

CHAMBER ACTION

The Elder & Long-Term Care Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to assisted care communities; creating ch. 429, F.S.; transferring pt. III of ch. 400, F.S., relating to assisted living facilities, to pt. I of ch. 429, F.S.; transferring pt. VII of ch. 400, F.S., relating to adult family-care homes, to pt. II of ch. 429, F.S.; transferring pt. V of ch. 400, F.S., relating to adult day care centers, to pt. III of ch. 429, F.S.; amending ss. 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031, 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506, 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073, 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191, 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428, 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444, 400.447, 400.452, 400.462, 400.464, 400.497, 400.552, 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,

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24 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,  
 25 400.9905, 401.23, 402.164, 408.032, 408.033, 408.034,  
 26 408.07, 408.831, 409.212, 409.221, 409.905, 409.906,  
 27 409.907, 409.912, 410.031, 410.034, 415.1111, 419.001,  
 28 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235,  
 29 468.1685, 468.505, 477.025, 483.285, 509.032, 509.241,  
 30 627.6617, 627.732, 651.011, 651.022, 651.023, 651.055,  
 31 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13,  
 32 943.0585, and 943.059, F.S., to conform references to  
 33 changes made by the act; requesting the Division of  
 34 Statutory Revision to make necessary conforming changes to  
 35 the Florida Statutes; providing an effective date.

36

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

38

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

41 Section 2. Sections 400.401, 400.402, 400.404, 400.407,  
 42 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,  
 43 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,  
 44 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,  
 45 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,  
 46 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,  
 47 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,  
 48 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and  
 49 400.454, Florida Statutes, are renumbered as sections 429.01,  
 50 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,  
 51 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,

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

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

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

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

78 101.655 Supervised voting by absent electors in certain  
 79 facilities.--

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

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

95 189.428 Special districts; oversight review process.--

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

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

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106           196.1975 Exemption for property used by nonprofit homes  
107 for the aged.--Nonprofit homes for the aged are exempt to the  
108 extent that they meet the following criteria:

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

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

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

120           202.125 Sales of communications services; specified  
121 exemptions.--

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

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

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

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

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

144           205.1965 Assisted living facilities.--A county or  
145 municipality may not issue an occupational license for the  
146 operation of an assisted living facility pursuant to ~~part III of~~  
147 chapter 429 ~~400~~ without first ascertaining that the applicant  
148 has been licensed by the Agency for Health Care Administration  
149 to operate such facility at the specified location or locations.  
150 The Agency for Health Care Administration shall furnish to local  
151 agencies responsible for issuing occupational licenses  
152 sufficient instructions for making the above required  
153 determinations.

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

156           212.031 Tax on rental or license fee for use of real  
157 property.--

158           (1)

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

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

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

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

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

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



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

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

225 |           296.02 Definitions.--For the purposes of this part, except  
226 | where the context clearly indicates otherwise:

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

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

231 |           381.0035 Educational course on HIV and AIDS; employees and  
232 | clients of certain health care facilities.--

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

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246 reporting, the offering of HIV testing to pregnant women, and  
247 partner notification issues pursuant to ss. 381.004 and 384.25.

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

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

255 381.745 Definitions; ss. 381.739-381.79.--As used in ss.  
256 381.739-381.79, the term:

257 (9) "Transitional living facility" means a state-approved  
258 facility, as defined and licensed under chapter 400 or chapter  
259 429, or a facility approved by the brain and spinal cord injury  
260 program in accordance with this chapter.

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

263 393.063 Definitions.--For the purposes of this chapter:

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

267 Section 16. Paragraph (b) of subsection (1) of section  
268 393.506, Florida Statutes, is amended to read:

269 393.506 Administration of medication.--

270 (1) Notwithstanding the provisions of part I of chapter  
271 464, the Nurse Practice Act, unlicensed direct care services  
272 staff providing services to persons with developmental

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273 disabilities may administer oral, transdermal, inhaled, or  
274 topical prescription medications as provided in this section.

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

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

282 394.455 Definitions.--As used in this part, unless the  
283 context clearly requires otherwise, the term:

284 (10) "Facility" means any hospital, community facility,  
285 public or private facility, or receiving or treatment facility  
286 providing for the evaluation, diagnosis, care, treatment,  
287 training, or hospitalization of persons who appear to have a  
288 mental illness or have been diagnosed as having a mental  
289 illness. "Facility" does not include any program or entity  
290 licensed pursuant to chapter 400 or chapter 429.

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

293 394.4574 Department responsibilities for a mental health  
294 resident who resides in an assisted living facility that holds a  
295 limited mental health license.--

296 (2) The department must ensure that:

297 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~  
298 ~~400.4075~~, is developed between the mental health care services  
299 provider that serves a mental health resident and the  
300 administrator of the assisted living facility with a limited

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301 mental health license in which the mental health resident is  
 302 living. Any entity that provides Medicaid prepaid health plan  
 303 services shall ensure the appropriate coordination of health  
 304 care services with an assisted living facility in cases where a  
 305 Medicaid recipient is both a member of the entity's prepaid  
 306 health plan and a resident of the assisted living facility. If  
 307 the entity is at risk for Medicaid targeted case management and  
 308 behavioral health services, the entity shall inform the assisted  
 309 living facility of the procedures to follow should an emergent  
 310 condition arise.

311 (c) The community living support plan, as defined in s.  
 312 429.02 ~~s. 400.402~~, has been prepared by a mental health resident  
 313 and a mental health case manager of that resident in  
 314 consultation with the administrator of the facility or the  
 315 administrator's designee. The plan must be provided to the  
 316 administrator of the assisted living facility with a limited  
 317 mental health license in which the mental health resident lives.  
 318 The support plan and the agreement may be in one document.

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

326 Section 19. Paragraph (b) of subsection (2) of section  
 327 394.463, Florida Statutes, is amended to read:

328 394.463 Involuntary examination.--

329 (2) INVOLUNTARY EXAMINATION.--

330 (b) A person shall not be removed from any program or  
 331 residential placement licensed under chapter 400 or chapter 429  
 332 and transported to a receiving facility for involuntary  
 333 examination unless an ex parte order, a professional  
 334 certificate, or a law enforcement officer's report is first  
 335 prepared. If the condition of the person is such that  
 336 preparation of a law enforcement officer's report is not  
 337 practicable before removal, the report shall be completed as  
 338 soon as possible after removal, but in any case before the  
 339 person is transported to a receiving facility. A receiving  
 340 facility admitting a person for involuntary examination who is  
 341 not accompanied by the required ex parte order, professional  
 342 certificate, or law enforcement officer's report shall notify  
 343 the Agency for Health Care Administration of such admission by  
 344 certified mail no later than the next working day. The  
 345 provisions of this paragraph do not apply when transportation is  
 346 provided by the patient's family or guardian.

347 Section 20. Paragraph (b) of subsection (3) of section  
 348 400.0063, Florida Statutes, is amended to read:

349 400.0063 Establishment of Office of State Long-Term Care  
 350 Ombudsman; designation of ombudsman and legal advocate.--

351 (3)

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

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

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

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

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

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

369           400.0069 Local long-term care ombudsman councils; duties;  
370 membership.--

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

376           Section 22. Paragraphs (c) and (f) of subsection (5) and  
377 subsection (6) of section 400.0073, Florida Statutes, are  
378 amended to read:

379           400.0073 State and local ombudsman council  
380 investigations.--

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

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

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385 facilities, consistent with the underlying purposes of this part  
386 and chapter 429. Unnecessary duplication of efforts among  
387 council members or the councils shall be reduced to the extent  
388 possible.

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

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

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

399 400.0077 Confidentiality.--

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

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

406 400.0239 Quality of Long-Term Care Facility Improvement  
407 Trust Fund.--

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

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413 proceeds generated pursuant to ss. 400.0238 and 429.298  
 414 ~~400.4298~~, through funds specifically appropriated by the  
 415 Legislature, through gifts, endowments, and other charitable  
 416 contributions allowed under federal and state law, and through  
 417 federal nursing home civil monetary penalties collected by the  
 418 Centers for Medicare and Medicaid Services and returned to the  
 419 state. These funds must be utilized in accordance with federal  
 420 requirements.

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

423 400.119 Confidentiality of records and meetings of risk  
 424 management and quality assurance committees.--

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

438 (4) The meetings of an internal risk management and  
 439 quality assurance committee of a long-term care facility  
 440 licensed under this part or part I III of ~~this~~ chapter 429 are



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

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

445 400.141 Administration and management of nursing home  
446 facilities.--Every licensed facility shall comply with all  
447 applicable standards and rules of the agency and shall:

448 (4) Provide for resident use of a community pharmacy as  
449 specified in s. 400.022(1)(q). Any other law to the contrary  
450 notwithstanding, a registered pharmacist licensed in Florida,  
451 that is under contract with a facility licensed under this  
452 chapter or chapter 429, shall repackage a nursing facility  
453 resident's bulk prescription medication which has been packaged  
454 by another pharmacist licensed in any state in the United States  
455 into a unit dose system compatible with the system used by the  
456 nursing facility, if the pharmacist is requested to offer such  
457 service. In order to be eligible for the repackaging, a resident  
458 or the resident's spouse must receive prescription medication  
459 benefits provided through a former employer as part of his or  
460 her retirement benefits, a qualified pension plan as specified  
461 in s. 4972 of the Internal Revenue Code, a federal retirement  
462 program as specified under 5 C.F.R. s. 831, or a long-term care  
463 policy as defined in s. 627.9404(1). A pharmacist who correctly  
464 repackages and relabels the medication and the nursing facility  
465 which correctly administers such repackaged medication under the  
466 provisions of this subsection shall not be held liable in any  
467 civil or administrative action arising from the repackaging. In  
468 order to be eligible for the repackaging, a nursing facility

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469 resident for whom the medication is to be repackaged shall sign  
470 an informed consent form provided by the facility which includes  
471 an explanation of the repackaging process and which notifies the  
472 resident of the immunities from liability provided herein. A  
473 pharmacist who repackages and relabels prescription medications,  
474 as authorized under this subsection, may charge a reasonable fee  
475 for costs resulting from the implementation of this provision.

476 (7) If the facility has a standard license or is a Gold  
477 Seal facility, exceeds the minimum required hours of licensed  
478 nursing and certified nursing assistant direct care per resident  
479 per day, and is part of a continuing care facility licensed  
480 under chapter 651 or a retirement community that offers other  
481 services pursuant to part III of this chapter or part I or part  
482 III of chapter 429, ~~part IV, or part V~~ on a single campus, be  
483 allowed to share programming and staff. At the time of  
484 inspection and in the semiannual report required pursuant to  
485 subsection (15), a continuing care facility or retirement  
486 community that uses this option must demonstrate through  
487 staffing records that minimum staffing requirements for the  
488 facility were met. Licensed nurses and certified nursing  
489 assistants who work in the nursing home facility may be used to  
490 provide services elsewhere on campus if the facility exceeds the  
491 minimum number of direct care hours required per resident per  
492 day and the total number of residents receiving direct care  
493 services from a licensed nurse or a certified nursing assistant  
494 does not cause the facility to violate the staffing ratios  
495 required under s. 400.23(3)(a). Compliance with the minimum  
496 staffing ratios shall be based on total number of residents

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497 receiving direct care services, regardless of where they reside  
 498 on campus. If the facility receives a conditional license, it  
 499 may not share staff until the conditional license status ends.  
 500 This subsection does not restrict the agency's authority under  
 501 federal or state law to require additional staff if a facility  
 502 is cited for deficiencies in care which are caused by an  
 503 insufficient number of certified nursing assistants or licensed  
 504 nurses. The agency may adopt rules for the documentation  
 505 necessary to determine compliance with this provision.

506

507 Facilities that have been awarded a Gold Seal under the program  
 508 established in s. 400.235 may develop a plan to provide  
 509 certified nursing assistant training as prescribed by federal  
 510 regulations and state rules and may apply to the agency for  
 511 approval of their program.

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

514 400.142 Emergency medication kits; orders not to  
 515 resuscitate.--

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

523 Section 28. Paragraph (a) of subsection (2) of section  
 524 400.191, Florida Statutes, is amended to read:

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525 400.191 Availability, distribution, and posting of reports  
526 and records.--

527 (2) The agency shall provide additional information in  
528 consumer-friendly printed and electronic formats to assist  
529 consumers and their families in comparing and evaluating nursing  
530 home facilities.

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

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

537 2. Whether such nursing home facilities are proprietary or  
538 nonproprietary.

