735, Florida
 5260 Statutes, is amended to read:

5261 768.735 Punitive damages; exceptions; limitation.--

5262 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
 5263 apply to any civil action based upon child abuse, abuse of the
 5264 elderly under chapter 415, or abuse of the developmentally

5265 disabled. Such actions are governed by applicable statutes and
 5266 controlling judicial precedent. This section does not apply to
 5267 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.

5268 Section 119. Paragraph (h) of subsection (1) of section
 5269 893.13, Florida Statutes, is amended to read:

5270 893.13 Prohibited acts; penalties.--

5271 (1)

5272 (h) Except as authorized by this chapter, it is unlawful
 5273 for any person to sell, manufacture, or deliver, or possess with
 5274 intent to sell, manufacture, or deliver, a controlled substance
 5275 in, on, or within 1,000 feet of the real property comprising an
 5276 assisted living facility, as that term is used in chapter 429
 5277 ~~400~~. Any person who violates this paragraph with respect to:

5278 1. A controlled substance named or described in s.
 5279 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 5280 commits a felony of the first degree, punishable as provided in
 5281 s. 775.082, s. 775.083, or s. 775.084.

5282 2. A controlled substance named or described in s.
 5283 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 5284 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 5285 the second degree, punishable as provided in s. 775.082, s.
 5286 775.083, or s. 775.084.

5287 Section 120. Paragraph (a) of subsection (4) of section
 5288 943.0585, Florida Statutes, is amended to read:

5289 943.0585 Court-ordered expunction of criminal history
 5290 records.--The courts of this state have jurisdiction over their
 5291 own procedures, including the maintenance, expunction, and
 5292 correction of judicial records containing criminal history

5293 information to the extent such procedures are not inconsistent
5294 with the conditions, responsibilities, and duties established by
5295 this section. Any court of competent jurisdiction may order a
5296 criminal justice agency to expunge the criminal history record
5297 of a minor or an adult who complies with the requirements of
5298 this section. The court shall not order a criminal justice
5299 agency to expunge a criminal history record until the person
5300 seeking to expunge a criminal history record has applied for and
5301 received a certificate of eligibility for expunction pursuant to
5302 subsection (2). A criminal history record that relates to a
5303 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5304 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5305 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5306 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5307 expunged, without regard to whether adjudication was withheld,
5308 if the defendant was found guilty of or pled guilty or nolo
5309 contendere to the offense, or if the defendant, as a minor, was
5310 found to have committed, or pled guilty or nolo contendere to
5311 committing, the offense as a delinquent act. The court may only
5312 order expunction of a criminal history record pertaining to one
5313 arrest or one incident of alleged criminal activity, except as
5314 provided in this section. The court may, at its sole discretion,
5315 order the expunction of a criminal history record pertaining to
5316 more than one arrest if the additional arrests directly relate
5317 to the original arrest. If the court intends to order the
5318 expunction of records pertaining to such additional arrests,
5319 such intent must be specified in the order. A criminal justice
5320 agency may not expunge any record pertaining to such additional

5321 | arrests if the order to expunge does not articulate the
 5322 | intention of the court to expunge a record pertaining to more
 5323 | than one arrest. This section does not prevent the court from
 5324 | ordering the expunction of only a portion of a criminal history
 5325 | record pertaining to one arrest or one incident of alleged
 5326 | criminal activity. Notwithstanding any law to the contrary, a
 5327 | criminal justice agency may comply with laws, court orders, and
 5328 | official requests of other jurisdictions relating to expunction,
 5329 | correction, or confidential handling of criminal history records
 5330 | or information derived therefrom. This section does not confer
 5331 | any right to the expunction of any criminal history record, and
 5332 | any request for expunction of a criminal history record may be
 5333 | denied at the sole discretion of the court.

5334 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 5335 | criminal history record of a minor or an adult which is ordered
 5336 | expunged by a court of competent jurisdiction pursuant to this
 5337 | section must be physically destroyed or obliterated by any
 5338 | criminal justice agency having custody of such record; except
 5339 | that any criminal history record in the custody of the
 5340 | department must be retained in all cases. A criminal history
 5341 | record ordered expunged that is retained by the department is
 5342 | confidential and exempt from the provisions of s. 119.07(1) and
 5343 | s. 24(a), Art. I of the State Constitution and not available to
 5344 | any person or entity except upon order of a court of competent
 5345 | jurisdiction. A criminal justice agency may retain a notation
 5346 | indicating compliance with an order to expunge.