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

541 4. The name of the owner or owners of each facility and  
542 whether the facility is affiliated with a company or other  
543 organization owning or managing more than one nursing facility  
544 in this state.

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

546 6. The number of private and semiprivate rooms in each  
547 facility.

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

549 8. The languages spoken by the administrator and staff of  
550 each facility.

551 9. Whether or not each facility accepts Medicare or  
552 Medicaid recipients or insurance, health maintenance

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553 organization, Veterans Administration, CHAMPUS program, or  
554 workers' compensation coverage.

555 10. Recreational and other programs available at each  
556 facility.

557 11. Special care units or programs offered at each  
558 facility.

559 12. Whether the facility is a part of a retirement  
560 community that offers other services pursuant to part III of  
561 this chapter or part I or part III of chapter 429, part IV, or  
562 part V.

563 13. Survey and deficiency information contained on the  
564 Online Survey Certification and Reporting (OSCAR) system of the  
565 federal Health Care Financing Administration, including annual  
566 survey, revisit, and complaint survey information, for each  
567 facility for the past 45 months. For noncertified nursing  
568 homes, state survey and deficiency information, including annual  
569 survey, revisit, and complaint survey information for the past  
570 45 months shall be provided.

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

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581 Section 29. Paragraph (b) of subsection (2) of section  
582 400.215, Florida Statutes, is amended to read:

583 400.215 Personnel screening requirement.--

584 (2) Employers and employees shall comply with the  
585 requirements of s. 435.05.

586 (b) Employees qualified under the provisions of paragraph  
587 (a) who have not maintained continuous residency within the  
588 state for the 5 years immediately preceding the date of request  
589 for background screening must complete level 2 screening, as  
590 provided in chapter 435. Such employees may work in a  
591 conditional status up to 180 days pending the receipt of written  
592 findings evidencing the completion of level 2 screening. Level 2  
593 screening shall not be required of employees or prospective  
594 employees who attest in writing under penalty of perjury that  
595 they meet the residency requirement. Completion of level 2  
596 screening shall require the employee or prospective employee to  
597 furnish to the nursing facility a full set of fingerprints to  
598 enable a criminal background investigation to be conducted. The  
599 nursing facility shall submit the completed fingerprint card to  
600 the agency. The agency shall establish a record of the request  
601 in the database provided for in paragraph (c) and forward the  
602 request to the Department of Law Enforcement, which is  
603 authorized to submit the fingerprints to the Federal Bureau of  
604 Investigation for a national criminal history records check. The  
605 results of the national criminal history records check shall be  
606 returned to the agency, which shall maintain the results in the  
607 database provided for in paragraph (c). The agency shall notify  
608 the administrator of the requesting nursing facility or the

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609 administrator of any other facility licensed under chapter 393,  
610 chapter 394, chapter 395, chapter 397, chapter 429, or this  
611 chapter, as requested by such facility, as to whether or not the  
612 employee has qualified under level 1 or level 2 screening. An  
613 employee or prospective employee who has qualified under level 2  
614 screening and has maintained such continuous residency within  
615 the state shall not be required to complete a subsequent level 2  
616 screening as a condition of employment at another facility.

617 Section 30. Section 400.402, Florida Statutes, is  
618 renumbered as section 429.02, Florida Statutes, and amended to  
619 read:

620 429.02 ~~400.402~~ Definitions.--When used in this part, the  
621 term:

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

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

628 (3) "Agency" means the Agency for Health Care  
629 Administration.

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

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637 volunteers, family, or friends, or through contractual  
638 arrangements with a third party.

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

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

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

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



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

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

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

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

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

689 (14) "Limited nursing services" means acts that may be  
690 performed pursuant to part I of chapter 464 by persons licensed  
691 thereunder while carrying out their professional duties but

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692 limited to those acts which the department specifies by rule.  
693 Acts which may be specified by rule as allowable limited nursing  
694 services shall be for persons who meet the admission criteria  
695 established by the department for assisted living facilities and  
696 shall not be complex enough to require 24-hour nursing  
697 supervision and may include such services as the application and  
698 care of routine dressings, and care of casts, braces, and  
699 splints.

700 (15) "Managed risk" means the process by which the  
701 facility staff discuss the service plan and the needs of the  
702 resident with the resident and, if applicable, the resident's  
703 representative or designee or the resident's surrogate,  
704 guardian, or attorney in fact, in such a way that the  
705 consequences of a decision, including any inherent risk, are  
706 explained to all parties and reviewed periodically in  
707 conjunction with the service plan, taking into account changes  
708 in the resident's status and the ability of the facility to  
709 respond accordingly.

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

716 (17) "Personal services" means direct physical assistance  
717 with or supervision of the activities of daily living and the  
718 self-administration of medication and other similar services  
719 which the department may define by rule. "Personal services"

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720 shall not be construed to mean the provision of medical,  
721 nursing, dental, or mental health services.

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

731 (19) "Relative" means an individual who is the father,  
732 mother, stepfather, stepmother, son, daughter, brother, sister,  
733 grandmother, grandfather, great-grandmother, great-grandfather,  
734 grandson, granddaughter, uncle, aunt, first cousin, nephew,  
735 niece, husband, wife, father-in-law, mother-in-law, son-in-law,  
736 daughter-in-law, brother-in-law, sister-in-law, stepson,  
737 stepdaughter, stepbrother, stepsister, half brother, or half  
738 sister of an owner or administrator.

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

741 (21) "Resident's representative or designee" means a  
742 person other than the owner, or an agent or employee of the  
743 facility, designated in writing by the resident, if legally  
744 competent, to receive notice of changes in the contract executed  
745 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to  
746 participate in meetings between the resident and the facility  
747 owner, administrator, or staff concerning the rights of the

748 resident; to assist the resident in contacting the ombudsman  
 749 council if the resident has a complaint against the facility; or  
 750 to bring legal action on behalf of the resident pursuant to s.  
 751 429.29 ~~s. 400.429~~.

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

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

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

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

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

785 (27) "Twenty-four-hour nursing supervision" means services  
786 that are ordered by a physician for a resident whose condition  
787 requires the supervision of a physician and continued monitoring  
788 of vital signs and physical status. Such services shall be:  
789 medically complex enough to require constant supervision,  
790 assessment, planning, or intervention by a nurse; required to be  
791 performed by or under the direct supervision of licensed nursing  
792 personnel or other professional personnel for safe and effective  
793 performance; required on a daily basis; and consistent with the  
794 nature and severity of the resident's condition or the disease  
795 state or stage.

796 Section 31. Section 400.404, Florida Statutes, is  
797 renumbered as section 429.04, Florida Statutes, and amended to  
798 read:

799 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--

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

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803 (2) The following are exempt from licensure under this  
804 part:

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

807 (b) Any facility or part of a facility licensed under  
808 chapter 393 or chapter 394.

809 (c) Any facility licensed as an adult family-care home  
810 under part II ~~VII~~.

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

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

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

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830 (g) Any facility certified under chapter 651, or a  
831 retirement community, may provide services authorized under this  
832 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who  
833 live in single-family homes, duplexes, quadruplexes, or  
834 apartments located on the campus without obtaining a license to  
835 operate an assisted living facility if residential units within  
836 such buildings are used by residents who do not require staff  
837 supervision for that portion of the day when personal services  
838 are not being delivered and the owner obtains a home health  
839 license to provide such services. However, any building or  
840 distinct part of a building on the campus that is designated for  
841 persons who receive personal services and require supervision  
842 beyond that which is available while such services are being  
843 rendered must be licensed in accordance with this part. If a  
844 facility provides personal services to residents who do not  
845 otherwise require supervision and the owner is not licensed as a  
846 home health agency, the buildings or distinct parts of buildings  
847 where such services are rendered must be licensed under this  
848 part. A resident of a facility that obtains a home health  
849 license may contract with a home health agency of his or her  
850 choice, provided that the home health agency provides liability  
851 insurance and workers' compensation coverage for its employees.  
852 Facilities covered by this exemption may establish policies that  
853 give residents the option of contracting for services and care  
854 beyond that which is provided by the facility to enable them to  
855 age in place. For purposes of this section, a retirement  
856 community consists of a facility licensed under this part or

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857 under part II of chapter 400, and apartments designed for  
858 independent living located on the same campus.

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

865 Section 32. Section 400.407, Florida Statutes, is  
866 renumbered as section 429.07, Florida Statutes, and amended to  
867 read:

868 429.07 ~~400.407~~ License required; fee, display.--

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

871 (2) Separate licenses shall be required for facilities  
872 maintained in separate premises, even though operated under the  
873 same management. A separate license shall not be required for  
874 separate buildings on the same grounds.

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

883 (a) A standard license shall be issued to facilities  
884 providing one or more of the personal services identified in s.



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885 429.02 ~~s. 400.402~~. Such facilities may also employ or contract  
 886 with a person licensed under part I of chapter 464 to administer  
 887 medications and perform other tasks as specified in s. 429.255  
 888 ~~s. 400.4255~~.

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

896 1. In order for extended congregate care services to be  
 897 provided in a facility licensed under this part, the agency must  
 898 first determine that all requirements established in law and  
 899 rule are met and must specifically designate, on the facility's  
 900 license, that such services may be provided and whether the  
 901 designation applies to all or part of a facility. Such  
 902 designation may be made at the time of initial licensure or  
 903 relicensure, or upon request in writing by a licensee under this  
 904 part. Notification of approval or denial of such request shall  
 905 be made within 90 days after receipt of such request and all  
 906 necessary documentation. Existing facilities qualifying to  
 907 provide extended congregate care services must have maintained a  
 908 standard license and may not have been subject to administrative  
 909 sanctions during the previous 2 years, or since initial  
 910 licensure if the facility has been licensed for less than 2  
 911 years, for any of the following reasons:

912 a. A class I or class II violation;

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913           b. Three or more repeat or recurring class III violations  
914 of identical or similar resident care standards as specified in  
915 rule from which a pattern of noncompliance is found by the  
916 agency;

917           c. Three or more class III violations that were not  
918 corrected in accordance with the corrective action plan approved  
919 by the agency;

920           d. Violation of resident care standards resulting in a  
921 requirement to employ the services of a consultant pharmacist or  
922 consultant dietitian;

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

927           f. Imposition of a moratorium on admissions or initiation  
928 of injunctive proceedings.

929           2. Facilities that are licensed to provide extended  
930 congregate care services shall maintain a written progress  
931 report on each person who receives such services, which report  
932 describes the type, amount, duration, scope, and outcome of  
933 services that are rendered and the general status of the  
934 resident's health. A registered nurse, or appropriate designee,  
935 representing the agency shall visit such facilities at least  
936 quarterly to monitor residents who are receiving extended  
937 congregate care services and to determine if the facility is in  
938 compliance with this part and with rules that relate to extended  
939 congregate care. One of these visits may be in conjunction with  
940 the regular survey. The monitoring visits may be provided

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941 through contractual arrangements with appropriate community  
942 agencies. A registered nurse shall serve as part of the team  
943 that inspects such facility. The agency may waive one of the  
944 required yearly monitoring visits for a facility that has been  
945 licensed for at least 24 months to provide extended congregate  
946 care services, if, during the inspection, the registered nurse  
947 determines that extended congregate care services are being  
948 provided appropriately, and if the facility has no class I or  
949 class II violations and no uncorrected class III violations.  
950 Before such decision is made, the agency shall consult with the  
951 long-term care ombudsman council for the area in which the  
952 facility is located to determine if any complaints have been  
953 made and substantiated about the quality of services or care.  
954 The agency may not waive one of the required yearly monitoring  
955 visits if complaints have been made and substantiated.

956 3. Facilities that are licensed to provide extended  
957 congregate care services shall:

958 a. Demonstrate the capability to meet unanticipated  
959 resident service needs.

960 b. Offer a physical environment that promotes a homelike  
961 setting, provides for resident privacy, promotes resident  
962 independence, and allows sufficient congregate space as defined  
963 by rule.

964 c. Have sufficient staff available, taking into account  
965 the physical plant and firesafety features of the building, to  
966 assist with the evacuation of residents in an emergency, as  
967 necessary.

968           d. Adopt and follow policies and procedures that maximize  
969 resident independence, dignity, choice, and decisionmaking to  
970 permit residents to age in place to the extent possible, so that  
971 moves due to changes in functional status are minimized or  
972 avoided.

973           e. Allow residents or, if applicable, a resident's  
974 representative, designee, surrogate, guardian, or attorney in  
975 fact to make a variety of personal choices, participate in  
976 developing service plans, and share responsibility in  
977 decisionmaking.

978           f. Implement the concept of managed risk.

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

981           h. In addition to the training mandated in s. 429.52 ~~s.~~  
982 ~~400.452~~, provide specialized training as defined by rule for  
983 facility staff.

984           4. Facilities licensed to provide extended congregate care  
985 services are exempt from the criteria for continued residency as  
986 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.

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

994           5. The primary purpose of extended congregate care  
995 services is to allow residents, as they become more impaired,

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996 | the option of remaining in a familiar setting from which they  
 997 | would otherwise be disqualified for continued residency. A  
 998 | facility licensed to provide extended congregate care services  
 999 | may also admit an individual who exceeds the admission criteria  
 1000 | for a facility with a standard license, if the individual is  
 1001 | determined appropriate for admission to the extended congregate  
 1002 | care facility.

1003 |         6. Before admission of an individual to a facility  
 1004 | licensed to provide extended congregate care services, the  
 1005 | individual must undergo a medical examination as provided in s.  
 1006 | 429.26(4) ~~s. 400.426(4)~~ and the facility must develop a  
 1007 | preliminary service plan for the individual.

1008 |         7. When a facility can no longer provide or arrange for  
 1009 | services in accordance with the resident's service plan and  
 1010 | needs and the facility's policy, the facility shall make  
 1011 | arrangements for relocating the person in accordance with s.  
 1012 | 429.28(1)(k) ~~s. 400.428(1)(k)~~.

1013 |         8. Failure to provide extended congregate care services  
 1014 | may result in denial of extended congregate care license  
 1015 | renewal.

1016 |         9. No later than January 1 of each year, the department,  
 1017 | in consultation with the agency, shall prepare and submit to the  
 1018 | Governor, the President of the Senate, the Speaker of the House  
 1019 | of Representatives, and the chairs of appropriate legislative  
 1020 | committees, a report on the status of, and recommendations  
 1021 | related to, extended congregate care services. The status report  
 1022 | must include, but need not be limited to, the following  
 1023 | information:

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- 1024           a. A description of the facilities licensed to provide  
 1025 such services, including total number of beds licensed under  
 1026 this part.
- 1027           b. The number and characteristics of residents receiving  
 1028 such services.
- 1029           c. The types of services rendered that could not be  
 1030 provided through a standard license.
- 1031           d. An analysis of deficiencies cited during licensure  
 1032 inspections.
- 1033           e. The number of residents who required extended  
 1034 congregate care services at admission and the source of  
 1035 admission.
- 1036           f. Recommendations for statutory or regulatory changes.
- 1037           g. The availability of extended congregate care to state  
 1038 clients residing in facilities licensed under this part and in  
 1039 need of additional services, and recommendations for  
 1040 appropriations to subsidize extended congregate care services  
 1041 for such persons.
- 1042           h. Such other information as the department considers  
 1043 appropriate.
- 1044           (c) A limited nursing services license shall be issued to  
 1045 a facility that provides services beyond those authorized in  
 1046 paragraph (a) and as specified in this paragraph.
- 1047           1. In order for limited nursing services to be provided in  
 1048 a facility licensed under this part, the agency must first  
 1049 determine that all requirements established in law and rule are  
 1050 met and must specifically designate, on the facility's license,  
 1051 that such services may be provided. Such designation may be made

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1052 at the time of initial licensure or relicensure, or upon request  
1053 in writing by a licensee under this part. Notification of  
1054 approval or denial of such request shall be made within 90 days  
1055 after receipt of such request and all necessary documentation.  
1056 Existing facilities qualifying to provide limited nursing  
1057 services shall have maintained a standard license and may not  
1058 have been subject to administrative sanctions that affect the  
1059 health, safety, and welfare of residents for the previous 2  
1060 years or since initial licensure if the facility has been  
1061 licensed for less than 2 years.

1062 2. Facilities that are licensed to provide limited nursing  
1063 services shall maintain a written progress report on each person  
1064 who receives such nursing services, which report describes the  
1065 type, amount, duration, scope, and outcome of services that are  
1066 rendered and the general status of the resident's health. A  
1067 registered nurse representing the agency shall visit such  
1068 facilities at least twice a year to monitor residents who are  
1069 receiving limited nursing services and to determine if the  
1070 facility is in compliance with applicable provisions of this  
1071 part and with related rules. The monitoring visits may be  
1072 provided through contractual arrangements with appropriate  
1073 community agencies. A registered nurse shall also serve as part  
1074 of the team that inspects such facility.

1075 3. A person who receives limited nursing services under  
1076 this part must meet the admission criteria established by the  
1077 agency for assisted living facilities. When a resident no  
1078 longer meets the admission criteria for a facility licensed  
1079 under this part, arrangements for relocating the person shall be

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1080 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless  
 1081 the facility is licensed to provide extended congregate care  
 1082 services.

1083 (4) (a) The biennial license fee required of a facility is  
 1084 \$300 per license, with an additional fee of \$50 per resident  
 1085 based on the total licensed resident capacity of the facility,  
 1086 except that no additional fee will be assessed for beds  
 1087 designated for recipients of optional state supplementation  
 1088 payments provided for in s. 409.212. The total fee may not  
 1089 exceed \$10,000, no part of which shall be returned to the  
 1090 facility. The agency shall adjust the per bed license fee and  
 1091 the total licensure fee annually by not more than the change in  
 1092 the consumer price index based on the 12 months immediately  
 1093 preceding the increase.

1094 (b) In addition to the total fee assessed under paragraph  
 1095 (a), the agency shall require facilities that are licensed to  
 1096 provide extended congregate care services under this part to pay  
 1097 an additional fee per licensed facility. The amount of the  
 1098 biennial fee shall be \$400 per license, with an additional fee  
 1099 of \$10 per resident based on the total licensed resident  
 1100 capacity of the facility. No part of this fee shall be returned  
 1101 to the facility. The agency may adjust the per bed license fee  
 1102 and the annual license fee once each year by not more than the  
 1103 average rate of inflation for the 12 months immediately  
 1104 preceding the increase.

1105 (c) In addition to the total fee assessed under paragraph  
 1106 (a), the agency shall require facilities that are licensed to  
 1107 provide limited nursing services under this part to pay an



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1108 additional fee per licensed facility. The amount of the  
 1109 biennial fee shall be \$250 per license, with an additional fee  
 1110 of \$10 per resident based on the total licensed resident  
 1111 capacity of the facility. No part of this fee shall be returned  
 1112 to the facility. The agency may adjust the per bed license fee  
 1113 and the biennial license fee once each year by not more than the  
 1114 average rate of inflation for the 12 months immediately  
 1115 preceding the increase.

1116 (5) Counties or municipalities applying for licenses under  
 1117 this part are exempt from the payment of license fees.

1118 (6) The license shall be displayed in a conspicuous place  
 1119 inside the facility.

1120 (7) A license shall be valid only in the possession of the  
 1121 individual, firm, partnership, association, or corporation to  
 1122 which it is issued and shall not be subject to sale, assignment,  
 1123 or other transfer, voluntary or involuntary; nor shall a license  
 1124 be valid for any premises other than that for which originally  
 1125 issued.

1126 (8) A fee may be charged to a facility requesting a  
 1127 duplicate license. The fee shall not exceed the actual cost of  
 1128 duplication and postage.

1129 Section 33. Section 400.4071, Florida Statutes, is  
 1130 renumbered as section 429.071, Florida Statutes, and amended to  
 1131 read:

1132 429.071 ~~400.4071~~ Intergenerational respite care assisted  
 1133 living facility pilot program.--

1134 (1) It is the intent of the Legislature to establish a  
 1135 pilot program to:

1136 (a) Facilitate the receipt of in-home, family-based care  
1137 by minors and adults with disabilities and elderly persons with  
1138 special needs through respite care for up to 14 days.

1139 (b) Prevent caregiver "burnout," in which the caregiver's  
1140 health declines and he or she is unable to continue to provide  
1141 care so that the only option for the person with disabilities or  
1142 special needs is to receive institutional care.

1143 (c) Foster the development of intergenerational respite  
1144 care assisted living facilities to temporarily care for minors  
1145 and adults with disabilities and elderly persons with special  
1146 needs in the same facility and to give caregivers the time they  
1147 need for rejuvenation and healing.

1148 (2) The Agency for Health Care Administration shall  
1149 establish a 5-year pilot program, which shall license an  
1150 intergenerational respite care assisted living facility that  
1151 will provide temporary personal, respite, and custodial care to  
1152 minors and adults with disabilities and elderly persons with  
1153 special needs who do not require 24-hour nursing services. The  
1154 intergenerational respite care assisted living facility must:

1155 (a) Meet all applicable requirements and standards  
1156 contained in this part ~~III of this chapter~~, except that, for  
1157 purposes of this section, the term "resident" means a person of  
1158 any age temporarily residing in and receiving care from the  
1159 facility.

1160 (b) Provide respite care services for minors and adults  
1161 with disabilities and elderly persons with special needs for a  
1162 period of at least 24 hours but not for more than 14 consecutive  
1163 days.

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1164 (c) Provide a facility or facilities in which minors and  
1165 adults reside in distinct and separate living units.

1166 (d) Provide a facility that has a maximum of 48 beds, is  
1167 located in Miami-Dade County, and is operated by a not-for-  
1168 profit entity.

1169 (3) The agency may establish policies necessary to achieve  
1170 the objectives specific to the pilot program and may adopt rules  
1171 necessary to implement the program.

1172 (4) After 4 years, the agency shall present its report on  
1173 the effectiveness of the pilot program to the President of the  
1174 Senate and the Speaker of the House of Representatives and its  
1175 recommendation as to whether the Legislature should make the  
1176 program permanent.

1177 Section 34. Section 400.408, Florida Statutes, is  
1178 renumbered as section 429.08, Florida Statutes, and amended to  
1179 read:

1180 429.08 ~~400.408~~ Unlicensed facilities; referral of person  
1181 for residency to unlicensed facility; penalties; verification of  
1182 licensure status.--

1183 (1)(a) It is unlawful to own, operate, or maintain an  
1184 assisted living facility without obtaining a license under this  
1185 part.

1186 (b) Except as provided under paragraph (d), any person who  
1187 owns, operates, or maintains an unlicensed assisted living  
1188 facility commits a felony of the third degree, punishable as  
1189 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of  
1190 continued operation is a separate offense.

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1191 (c) Any person found guilty of violating paragraph (a) a  
 1192 second or subsequent time commits a felony of the second degree,  
 1193 punishable as provided under s. 775.082, s. 775.083, or s.  
 1194 775.084. Each day of continued operation is a separate offense.

1195 (d) Any person who owns, operates, or maintains an  
 1196 unlicensed assisted living facility due to a change in this part  
 1197 or a modification in department rule within 6 months after the  
 1198 effective date of such change and who, within 10 working days  
 1199 after receiving notification from the agency, fails to cease  
 1200 operation or apply for a license under this part commits a  
 1201 felony of the third degree, punishable as provided in s.  
 1202 775.082, s. 775.083, or s. 775.084. Each day of continued  
 1203 operation is a separate offense.

1204 (e) Any facility that fails to cease operation after  
 1205 agency notification may be fined for each day of noncompliance  
 1206 pursuant to s. 429.19 ~~s. 400.419~~.

1207 (f) When a licensee has an interest in more than one  
 1208 assisted living facility, and fails to license any one of these  
 1209 facilities, the agency may revoke the license, impose a  
 1210 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,  
 1211 on any or all of the licensed facilities until such time as the  
 1212 unlicensed facility is licensed or ceases operation.

1213 (g) If the agency determines that an owner is operating or  
 1214 maintaining an assisted living facility without obtaining a  
 1215 license and determines that a condition exists in the facility  
 1216 that poses a threat to the health, safety, or welfare of a  
 1217 resident of the facility, the owner is subject to the same

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1218 actions and fines imposed against a licensed facility as  
1219 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

1220 (h) Any person aware of the operation of an unlicensed  
1221 assisted living facility must report that facility to the  
1222 agency. The agency shall provide to the department's elder  
1223 information and referral providers a list, by county, of  
1224 licensed assisted living facilities, to assist persons who are  
1225 considering an assisted living facility placement in locating a  
1226 licensed facility.

1227 (i) Each field office of the Agency for Health Care  
1228 Administration shall establish a local coordinating workgroup  
1229 which includes representatives of local law enforcement  
1230 agencies, state attorneys, the Medicaid Fraud Control Unit of  
1231 the Department of Legal Affairs, local fire authorities, the  
1232 Department of Children and Family Services, the district long-  
1233 term care ombudsman council, and the district human rights  
1234 advocacy committee to assist in identifying the operation of  
1235 unlicensed facilities and to develop and implement a plan to  
1236 ensure effective enforcement of state laws relating to such  
1237 facilities. The workgroup shall report its findings, actions,  
1238 and recommendations semiannually to the Director of Health  
1239 Facility Regulation of the agency.