5347 | (a) The person who is the subject of a criminal history
 5348 | record that is expunged under this section or under other

5349 provisions of law, including former s. 893.14, former s. 901.33,
 5350 and former s. 943.058, may lawfully deny or fail to acknowledge
 5351 the arrests covered by the expunged record, except when the
 5352 subject of the record:

5353 1. Is a candidate for employment with a criminal justice
 5354 agency;

5355 2. Is a defendant in a criminal prosecution;

5356 3. Concurrently or subsequently petitions for relief under
 5357 this section or s. 943.059;

5358 4. Is a candidate for admission to The Florida Bar;

5359 5. Is seeking to be employed or licensed by or to contract
 5360 with the Department of Children and Family Services or the
 5361 Department of Juvenile Justice or to be employed or used by such
 5362 contractor or licensee in a sensitive position having direct
 5363 contact with children, the developmentally disabled, the aged,
 5364 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 5365 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 5366 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
 5367 985.407, ~~or~~ chapter 400, or chapter 429; or

5368 6. Is seeking to be employed or licensed by the Department
 5369 of Education, any district school board, any university
 5370 laboratory school, any charter school, any private or parochial
 5371 school, or any local governmental entity that licenses child
 5372 care facilities.

5373 Section 121. Paragraph (a) of subsection (4) of section
 5374 943.059, Florida Statutes, is amended to read:

5375 943.059 Court-ordered sealing of criminal history
 5376 records.--The courts of this state shall continue to have

5377 jurisdiction over their own procedures, including the
5378 maintenance, sealing, and correction of judicial records
5379 containing criminal history information to the extent such
5380 procedures are not inconsistent with the conditions,
5381 responsibilities, and duties established by this section. Any
5382 court of competent jurisdiction may order a criminal justice
5383 agency to seal the criminal history record of a minor or an
5384 adult who complies with the requirements of this section. The
5385 court shall not order a criminal justice agency to seal a
5386 criminal history record until the person seeking to seal a
5387 criminal history record has applied for and received a
5388 certificate of eligibility for sealing pursuant to subsection
5389 (2). A criminal history record that relates to a violation of s.
5390 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5391 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5392 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5393 a violation enumerated in s. 907.041 may not be sealed, without
5394 regard to whether adjudication was withheld, if the defendant
5395 was found guilty of or pled guilty or nolo contendere to the
5396 offense, or if the defendant, as a minor, was found to have
5397 committed or pled guilty or nolo contendere to committing the
5398 offense as a delinquent act. The court may only order sealing of
5399 a criminal history record pertaining to one arrest or one
5400 incident of alleged criminal activity, except as provided in
5401 this section. The court may, at its sole discretion, order the
5402 sealing of a criminal history record pertaining to more than one
5403 arrest if the additional arrests directly relate to the original
5404 arrest. If the court intends to order the sealing of records

5405 | pertaining to such additional arrests, such intent must be
 5406 | specified in the order. A criminal justice agency may not seal
 5407 | any record pertaining to such additional arrests if the order to
 5408 | seal does not articulate the intention of the court to seal
 5409 | records pertaining to more than one arrest. This section does
 5410 | not prevent the court from ordering the sealing of only a
 5411 | portion of a criminal history record pertaining to one arrest or
 5412 | one incident of alleged criminal activity. Notwithstanding any
 5413 | law to the contrary, a criminal justice agency may comply with
 5414 | laws, court orders, and official requests of other jurisdictions
 5415 | relating to sealing, correction, or confidential handling of
 5416 | criminal history records or information derived therefrom. This
 5417 | section does not confer any right to the sealing of any criminal
 5418 | history record, and any request for sealing a criminal history
 5419 | record may be denied at the sole discretion of the court.

5420 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 5421 | history record of a minor or an adult which is ordered sealed by
 5422 | a court of competent jurisdiction pursuant to this section is
 5423 | confidential and exempt from the provisions of s. 119.07(1) and
 5424 | s. 24(a), Art. I of the State Constitution and is available only
 5425 | to the person who is the subject of the record, to the subject's
 5426 | attorney, to criminal justice agencies for their respective
 5427 | criminal justice purposes, or to those entities set forth in
 5428 | subparagraphs (a)1., 4., 5., and 6. for their respective
 5429 | licensing and employment purposes.

5430 | (a) The subject of a criminal history record sealed under
 5431 | this section or under other provisions of law, including former
 5432 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

5433 deny or fail to acknowledge the arrests covered by the sealed
 5434 record, except when the subject of the record:

5435 1. Is a candidate for employment with a criminal justice
 5436 agency;

5437 2. Is a defendant in a criminal prosecution;

5438 3. Concurrently or subsequently petitions for relief under
 5439 this section or s. 943.0585;

5440 4. Is a candidate for admission to The Florida Bar;

5441 5. Is seeking to be employed or licensed by or to contract
 5442 with the Department of Children and Family Services or the
 5443 Department of Juvenile Justice or to be employed or used by such
 5444 contractor or licensee in a sensitive position having direct
 5445 contact with children, the developmentally disabled, the aged,
 5446 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 5447 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 5448 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
 5449 (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or

5450 6. Is seeking to be employed or licensed by the Department
 5451 of Education, any district school board, any university
 5452 laboratory school, any charter school, any private or parochial
 5453 school, or any local governmental entity that licenses child
 5454 care facilities.

5455 Section 122. The Division of Statutory Revision of the
 5456 Office of Legislative Services is requested to prepare a
 5457 reviser's bill for introduction at a subsequent session of the
 5458 Legislature to conform the Florida Statutes to changes made by
 5459 this act.

5460 Section 123. This act shall take effect July 1, 2006.