1240 (2) It is unlawful to knowingly refer a person for  
1241 residency to an unlicensed assisted living facility; to an  
1242 assisted living facility the license of which is under denial or  
1243 has been suspended or revoked; or to an assisted living facility  
1244 that has a moratorium on admissions. Any person who violates

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1245 this subsection commits a noncriminal violation, punishable by a  
1246 fine not exceeding \$500 as provided in s. 775.083.

1247 (a) Any health care practitioner, as defined in s.  
1248 456.001, who is aware of the operation of an unlicensed facility  
1249 shall report that facility to the agency. Failure to report a  
1250 facility that the practitioner knows or has reasonable cause to  
1251 suspect is unlicensed shall be reported to the practitioner's  
1252 licensing board.

1253 (b) Any hospital or community mental health center  
1254 licensed under chapter 395 or chapter 394 which knowingly  
1255 discharges a patient or client to an unlicensed facility is  
1256 subject to sanction by the agency.

1257 (c) Any employee of the agency or department, or the  
1258 Department of Children and Family Services, who knowingly refers  
1259 a person for residency to an unlicensed facility; to a facility  
1260 the license of which is under denial or has been suspended or  
1261 revoked; or to a facility that has a moratorium on admissions is  
1262 subject to disciplinary action by the agency or department, or  
1263 the Department of Children and Family Services.

1264 (d) The employer of any person who is under contract with  
1265 the agency or department, or the Department of Children and  
1266 Family Services, and who knowingly refers a person for residency  
1267 to an unlicensed facility; to a facility the license of which is  
1268 under denial or has been suspended or revoked; or to a facility  
1269 that has a moratorium on admissions shall be fined and required  
1270 to prepare a corrective action plan designed to prevent such  
1271 referrals.

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1272 (e) The agency shall provide the department and the  
1273 Department of Children and Family Services with a list of  
1274 licensed facilities within each county and shall update the list  
1275 at least quarterly.

1276 (f) At least annually, the agency shall notify, in  
1277 appropriate trade publications, physicians licensed under  
1278 chapter 458 or chapter 459, hospitals licensed under chapter  
1279 395, nursing home facilities licensed under part II of ~~this~~  
1280 chapter 400, and employees of the agency or the department, or  
1281 the Department of Children and Family Services, who are  
1282 responsible for referring persons for residency, that it is  
1283 unlawful to knowingly refer a person for residency to an  
1284 unlicensed assisted living facility and shall notify them of the  
1285 penalty for violating such prohibition. The department and the  
1286 Department of Children and Family Services shall, in turn,  
1287 notify service providers under contract to the respective  
1288 departments who have responsibility for resident referrals to  
1289 facilities. Further, the notice must direct each noticed  
1290 facility and individual to contact the appropriate agency office  
1291 in order to verify the licensure status of any facility prior to  
1292 referring any person for residency. Each notice must include the  
1293 name, telephone number, and mailing address of the appropriate  
1294 office to contact.

1295 Section 35. Section 400.411, Florida Statutes, is  
1296 renumbered as section 429.11, Florida Statutes, and amended to  
1297 read:

1298 429.11 ~~400.411~~ Initial application for license;  
1299 provisional license.--

1300 (1) Application for a license shall be made to the agency  
 1301 on forms furnished by it and shall be accompanied by the  
 1302 appropriate license fee.

1303 (2) The applicant may be an individual owner, a  
 1304 corporation, a partnership, a firm, an association, or a  
 1305 governmental entity.

1306 (3) The application must be signed by the applicant under  
 1307 oath and must contain the following:

1308 (a) The name, address, date of birth, and social security  
 1309 number of the applicant and the name by which the facility is to  
 1310 be known. If the applicant is a firm, partnership, or  
 1311 association, the application shall contain the name, address,  
 1312 date of birth, and social security number of every member  
 1313 thereof. If the applicant is a corporation, the application  
 1314 shall contain the corporation's name and address; the name,  
 1315 address, date of birth, and social security number of each of  
 1316 its directors and officers; and the name and address of each  
 1317 person having at least a 5-percent ownership interest in the  
 1318 corporation.

1319 (b) The name and address of any professional service,  
 1320 firm, association, partnership, or corporation that is to  
 1321 provide goods, leases, or services to the facility if a 5-  
 1322 percent or greater ownership interest in the service, firm,  
 1323 association, partnership, or corporation is owned by a person  
 1324 whose name must be listed on the application under paragraph

1325 (a).

1326 (c) The name and address of any long-term care facility  
 1327 with which the applicant, administrator, or financial officer



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1328 has been affiliated through ownership or employment within 5  
 1329 years of the date of this license application; and a signed  
 1330 affidavit disclosing any financial or ownership interest that  
 1331 the applicant, or any person listed in paragraph (a), holds or  
 1332 has held within the last 5 years in any facility licensed under  
 1333 this part, or in any other entity licensed by this state or  
 1334 another state to provide health or residential care, which  
 1335 facility or entity closed or ceased to operate as a result of  
 1336 financial problems, or has had a receiver appointed or a license  
 1337 denied, suspended or revoked, or was subject to a moratorium on  
 1338 admissions, or has had an injunctive proceeding initiated  
 1339 against it.

1340 (d) A description and explanation of any exclusions,  
 1341 permanent suspensions, or terminations of the applicant from the  
 1342 Medicare or Medicaid programs. Proof of compliance with  
 1343 disclosure of ownership and control interest requirements of the  
 1344 Medicaid or Medicare programs shall be accepted in lieu of this  
 1345 submission.

1346 (e) The names and addresses of persons of whom the agency  
 1347 may inquire as to the character, reputation, and financial  
 1348 responsibility of the owner and, if different from the  
 1349 applicant, the administrator and financial officer.

1350 (f) Identification of all other homes or facilities,  
 1351 including the addresses and the license or licenses under which  
 1352 they operate, if applicable, which are currently operated by the  
 1353 applicant or administrator and which provide housing, meals, and  
 1354 personal services to residents.

1355 (g) The location of the facility for which a license is  
 1356 sought and documentation, signed by the appropriate local  
 1357 government official, which states that the applicant has met  
 1358 local zoning requirements.

1359 (h) The name, address, date of birth, social security  
 1360 number, education, and experience of the administrator, if  
 1361 different from the applicant.

1362 (4) The applicant shall furnish satisfactory proof of  
 1363 financial ability to operate and conduct the facility in  
 1364 accordance with the requirements of this part. A certificate of  
 1365 authority, pursuant to chapter 651, may be provided as proof of  
 1366 financial ability.

1367 (5) If the applicant is a continuing care facility  
 1368 certified under chapter 651, a copy of the facility's  
 1369 certificate of authority must be provided.

1370 (6) The applicant shall provide proof of liability  
 1371 insurance as defined in s. 624.605.

1372 (7) If the applicant is a community residential home, the  
 1373 applicant must provide proof that it has met the requirements  
 1374 specified in chapter 419.

1375 (8) The applicant must provide the agency with proof of  
 1376 legal right to occupy the property.

1377 (9) The applicant must furnish proof that the facility has  
 1378 received a satisfactory firesafety inspection. The local  
 1379 authority having jurisdiction or the State Fire Marshal must  
 1380 conduct the inspection within 30 days after written request by  
 1381 the applicant.

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1382 (10) The applicant must furnish documentation of a  
1383 satisfactory sanitation inspection of the facility by the county  
1384 health department.

1385 (11) The applicant must furnish proof of compliance with  
1386 level 2 background screening as required under s. 429.174 ~~s.~~  
1387 ~~400.4174~~.

1388 (12) A provisional license may be issued to an applicant  
1389 making initial application for licensure or making application  
1390 for a change of ownership. A provisional license shall be  
1391 limited in duration to a specific period of time not to exceed 6  
1392 months, as determined by the agency.

1393 (13) A county or municipality may not issue an  
1394 occupational license that is being obtained for the purpose of  
1395 operating a facility regulated under this part without first  
1396 ascertaining that the applicant has been licensed to operate  
1397 such facility at the specified location or locations by the  
1398 agency. The agency shall furnish to local agencies responsible  
1399 for issuing occupational licenses sufficient instruction for  
1400 making such determinations.

1401 Section 36. Section 400.412, Florida Statutes, is  
1402 renumbered as section 429.12, Florida Statutes, and amended to  
1403 read:

1404 429.12 ~~400.412~~ Sale or transfer of ownership of a  
1405 facility.--It is the intent of the Legislature to protect the  
1406 rights of the residents of an assisted living facility when the  
1407 facility is sold or the ownership thereof is transferred.  
1408 Therefore, whenever a facility is sold or the ownership thereof  
1409 is transferred, including leasing:

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1410 (1) The transferee shall make application to the agency  
 1411 for a new license at least 60 days before the date of transfer  
 1412 of ownership. The application must comply with the provisions  
 1413 of s. 429.11 ~~s. 400.411~~.

1414 (2) (a) The transferor shall notify the agency in writing  
 1415 at least 60 days before the date of transfer of ownership.

1416 (b) The new owner shall notify the residents, in writing,  
 1417 of the transfer of ownership within 7 days of his or her receipt  
 1418 of the license.

1419 (3) The transferor shall be responsible and liable for:

1420 (a) The lawful operation of the facility and the welfare  
 1421 of the residents domiciled in the facility until the date the  
 1422 transferee is licensed by the agency.

1423 (b) Any and all penalties imposed against the facility for  
 1424 violations occurring before the date of transfer of ownership  
 1425 unless the penalty imposed is a moratorium on admissions or  
 1426 denial of licensure. The moratorium on admissions or denial of  
 1427 licensure remains in effect after the transfer of ownership,  
 1428 unless the agency has approved the transferee's corrective  
 1429 action plan or the conditions which created the moratorium or  
 1430 denial have been corrected, and may be grounds for denial of  
 1431 license to the transferee in accordance with chapter 120.

1432 (c) Any outstanding liability to the state, unless the  
 1433 transferee has agreed, as a condition of sale or transfer, to  
 1434 accept the outstanding liabilities and to guarantee payment  
 1435 therefor; except that, if the transferee fails to meet these  
 1436 obligations, the transferor shall remain liable for the  
 1437 outstanding liability.

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1438 (4) The transferor of a facility the license of which is  
 1439 denied pending an administrative hearing shall, as a part of the  
 1440 written transfer-of-ownership contract, advise the transferee  
 1441 that a plan of correction must be submitted by the transferee  
 1442 and approved by the agency at least 7 days before the transfer  
 1443 of ownership and that failure to correct the condition which  
 1444 resulted in the moratorium on admissions or denial of licensure  
 1445 is grounds for denial of the transferee's license.

1446 (5) The transferee must provide the agency with proof of  
 1447 legal right to occupy the property before a license may be  
 1448 issued. Proof may include, but is not limited to, copies of  
 1449 warranty deeds, or copies of lease or rental agreements,  
 1450 contracts for deeds, quitclaim deeds, or other such  
 1451 documentation.

1452 Section 37. Section 400.414, Florida Statutes, is  
 1453 renumbered as section 429.14, Florida Statutes, and amended to  
 1454 read:

1455 429.14 ~~400.414~~ Denial, revocation, or suspension of  
 1456 license; imposition of administrative fine; grounds.--

1457 (1) The agency may deny, revoke, or suspend any license  
 1458 issued under this part, or impose an administrative fine in the  
 1459 manner provided in chapter 120, for any of the following actions  
 1460 by an assisted living facility, for the actions of any person  
 1461 subject to level 2 background screening under s. 429.174 ~~s.~~  
 1462 ~~400.4174~~, or for the actions of any facility employee:

1463 (a) An intentional or negligent act seriously affecting  
 1464 the health, safety, or welfare of a resident of the facility.

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1465 (b) The determination by the agency that the owner lacks  
1466 the financial ability to provide continuing adequate care to  
1467 residents.

1468 (c) Misappropriation or conversion of the property of a  
1469 resident of the facility.

1470 (d) Failure to follow the criteria and procedures provided  
1471 under part I of chapter 394 relating to the transportation,  
1472 voluntary admission, and involuntary examination of a facility  
1473 resident.

1474 (e) A citation of any of the following deficiencies as  
1475 defined in s. 429.19 ~~s. 400.419~~:

- 1476 1. One or more cited class I deficiencies.
- 1477 2. Three or more cited class II deficiencies.
- 1478 3. Five or more cited class III deficiencies that have  
1479 been cited on a single survey and have not been corrected within  
1480 the times specified.

1481 (f) A determination that a person subject to level 2  
1482 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not  
1483 meet the screening standards of s. 435.04 or that the facility  
1484 is retaining an employee subject to level 1 background screening  
1485 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet  
1486 the screening standards of s. 435.03 and for whom exemptions  
1487 from disqualification have not been provided by the agency.

1488 (g) A determination that an employee, volunteer,  
1489 administrator, or owner, or person who otherwise has access to  
1490 the residents of a facility does not meet the criteria specified  
1491 in s. 435.03(2), and the owner or administrator has not taken  
1492 action to remove the person. Exemptions from disqualification

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1493 may be granted as set forth in s. 435.07. No administrative  
1494 action may be taken against the facility if the person is  
1495 granted an exemption.

1496 (h) Violation of a moratorium.

1497 (i) Failure of the license applicant, the licensee during  
1498 relicensure, or a licensee that holds a provisional license to  
1499 meet the minimum license requirements of this part, or related  
1500 rules, at the time of license application or renewal.

1501 (j) A fraudulent statement or omission of any material  
1502 fact on an application for a license or any other document  
1503 required by the agency, including the submission of a license  
1504 application that conceals the fact that any board member,  
1505 officer, or person owning 5 percent or more of the facility may  
1506 not meet the background screening requirements of s. 429.174 ~~s.~~  
1507 ~~400.4174~~, or that the applicant has been excluded, permanently  
1508 suspended, or terminated from the Medicaid or Medicare programs.

1509 (k) An intentional or negligent life-threatening act in  
1510 violation of the uniform firesafety standards for assisted  
1511 living facilities or other firesafety standards that threatens  
1512 the health, safety, or welfare of a resident of a facility, as  
1513 communicated to the agency by the local authority having  
1514 jurisdiction or the State Fire Marshal.

1515 (l) Exclusion, permanent suspension, or termination from  
1516 the Medicare or Medicaid programs.

1517 (m) Knowingly operating any unlicensed facility or  
1518 providing without a license any service that must be licensed  
1519 under this chapter or chapter 400.

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1520 (n) Any act constituting a ground upon which application  
1521 for a license may be denied.

1522

1523 Administrative proceedings challenging agency action under this  
1524 subsection shall be reviewed on the basis of the facts and  
1525 conditions that resulted in the agency action.

1526 (2) Upon notification by the local authority having  
1527 jurisdiction or by the State Fire Marshal, the agency may deny  
1528 or revoke the license of an assisted living facility that fails  
1529 to correct cited fire code violations that affect or threaten  
1530 the health, safety, or welfare of a resident of a facility.

1531 (3) The agency may deny a license to any applicant or to  
1532 any officer or board member of an applicant who is a firm,  
1533 corporation, partnership, or association or who owns 5 percent  
1534 or more of the facility, if the applicant, officer, or board  
1535 member has or had a 25-percent or greater financial or ownership  
1536 interest in any other facility licensed under this part, or in  
1537 any entity licensed by this state or another state to provide  
1538 health or residential care, which facility or entity during the  
1539 5 years prior to the application for a license closed due to  
1540 financial inability to operate; had a receiver appointed or a  
1541 license denied, suspended, or revoked; was subject to a  
1542 moratorium on admissions; had an injunctive proceeding initiated  
1543 against it; or has an outstanding fine assessed under this  
1544 chapter or chapter 400.

1545 (4) The agency shall deny or revoke the license of an  
1546 assisted living facility that has two or more class I violations  
1547 that are similar or identical to violations identified by the



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1548 agency during a survey, inspection, monitoring visit, or  
1549 complaint investigation occurring within the previous 2 years.

1550 (5) An action taken by the agency to suspend, deny, or  
1551 revoke a facility's license under this part, in which the agency  
1552 claims that the facility owner or an employee of the facility  
1553 has threatened the health, safety, or welfare of a resident of  
1554 the facility be heard by the Division of Administrative Hearings  
1555 of the Department of Management Services within 120 days after  
1556 receipt of the facility's request for a hearing, unless that  
1557 time limitation is waived by both parties. The administrative  
1558 law judge must render a decision within 30 days after receipt of  
1559 a proposed recommended order.

1560 (6) The agency shall provide to the Division of Hotels and  
1561 Restaurants of the Department of Business and Professional  
1562 Regulation, on a monthly basis, a list of those assisted living  
1563 facilities that have had their licenses denied, suspended, or  
1564 revoked or that are involved in an appellate proceeding pursuant  
1565 to s. 120.60 related to the denial, suspension, or revocation of  
1566 a license.

1567 (7) Agency notification of a license suspension or  
1568 revocation, or denial of a license renewal, shall be posted and  
1569 visible to the public at the facility.

1570 (8) The agency may issue a temporary license pending final  
1571 disposition of a proceeding involving the suspension or  
1572 revocation of an assisted living facility license.

1573 Section 38. Section 400.415, Florida Statutes, is  
1574 renumbered as section 429.15, Florida Statutes, and amended to  
1575 read:

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1576           429.15 ~~400.415~~ Moratorium on admissions; notice.--The  
 1577 agency may impose an immediate moratorium on admissions to any  
 1578 assisted living facility if the agency determines that any  
 1579 condition in the facility presents a threat to the health,  
 1580 safety, or welfare of the residents in the facility.

1581           (1) A facility the license of which is denied, revoked, or  
 1582 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to  
 1583 immediate imposition of a moratorium on admissions to run  
 1584 concurrently with licensure denial, revocation, or suspension.

1585           (2) When a moratorium is placed on a facility, notice of  
 1586 the moratorium shall be posted and visible to the public at the  
 1587 facility until the moratorium is lifted.

1588           (3) The department may by rule establish conditions that  
 1589 constitute grounds for imposing a moratorium on a facility and  
 1590 procedures for imposing and lifting a moratorium, as necessary  
 1591 to administer this section.

1592           Section 39. Section 400.417, Florida Statutes, is  
 1593 renumbered as section 429.17, Florida Statutes, and amended to  
 1594 read:

1595           429.17 ~~400.417~~ Expiration of license; renewal; conditional  
 1596 license.--

1597           (1) Biennial licenses, unless sooner suspended or revoked,  
 1598 shall expire 2 years from the date of issuance. Limited nursing,  
 1599 extended congregate care, and limited mental health licenses  
 1600 shall expire at the same time as the facility's standard  
 1601 license, regardless of when issued. The agency shall notify the  
 1602 facility at least 120 days prior to expiration that a renewal  
 1603 license is necessary to continue operation. The notification

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1604 must be provided electronically or by mail delivery. Ninety days  
1605 prior to the expiration date, an application for renewal shall  
1606 be submitted to the agency. Fees must be prorated. The failure  
1607 to file a timely renewal application shall result in a late fee  
1608 charged to the facility in an amount equal to 50 percent of the  
1609 current fee.

1610 (2) A license shall be renewed within 90 days upon the  
1611 timely filing of an application on forms furnished by the agency  
1612 and the provision of satisfactory proof of ability to operate  
1613 and conduct the facility in accordance with the requirements of  
1614 this part and adopted rules, including proof that the facility  
1615 has received a satisfactory firesafety inspection, conducted by  
1616 the local authority having jurisdiction or the State Fire  
1617 Marshal, within the preceding 12 months and an affidavit of  
1618 compliance with the background screening requirements of s.  
1619 429.174 ~~s. 400.4174~~.

1620 (3) An applicant for renewal of a license who has complied  
1621 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to  
1622 proof of financial ability to operate shall not be required to  
1623 provide further proof unless the facility or any other facility  
1624 owned or operated in whole or in part by the same person has  
1625 demonstrated financial instability as provided under s.  
1626 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the  
1627 facility is not financially stable as a result of the annual  
1628 survey or complaints from the public or a report from the State  
1629 Long-Term Care Ombudsman Council. Each facility must report to  
1630 the agency any adverse court action concerning the facility's  
1631 financial viability, within 7 days after its occurrence. The

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1632 agency shall have access to books, records, and any other  
 1633 financial documents maintained by the facility to the extent  
 1634 necessary to determine the facility's financial stability. A  
 1635 license for the operation of a facility shall not be renewed if  
 1636 the licensee has any outstanding fines assessed pursuant to this  
 1637 part which are in final order status.

1638 (4) A licensee against whom a revocation or suspension  
 1639 proceeding is pending at the time of license renewal may be  
 1640 issued a conditional license effective until final disposition  
 1641 by the agency. If judicial relief is sought from the final  
 1642 disposition, the court having jurisdiction may issue a  
 1643 conditional license for the duration of the judicial proceeding.

1644 (5) A conditional license may be issued to an applicant  
 1645 for license renewal if the applicant fails to meet all standards  
 1646 and requirements for licensure. A conditional license issued  
 1647 under this subsection shall be limited in duration to a specific  
 1648 period of time not to exceed 6 months, as determined by the  
 1649 agency, and shall be accompanied by an agency-approved plan of  
 1650 correction.

1651 (6) When an extended care or limited nursing license is  
 1652 requested during a facility's biennial license period, the fee  
 1653 shall be prorated in order to permit the additional license to  
 1654 expire at the end of the biennial license period. The fee shall  
 1655 be calculated as of the date the additional license application  
 1656 is received by the agency.

1657 (7) The department may by rule establish renewal  
 1658 procedures, identify forms, and specify documentation necessary  
 1659 to administer this section.

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1660 Section 40. Section 400.4174, Florida Statutes, is  
 1661 renumbered as section 429.174, Florida Statutes, and amended to  
 1662 read:

1663 429.174 ~~400.4174~~ Background screening; exemptions.--

1664 (1) (a) Level 2 background screening must be conducted on  
 1665 each of the following persons, who shall be considered employees  
 1666 for the purposes of conducting screening under chapter 435:

1667 1. The facility owner if an individual, the administrator,  
 1668 and the financial officer.

1669 2. An officer or board member if the facility owner is a  
 1670 firm, corporation, partnership, or association, or any person  
 1671 owning 5 percent or more of the facility if the agency has  
 1672 probable cause to believe that such person has been convicted of  
 1673 any offense prohibited by s. 435.04. For each officer, board  
 1674 member, or person owning 5 percent or more who has been  
 1675 convicted of any such offense, the facility shall submit to the  
 1676 agency a description and explanation of the conviction at the  
 1677 time of license application. This subparagraph does not apply to  
 1678 a board member of a not-for-profit corporation or organization  
 1679 if the board member serves solely in a voluntary capacity, does  
 1680 not regularly take part in the day-to-day operational decisions  
 1681 of the corporation or organization, receives no remuneration for  
 1682 his or her services, and has no financial interest and has no  
 1683 family members with a financial interest in the corporation or  
 1684 organization, provided that the board member and facility submit  
 1685 a statement affirming that the board member's relationship to  
 1686 the facility satisfies the requirements of this subparagraph.

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1687 (b) Proof of compliance with level 2 screening standards  
1688 which has been submitted within the previous 5 years to meet any  
1689 facility or professional licensure requirements of the agency or  
1690 the Department of Health satisfies the requirements of this  
1691 subsection, provided that such proof is accompanied, under  
1692 penalty of perjury, by an affidavit of compliance with the  
1693 provisions of chapter 435. Proof of compliance with the  
1694 background screening requirements of the Financial Services  
1695 Commission and the Office of Insurance Regulation for applicants  
1696 for a certificate of authority to operate a continuing care  
1697 retirement community under chapter 651, submitted within the  
1698 last 5 years, satisfies the Department of Law Enforcement and  
1699 Federal Bureau of Investigation portions of a level 2 background  
1700 check.

1701 (c) The agency may grant a provisional license to a  
1702 facility applying for an initial license when each individual  
1703 required by this subsection to undergo screening has completed  
1704 the Department of Law Enforcement background checks, but has not  
1705 yet received results from the Federal Bureau of Investigation,  
1706 or when a request for an exemption from disqualification has  
1707 been submitted to the agency pursuant to s. 435.07, but a  
1708 response has not been issued.

1709 (2) The owner or administrator of an assisted living  
1710 facility must conduct level 1 background screening, as set forth  
1711 in chapter 435, on all employees hired on or after October 1,  
1712 1998, who perform personal services as defined in s. 429.02(17)  
1713 ~~s. 400.402(17)~~. The agency may exempt an individual from

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1714 employment disqualification as set forth in chapter 435. Such  
1715 persons shall be considered as having met this requirement if:

1716 (a) Proof of compliance with level 1 screening  
1717 requirements obtained to meet any professional license  
1718 requirements in this state is provided and accompanied, under  
1719 penalty of perjury, by a copy of the person's current  
1720 professional license and an affidavit of current compliance with  
1721 the background screening requirements.

1722 (b) The person required to be screened has been  
1723 continuously employed in the same type of occupation for which  
1724 the person is seeking employment without a breach in service  
1725 which exceeds 180 days, and proof of compliance with the level 1  
1726 screening requirement which is no more than 2 years old is  
1727 provided. Proof of compliance shall be provided directly from  
1728 one employer or contractor to another, and not from the person  
1729 screened. Upon request, a copy of screening results shall be  
1730 provided by the employer retaining documentation of the  
1731 screening to the person screened.

1732 (c) The person required to be screened is employed by a  
1733 corporation or business entity or related corporation or  
1734 business entity that owns, operates, or manages more than one  
1735 facility or agency licensed under this chapter, and for whom a  
1736 level 1 screening was conducted by the corporation or business  
1737 entity as a condition of initial or continued employment.

1738 Section 41. Section 400.4176, Florida Statutes, is  
1739 renumbered as section 429.176, Florida Statutes, and amended to  
1740 read:

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1741            429.176 ~~400.4176~~ Notice of change of administrator.--If,  
 1742 during the period for which a license is issued, the owner  
 1743 changes administrators, the owner must notify the agency of the  
 1744 change within 10 days and provide documentation within 90 days  
 1745 that the new administrator has completed the applicable core  
 1746 educational requirements under s. 429.52 ~~s. 400.452~~. Background  
 1747 screening shall be completed on any new administrator as  
 1748 specified in s. 429.174 ~~s. 400.4174~~.

1749            Section 42. Section 400.4178, Florida Statutes, is  
 1750 renumbered as section 429.178, Florida Statutes, and amended to  
 1751 read:

1752            429.178 ~~400.4178~~ Special care for persons with Alzheimer's  
 1753 disease or other related disorders.--

1754            (1) A facility which advertises that it provides special  
 1755 care for persons with Alzheimer's disease or other related  
 1756 disorders must meet the following standards of operation:

1757            (a)1. If the facility has 17 or more residents, have an  
 1758 awake staff member on duty at all hours of the day and night; or

1759            2. If the facility has fewer than 17 residents, have an  
 1760 awake staff member on duty at all hours of the day and night or  
 1761 have mechanisms in place to monitor and ensure the safety of the  
 1762 facility's residents.

1763            (b) Offer activities specifically designed for persons who  
 1764 are cognitively impaired.

1765            (c) Have a physical environment that provides for the  
 1766 safety and welfare of the facility's residents.

1767            (d) Employ staff who have completed the training and  
 1768 continuing education required in subsection (2).



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1769 (2) (a) An individual who is employed by a facility that  
1770 provides special care for residents with Alzheimer's disease or  
1771 other related disorders, and who has regular contact with such  
1772 residents, must complete up to 4 hours of initial dementia-  
1773 specific training developed or approved by the department. The  
1774 training shall be completed within 3 months after beginning  
1775 employment and shall satisfy the core training requirements of  
1776 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1777 (b) A direct caregiver who is employed by a facility that  
1778 provides special care for residents with Alzheimer's disease or  
1779 other related disorders, and who provides direct care to such  
1780 residents, must complete the required initial training and 4  
1781 additional hours of training developed or approved by the  
1782 department. The training shall be completed within 9 months  
1783 after beginning employment and shall satisfy the core training  
1784 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1785 (c) An individual who is employed by a facility that  
1786 provides special care for residents with Alzheimer's disease or  
1787 other related disorders, but who only has incidental contact  
1788 with such residents, must be given, at a minimum, general  
1789 information on interacting with individuals with Alzheimer's  
1790 disease or other related disorders, within 3 months after  
1791 beginning employment.

1792 (3) In addition to the training required under subsection  
1793 (2), a direct caregiver must participate in a minimum of 4  
1794 contact hours of continuing education each calendar year. The  
1795 continuing education must include one or more topics included in  
1796 the dementia-specific training developed or approved by the

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1797 department, in which the caregiver has not received previous  
1798 training.

1799 (4) Upon completing any training listed in subsection (2),  
1800 the employee or direct caregiver shall be issued a certificate  
1801 that includes the name of the training provider, the topic  
1802 covered, and the date and signature of the training provider.  
1803 The certificate is evidence of completion of training in the  
1804 identified topic, and the employee or direct caregiver is not  
1805 required to repeat training in that topic if the employee or  
1806 direct caregiver changes employment to a different facility.  
1807 The employee or direct caregiver must comply with other  
1808 applicable continuing education requirements.

1809 (5) The department, or its designee, shall approve the  
1810 initial and continuing education courses and providers.

1811 (6) The department shall keep a current list of providers  
1812 who are approved to provide initial and continuing education for  
1813 staff of facilities that provide special care for persons with  
1814 Alzheimer's disease or other related disorders.

1815 (7) Any facility more than 90 percent of whose residents  
1816 receive monthly optional supplementation payments is not  
1817 required to pay for the training and education programs required  
1818 under this section. A facility that has one or more such  
1819 residents shall pay a reduced fee that is proportional to the  
1820 percentage of such residents in the facility. A facility that  
1821 does not have any residents who receive monthly optional  
1822 supplementation payments must pay a reasonable fee, as  
1823 established by the department, for such training and education  
1824 programs.

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1825 (8) The department shall adopt rules to establish  
1826 standards for trainers and training and to implement this  
1827 section.

1828 Section 43. Section 400.418, Florida Statutes, is  
1829 renumbered as section 429.18, Florida Statutes, and amended to  
1830 read:

1831 429.18 ~~400.418~~ Disposition of fees and administrative  
1832 fines.--

1833 (1) Income from license fees, inspection fees, late fees,  
1834 and administrative fines generated pursuant to ss. 429.07,  
1835 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~  
1836 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health  
1837 Care Trust Fund administered by the agency. Such funds shall be  
1838 directed to and used by the agency for the following purposes:

1839 (a) Up to 50 percent of the trust funds accrued each  
1840 fiscal year under this part may be used to offset the expenses  
1841 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court  
1842 determines that the income and assets of the facility are  
1843 insufficient to provide for adequate management and operation.

1844 (b) An amount of \$5,000 of the trust funds accrued each  
1845 year under this part shall be allocated to pay for inspection-  
1846 related physical and mental health examinations requested by the  
1847 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are  
1848 either recipients of supplemental security income or have  
1849 monthly incomes not in excess of the maximum combined federal  
1850 and state cash subsidies available to supplemental security  
1851 income recipients, as provided for in s. 409.212. Such funds

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1852 shall only be used where the resident is ineligible for  
1853 Medicaid.

1854 (c) Any trust funds accrued each year under this part and  
1855 not used for the purposes specified in paragraphs (a) and (b)  
1856 shall be used to offset the costs of the licensure program,  
1857 including the costs of conducting background investigations,  
1858 verifying information submitted, defraying the costs of  
1859 processing the names of applicants, and conducting inspections  
1860 and monitoring visits pursuant to this part.

1861 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~  
1862 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and  
1863 used to offset the costs of printing and postage.

1864 Section 44. Section 400.419, Florida Statutes, is  
1865 renumbered as section 429.19, Florida Statutes, and amended to  
1866 read:

1867 429.19 ~~400.419~~ Violations; imposition of administrative  
1868 fines; grounds.--

1869 (1) The agency shall impose an administrative fine in the  
1870 manner provided in chapter 120 for any of the actions or  
1871 violations as set forth within this section by an assisted  
1872 living facility, for the actions of any person subject to level  
1873 2 background screening under s. 429.174 ~~s. 400.4174~~, for the  
1874 actions of any facility employee, or for an intentional or  
1875 negligent act seriously affecting the health, safety, or welfare  
1876 of a resident of the facility.

1877 (2) Each violation of this part and adopted rules shall be  
1878 classified according to the nature of the violation and the  
1879 gravity of its probable effect on facility residents. The agency

1880 shall indicate the classification on the written notice of the  
1881 violation as follows:

1882 (a) Class "I" violations are those conditions or  
1883 occurrences related to the operation and maintenance of a  
1884 facility or to the personal care of residents which the agency  
1885 determines present an imminent danger to the residents or guests  
1886 of the facility or a substantial probability that death or  
1887 serious physical or emotional harm would result therefrom. The  
1888 condition or practice constituting a class I violation shall be  
1889 abated or eliminated within 24 hours, unless a fixed period, as  
1890 determined by the agency, is required for correction. The agency  
1891 shall impose an administrative fine for a cited class I  
1892 violation in an amount not less than \$5,000 and not exceeding  
1893 \$10,000 for each violation. A fine may be levied notwithstanding  
1894 the correction of the violation.

1895 (b) Class "II" violations are those conditions or  
1896 occurrences related to the operation and maintenance of a  
1897 facility or to the personal care of residents which the agency  
1898 determines directly threaten the physical or emotional health,  
1899 safety, or security of the facility residents, other than class  
1900 I violations. The agency shall impose an administrative fine for  
1901 a cited class II violation in an amount not less than \$1,000 and  
1902 not exceeding \$5,000 for each violation. A fine shall be levied  
1903 notwithstanding the correction of the violation.

1904 (c) Class "III" violations are those conditions or  
1905 occurrences related to the operation and maintenance of a  
1906 facility or to the personal care of residents which the agency  
1907 determines indirectly or potentially threaten the physical or

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1908 | emotional health, safety, or security of facility residents,  
 1909 | other than class I or class II violations. The agency shall  
 1910 | impose an administrative fine for a cited class III violation in  
 1911 | an amount not less than \$500 and not exceeding \$1,000 for each  
 1912 | violation. A citation for a class III violation must specify the  
 1913 | time within which the violation is required to be corrected. If  
 1914 | a class III violation is corrected within the time specified, no  
 1915 | fine may be imposed, unless it is a repeated offense.

1916 |         (d) Class "IV" violations are those conditions or  
 1917 | occurrences related to the operation and maintenance of a  
 1918 | building or to required reports, forms, or documents that do not  
 1919 | have the potential of negatively affecting residents. These  
 1920 | violations are of a type that the agency determines do not  
 1921 | threaten the health, safety, or security of residents of the  
 1922 | facility. The agency shall impose an administrative fine for a  
 1923 | cited class IV violation in an amount not less than \$100 and not  
 1924 | exceeding \$200 for each violation. A citation for a class IV  
 1925 | violation must specify the time within which the violation is  
 1926 | required to be corrected. If a class IV violation is corrected  
 1927 | within the time specified, no fine shall be imposed. Any class  
 1928 | IV violation that is corrected during the time an agency survey  
 1929 | is being conducted will be identified as an agency finding and  
 1930 | not as a violation.

1931 |         (3) In determining if a penalty is to be imposed and in  
 1932 | fixing the amount of the fine, the agency shall consider the  
 1933 | following factors:

1934 |             (a) The gravity of the violation, including the  
 1935 | probability that death or serious physical or emotional harm to

1936 a resident will result or has resulted, the severity of the  
 1937 action or potential harm, and the extent to which the provisions  
 1938 of the applicable laws or rules were violated.

1939 (b) Actions taken by the owner or administrator to correct  
 1940 violations.

1941 (c) Any previous violations.

1942 (d) The financial benefit to the facility of committing or  
 1943 continuing the violation.

1944 (e) The licensed capacity of the facility.

1945 (4) Each day of continuing violation after the date fixed  
 1946 for termination of the violation, as ordered by the agency,  
 1947 constitutes an additional, separate, and distinct violation.

1948 (5) Any action taken to correct a violation shall be  
 1949 documented in writing by the owner or administrator of the  
 1950 facility and verified through followup visits by agency  
 1951 personnel. The agency may impose a fine and, in the case of an  
 1952 owner-operated facility, revoke or deny a facility's license  
 1953 when a facility administrator fraudulently misrepresents action  
 1954 taken to correct a violation.

1955 (6) For fines that are upheld following administrative or  
 1956 judicial review, the violator shall pay the fine, plus interest  
 1957 at the rate as specified in s. 55.03, for each day beyond the  
 1958 date set by the agency for payment of the fine.

1959 (7) Any unlicensed facility that continues to operate  
 1960 after agency notification is subject to a \$1,000 fine per day.

1961 (8) Any licensed facility whose owner or administrator  
 1962 concurrently operates an unlicensed facility shall be subject to  
 1963 an administrative fine of \$5,000 per day.

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1964 (9) Any facility whose owner fails to apply for a change-  
1965 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and  
1966 operates the facility under the new ownership is subject to a  
1967 fine of \$5,000.

1968 (10) In addition to any administrative fines imposed, the  
1969 agency may assess a survey fee, equal to the lesser of one half  
1970 of the facility's biennial license and bed fee or \$500, to cover  
1971 the cost of conducting initial complaint investigations that  
1972 result in the finding of a violation that was the subject of the  
1973 complaint or monitoring visits conducted under s. 429.28(3)(c)  
1974 ~~s. 400.428(3)(e)~~ to verify the correction of the violations.

1975 (11) The agency, as an alternative to or in conjunction  
1976 with an administrative action against a facility for violations  
1977 of this part and adopted rules, shall make a reasonable attempt  
1978 to discuss each violation and recommended corrective action with  
1979 the owner or administrator of the facility, prior to written  
1980 notification. The agency, instead of fixing a period within  
1981 which the facility shall enter into compliance with standards,  
1982 may request a plan of corrective action from the facility which  
1983 demonstrates a good faith effort to remedy each violation by a  
1984 specific date, subject to the approval of the agency.

1985 (12) Administrative fines paid by any facility under this  
1986 section shall be deposited into the Health Care Trust Fund and  
1987 expended as provided in s. 429.18 ~~s. 400.418~~.

1988 (13) The agency shall develop and disseminate an annual  
1989 list of all facilities sanctioned or fined \$5,000 or more for  
1990 violations of state standards, the number and class of  
1991 violations involved, the penalties imposed, and the current



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1992 status of cases. The list shall be disseminated, at no charge,  
 1993 to the Department of Elderly Affairs, the Department of Health,  
 1994 the Department of Children and Family Services, the area  
 1995 agencies on aging, the Florida Statewide Advocacy Council, and  
 1996 the state and local ombudsman councils. The Department of  
 1997 Children and Family Services shall disseminate the list to  
 1998 service providers under contract to the department who are  
 1999 responsible for referring persons to a facility for residency.  
 2000 The agency may charge a fee commensurate with the cost of  
 2001 printing and postage to other interested parties requesting a  
 2002 copy of this list.

2003 Section 45. Section 400.42, Florida Statutes, is  
 2004 renumbered as section 429.20, Florida Statutes, and amended to  
 2005 read:

2006 429.20 ~~400.42~~ Certain solicitation prohibited; third-party  
 2007 supplementation.--

2008 (1) A person may not, in connection with the solicitation  
 2009 of contributions by or on behalf of an assisted living facility  
 2010 or facilities, misrepresent or mislead any person, by any  
 2011 manner, means, practice, or device whatsoever, to believe that  
 2012 the receipts of such solicitation will be used for charitable  
 2013 purposes, if that is not the fact.

2014 (2) Solicitation of contributions of any kind in a  
 2015 threatening, coercive, or unduly forceful manner by or on behalf  
 2016 of an assisted living facility or facilities by any agent,  
 2017 employee, owner, or representative of any assisted living  
 2018 facility or facilities is grounds for denial, suspension, or  
 2019 revocation of the license of the assisted living facility or

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2020 facilities by or on behalf of which such contributions were  
2021 solicited.

2022 (3) The admission or maintenance of assisted living  
2023 facility residents whose care is supported, in whole or in part,  
2024 by state funds may not be conditioned upon the receipt of any  
2025 manner of contribution or donation from any person. The  
2026 solicitation or receipt of contributions in violation of this  
2027 subsection is grounds for denial, suspension, or revocation of  
2028 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted  
2029 living facility by or on behalf of which such contributions were  
2030 solicited.

2031 (4) An assisted living facility may accept additional  
2032 supplementation from third parties on behalf of residents  
2033 receiving optional state supplementation in accordance with s.  
2034 409.212.

2035 Section 46. Section 400.422, Florida Statutes, is  
2036 renumbered as section 429.22, Florida Statutes, and amended to  
2037 read:

2038 429.22 ~~400.422~~ Receivership proceedings.--

2039 (1) As an alternative to or in conjunction with an  
2040 injunctive proceeding, the agency may petition a court of  
2041 competent jurisdiction for the appointment of a receiver, if  
2042 suitable alternate placements are not available, when any of the  
2043 following conditions exist:

2044 (a) The facility is operating without a license and  
2045 refuses to make application for a license as required by ss.  
2046 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

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2047 (b) The facility is closing or has informed the agency  
2048 that it intends to close and adequate arrangements have not been  
2049 made for relocation of the residents within 7 days, exclusive of  
2050 weekends and holidays, of the closing of the facility.

2051 (c) The agency determines there exist in the facility  
2052 conditions which present an imminent danger to the health,  
2053 safety, or welfare of the residents of the facility or a  
2054 substantial probability that death or serious physical harm  
2055 would result therefrom.

2056 (d) The facility cannot meet its financial obligation for  
2057 providing food, shelter, care, and utilities.

2058 (2) Petitions for receivership shall take precedence over  
2059 other court business unless the court determines that some other  
2060 pending proceeding, having similar statutory precedence, shall  
2061 have priority. A hearing shall be conducted within 5 days of  
2062 the filing of the petition, at which time all interested parties  
2063 shall have the opportunity to present evidence pertaining to the  
2064 petition. The agency shall notify, by certified mail, the owner  
2065 or administrator of the facility named in the petition and the  
2066 facility resident or, if applicable, the resident's  
2067 representative or designee, or the resident's surrogate,  
2068 guardian, or attorney in fact, of its filing, the substance of  
2069 the violation, and the date and place set for the hearing. The  
2070 court shall grant the petition only upon finding that the  
2071 health, safety, or welfare of facility residents would be  
2072 threatened if a condition existing at the time the petition was  
2073 filed is permitted to continue. A receiver shall not be  
2074 appointed ex parte unless the court determines that one or more

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2075 of the conditions in subsection (1) exist; that the facility  
2076 owner or administrator cannot be found; that all reasonable  
2077 means of locating the owner or administrator and notifying him  
2078 or her of the petition and hearing have been exhausted; or that  
2079 the owner or administrator after notification of the hearing  
2080 chooses not to attend. After such findings, the court may  
2081 appoint any qualified person as a receiver, except it may not  
2082 appoint any owner or affiliate of the facility which is in  
2083 receivership. The receiver may be selected from a list of  
2084 persons qualified to act as receivers developed by the agency  
2085 and presented to the court with each petition for receivership.  
2086 Under no circumstances may the agency or designated agency  
2087 employee be appointed as a receiver for more than 60 days;  
2088 however, the receiver may petition the court, one time only, for  
2089 a 30-day extension. The court shall grant the extension upon a  
2090 showing of good cause.

2091 (3) The receiver must make provisions for the continued  
2092 health, safety, and welfare of all residents of the facility  
2093 and:

2094 (a) Shall exercise those powers and perform those duties  
2095 set out by the court.

2096 (b) Shall operate the facility in such a manner as to  
2097 assure safety and adequate health care for the residents.

2098 (c) Shall take such action as is reasonably necessary to  
2099 protect or conserve the assets or property of the facility for  
2100 which the receiver is appointed, or the proceeds from any  
2101 transfer thereof, and may use them only in the performance of

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2102 | the powers and duties set forth in this section and by order of  
2103 | the court.

2104 |         (d) May use the building, fixtures, furnishings, and any  
2105 | accompanying consumable goods in the provision of care and  
2106 | services to residents and to any other persons receiving  
2107 | services from the facility at the time the petition for  
2108 | receivership was filed. The receiver shall collect payments for  
2109 | all goods and services provided to residents or others during  
2110 | the period of the receivership at the same rate of payment  
2111 | charged by the owners at the time the petition for receivership  
2112 | was filed, or at a fair and reasonable rate otherwise approved  
2113 | by the court.

2114 |         (e) May correct or eliminate any deficiency in the  
2115 | structure or furnishings of the facility which endangers the  
2116 | safety or health of residents while they remain in the facility,  
2117 | if the total cost of correction does not exceed \$10,000. The  
2118 | court may order expenditures for this purpose in excess of  
2119 | \$10,000 on application from the receiver after notice to the  
2120 | owner and a hearing.

2121 |         (f) May let contracts and hire agents and employees to  
2122 | carry out the powers and duties of the receiver.

2123 |         (g) Shall honor all leases, mortgages, and secured  
2124 | transactions governing the building in which the facility is  
2125 | located and all goods and fixtures in the building of which the  
2126 | receiver has taken possession, but only to the extent of  
2127 | payments which, in the case of a rental agreement, are for the  
2128 | use of the property during the period of the receivership, or

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2129 | which, in the case of a purchase agreement, become due during  
2130 | the period of the receivership.

2131 |       (h) Shall have full power to direct and manage and to  
2132 | discharge employees of the facility, subject to any contract  
2133 | rights they may have. The receiver shall pay employees at the  
2134 | rate of compensation, including benefits, approved by the court.  
2135 | A receivership does not relieve the owner of any obligation to  
2136 | employees made prior to the appointment of a receiver and not  
2137 | carried out by the receiver.

2138 |       (i) Shall be entitled to and take possession of all  
2139 | property or assets of residents which are in the possession of a  
2140 | facility or its owner. The receiver shall preserve all property,  
2141 | assets, and records of residents of which the receiver takes  
2142 | possession and shall provide for the prompt transfer of the  
2143 | property, assets, and records to the new placement of any  
2144 | transferred resident. An inventory list certified by the owner  
2145 | and receiver shall be made immediately at the time the receiver  
2146 | takes possession of the facility.

2147 |       (4) (a) A person who is served with notice of an order of  
2148 | the court appointing a receiver and of the receiver's name and  
2149 | address shall be liable to pay the receiver for any goods or  
2150 | services provided by the receiver after the date of the order if  
2151 | the person would have been liable for the goods or services as  
2152 | supplied by the owner. The receiver shall give a receipt for  
2153 | each payment and shall keep a copy of each receipt on file. The  
2154 | receiver shall deposit accounts received in a separate account  
2155 | and shall use this account for all disbursements.

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2156 (b) The receiver may bring an action to enforce the  
2157 liability created by paragraph (a).

2158 (c) A payment to the receiver of any sum owing to the  
2159 facility or its owner shall discharge any obligation to the  
2160 facility to the extent of the payment.

2161 (5) (a) A receiver may petition the court that he or she  
2162 not be required to honor any lease, mortgage, secured  
2163 transaction, or other wholly or partially executory contract  
2164 entered into by the owner of the facility if the rent, price, or  
2165 rate of interest required to be paid under the agreement was  
2166 substantially in excess of a reasonable rent, price, or rate of  
2167 interest at the time the contract was entered into, or if any  
2168 material provision of the agreement was unreasonable, when  
2169 compared to contracts negotiated under similar conditions. Any  
2170 relief in this form provided by the court shall be limited to  
2171 the life of the receivership, unless otherwise determined by the  
2172 court.

2173 (b) If the receiver is in possession of real estate or  
2174 goods subject to a lease, mortgage, or security interest which  
2175 the receiver has obtained a court order to avoid under paragraph  
2176 (a), and if the real estate or goods are necessary for the  
2177 continued operation of the facility under this section, the  
2178 receiver may apply to the court to set a reasonable rental,  
2179 price, or rate of interest to be paid by the receiver during the  
2180 duration of the receivership. The court shall hold a hearing on  
2181 the application within 15 days. The receiver shall send notice  
2182 of the application to any known persons who own the property  
2183 involved at least 10 days prior to the hearing. Payment by the

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2184 receiver of the amount determined by the court to be reasonable  
 2185 is a defense to any action against the receiver for payment or  
 2186 for possession of the goods or real estate subject to the lease,  
 2187 security interest, or mortgage involved by any person who  
 2188 received such notice, but the payment does not relieve the owner  
 2189 of the facility of any liability for the difference between the  
 2190 amount paid by the receiver and the amount due under the  
 2191 original lease, security interest, or mortgage involved.

2192 (6) The court shall set the compensation of the receiver,  
 2193 which will be considered a necessary expense of a receivership.

2194 (7) A receiver may be held liable in a personal capacity  
 2195 only for the receiver's own gross negligence, intentional acts,  
 2196 or breach of fiduciary duty.

2197 (8) The court may require a receiver to post a bond.

2198 (9) The court may direct the agency to allocate funds from  
 2199 the Health Care Trust Fund to the receiver, subject to the  
 2200 provisions of s. 429.18(1) ~~s. 400.418(1)~~.

2201 (10) The court may terminate a receivership when:

2202 (a) The court determines that the receivership is no  
 2203 longer necessary because the conditions which gave rise to the  
 2204 receivership no longer exist or the agency grants the facility a  
 2205 new license; or

2206 (b) All of the residents in the facility have been  
 2207 transferred or discharged.

2208 (11) Within 30 days after termination, the receiver shall  
 2209 give the court a complete accounting of all property of which  
 2210 the receiver has taken possession, of all funds collected, and  
 2211 of the expenses of the receivership.



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2212 (12) Nothing in this section shall be deemed to relieve  
 2213 any owner, administrator, or employee of a facility placed in  
 2214 receivership of any civil or criminal liability incurred, or any  
 2215 duty imposed by law, by reason of acts or omissions of the  
 2216 owner, administrator, or employee prior to the appointment of a  
 2217 receiver; nor shall anything contained in this section be  
 2218 construed to suspend during the receivership any obligation of  
 2219 the owner, administrator, or employee for payment of taxes or  
 2220 other operating and maintenance expenses of the facility or of  
 2221 the owner, administrator, employee, or any other person for the  
 2222 payment of mortgages or liens. The owner shall retain the right  
 2223 to sell or mortgage any facility under receivership, subject to  
 2224 approval of the court which ordered the receivership.

2225 Section 47. Section 400.424, Florida Statutes, is  
 2226 renumbered as section 429.24, Florida Statutes, and amended to  
 2227 read:

2228 429.24 ~~400.424~~ Contracts.--

2229 (1) The presence of each resident in a facility shall be  
 2230 covered by a contract, executed at the time of admission or  
 2231 prior thereto, between the licensee and the resident or his or  
 2232 her designee or legal representative. Each party to the contract  
 2233 shall be provided with a duplicate original thereof, and the  
 2234 licensee shall keep on file in the facility all such contracts.  
 2235 The licensee may not destroy or otherwise dispose of any such  
 2236 contract until 5 years after its expiration.

2237 (2) Each contract must contain express provisions  
 2238 specifically setting forth the services and accommodations to be  
 2239 provided by the facility; the rates or charges; provision for at

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2240 | least 30 days' written notice of a rate increase; the rights,  
 2241 | duties, and obligations of the residents, other than those  
 2242 | specified in s. 429.28 ~~s. 400.428~~; and other matters that the  
 2243 | parties deem appropriate. Whenever money is deposited or  
 2244 | advanced by a resident in a contract as security for performance  
 2245 | of the contract agreement or as advance rent for other than the  
 2246 | next immediate rental period:

2247 |         (a) Such funds shall be deposited in a banking institution  
 2248 | in this state that is located, if possible, in the same  
 2249 | community in which the facility is located; shall be kept  
 2250 | separate from the funds and property of the facility; may not be  
 2251 | represented as part of the assets of the facility on financial  
 2252 | statements; and shall be used, or otherwise expended, only for  
 2253 | the account of the resident.

2254 |         (b) The licensee shall, within 30 days of receipt of  
 2255 | advance rent or a security deposit, notify the resident or  
 2256 | residents in writing of the manner in which the licensee is  
 2257 | holding the advance rent or security deposit and state the name  
 2258 | and address of the depository where the moneys are being held.  
 2259 | The licensee shall notify residents of the facility's policy on  
 2260 | advance deposits.

2261 |         (3)(a) The contract shall include a refund policy to be  
 2262 | implemented at the time of a resident's transfer, discharge, or  
 2263 | death. The refund policy shall provide that the resident or  
 2264 | responsible party is entitled to a prorated refund based on the  
 2265 | daily rate for any unused portion of payment beyond the  
 2266 | termination date after all charges, including the cost of  
 2267 | damages to the residential unit resulting from circumstances

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2268 other than normal use, have been paid to the licensee. For the  
 2269 purpose of this paragraph, the termination date shall be the  
 2270 date the unit is vacated by the resident and cleared of all  
 2271 personal belongings. If the amount of belongings does not  
 2272 preclude renting the unit, the facility may clear the unit and  
 2273 charge the resident or his or her estate for moving and storing  
 2274 the items at a rate equal to the actual cost to the facility,  
 2275 not to exceed 20 percent of the regular rate for the unit,  
 2276 provided that 14 days' advance written notification is given.  
 2277 If the resident's possessions are not claimed within 45 days  
 2278 after notification, the facility may dispose of them. The  
 2279 contract shall also specify any other conditions under which  
 2280 claims will be made against the refund due the resident. Except  
 2281 in the case of death or a discharge due to medical reasons, the  
 2282 refunds shall be computed in accordance with the notice of  
 2283 relocation requirements specified in the contract. However, a  
 2284 resident may not be required to provide the licensee with more  
 2285 than 30 days' notice of termination. If after a contract is  
 2286 terminated, the facility intends to make a claim against a  
 2287 refund due the resident, the facility shall notify the resident  
 2288 or responsible party in writing of the claim and shall provide  
 2289 said party with a reasonable time period of no less than 14  
 2290 calendar days to respond. The facility shall provide a refund  
 2291 to the resident or responsible party within 45 days after the  
 2292 transfer, discharge, or death of the resident. The agency shall  
 2293 impose a fine upon a facility that fails to comply with the  
 2294 refund provisions of the paragraph, which fine shall be equal to  
 2295 three times the amount due to the resident. One-half of the fine

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2296 shall be remitted to the resident or his or her estate, and the  
2297 other half to the Health Care Trust Fund to be used for the  
2298 purpose specified in s. 429.18 ~~s. 400.418~~.

2299 (b) If a licensee agrees to reserve a bed for a resident  
2300 who is admitted to a medical facility, including, but not  
2301 limited to, a nursing home, health care facility, or psychiatric  
2302 facility, the resident or his or her responsible party shall  
2303 notify the licensee of any change in status that would prevent  
2304 the resident from returning to the facility. Until such notice  
2305 is received, the agreed-upon daily rate may be charged by the  
2306 licensee.

2307 (c) The purpose of any advance payment and a refund policy  
2308 for such payment, including any advance payment for housing,  
2309 meals, or personal services, shall be covered in the contract.

2310 (4) The contract shall state whether or not the facility  
2311 is affiliated with any religious organization and, if so, which  
2312 organization and its general responsibility to the facility.

2313 (5) Neither the contract nor any provision thereof  
2314 relieves any licensee of any requirement or obligation imposed  
2315 upon it by this part or rules adopted under this part.

2316 (6) In lieu of the provisions of this section, facilities  
2317 certified under chapter 651 shall comply with the requirements  
2318 of s. 651.055.

2319 (7) Notwithstanding the provisions of this section,  
2320 facilities which consist of 60 or more apartments may require  
2321 refund policies and termination notices in accordance with the  
2322 provisions of part II of chapter 83, provided that the lease is  
2323 terminated automatically without financial penalty in the event

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2324 of a resident's death or relocation due to psychiatric  
 2325 hospitalization or to medical reasons which necessitate services  
 2326 or care beyond which the facility is licensed to provide. The  
 2327 date of termination in such instances shall be the date the unit  
 2328 is fully vacated. A lease may be substituted for the contract  
 2329 if it meets the disclosure requirements of this section. For  
 2330 the purpose of this section, the term "apartment" means a room  
 2331 or set of rooms with a kitchen or kitchenette and lavatory  
 2332 located within one or more buildings containing other similar or  
 2333 like residential units.

2334 (8) The department may by rule clarify terms, establish  
 2335 procedures, clarify refund policies and contract provisions, and  
 2336 specify documentation as necessary to administer this section.

2337 Section 48. Section 400.4255, Florida Statutes, is  
 2338 renumbered as section 429.255, Florida Statutes, and amended to  
 2339 read:

2340 429.255 ~~400.4255~~ Use of personnel; emergency care.--

2341 (1)(a) Persons under contract to the facility, facility  
 2342 staff, or volunteers, who are licensed according to part I of  
 2343 chapter 464, or those persons exempt under s. 464.022(1), and  
 2344 others as defined by rule, may administer medications to  
 2345 residents, take residents' vital signs, manage individual weekly  
 2346 pill organizers for residents who self-administer medication,  
 2347 give prepackaged enemas ordered by a physician, observe  
 2348 residents, document observations on the appropriate resident's  
 2349 record, report observations to the resident's physician, and  
 2350 contract or allow residents or a resident's representative,  
 2351 designee, surrogate, guardian, or attorney in fact to contract

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2352 with a third party, provided residents meet the criteria for  
 2353 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.  
 2354 Nursing assistants certified pursuant to part II of chapter 464  
 2355 may take residents' vital signs as directed by a licensed nurse  
 2356 or physician.

2357 (b) All staff in facilities licensed under this part shall  
 2358 exercise their professional responsibility to observe residents,  
 2359 to document observations on the appropriate resident's record,  
 2360 and to report the observations to the resident's physician.  
 2361 However, the owner or administrator of the facility shall be  
 2362 responsible for determining that the resident receiving services  
 2363 is appropriate for residence in the facility.

2364 (c) In an emergency situation, licensed personnel may  
 2365 carry out their professional duties pursuant to part I of  
 2366 chapter 464 until emergency medical personnel assume  
 2367 responsibility for care.

2368 (2) In facilities licensed to provide extended congregate  
 2369 care, persons under contract to the facility, facility staff, or  
 2370 volunteers, who are licensed according to part I of chapter 464,  
 2371 or those persons exempt under s. 464.022(1), or those persons  
 2372 certified as nursing assistants pursuant to part II of chapter  
 2373 464, may also perform all duties within the scope of their  
 2374 license or certification, as approved by the facility  
 2375 administrator and pursuant to this part.

2376 (3) Facility staff may withhold or withdraw  
 2377 cardiopulmonary resuscitation if presented with an order not to  
 2378 resuscitate executed pursuant to s. 401.45. The department shall  
 2379 adopt rules providing for the implementation of such orders.

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2380 Facility staff and facilities shall not be subject to criminal  
 2381 prosecution or civil liability, nor be considered to have  
 2382 engaged in negligent or unprofessional conduct, for withholding  
 2383 or withdrawing cardiopulmonary resuscitation pursuant to such an  
 2384 order and rules adopted by the department. The absence of an  
 2385 order to resuscitate executed pursuant to s. 401.45 does not  
 2386 preclude a physician from withholding or withdrawing  
 2387 cardiopulmonary resuscitation as otherwise permitted by law.

2388 Section 49. Section 400.4256, Florida Statutes, is  
 2389 renumbered as section 429.256, Florida Statutes, and amended to  
 2390 read:

2391 429.256 ~~400.4256~~ Assistance with self-administration of  
 2392 medication.--

2393 (1) For the purposes of this section, the term:

2394 (a) "Informed consent" means advising the resident, or the  
 2395 resident's surrogate, guardian, or attorney in fact, that an  
 2396 assisted living facility is not required to have a licensed  
 2397 nurse on staff, that the resident may be receiving assistance  
 2398 with self-administration of medication from an unlicensed  
 2399 person, and that such assistance, if provided by an unlicensed  
 2400 person, will or will not be overseen by a licensed nurse.

2401 (b) "Unlicensed person" means an individual not currently  
 2402 licensed to practice nursing or medicine who is employed by or  
 2403 under contract to an assisted living facility and who has  
 2404 received training with respect to assisting with the self-  
 2405 administration of medication in an assisted living facility as  
 2406 provided under s. 429.52 ~~s. 400.452~~ prior to providing such  
 2407 assistance as described in this section.

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2408           (2) Residents who are capable of self-administering their  
 2409 own medications without assistance shall be encouraged and  
 2410 allowed to do so. However, an unlicensed person may, consistent  
 2411 with a dispensed prescription's label or the package directions  
 2412 of an over-the-counter medication, assist a resident whose  
 2413 condition is medically stable with the self-administration of  
 2414 routine, regularly scheduled medications that are intended to be  
 2415 self-administered. Assistance with self-medication by an  
 2416 unlicensed person may occur only upon a documented request by,  
 2417 and the written informed consent of, a resident or the  
 2418 resident's surrogate, guardian, or attorney in fact. For the  
 2419 purposes of this section, self-administered medications include  
 2420 both legend and over-the-counter oral dosage forms, topical  
 2421 dosage forms and topical ophthalmic, otic, and nasal dosage  
 2422 forms including solutions, suspensions, sprays, and inhalers.

2423           (3) Assistance with self-administration of medication  
 2424 includes:

2425           (a) Taking the medication, in its previously dispensed,  
 2426 properly labeled container, from where it is stored, and  
 2427 bringing it to the resident.

2428           (b) In the presence of the resident, reading the label,  
 2429 opening the container, removing a prescribed amount of  
 2430 medication from the container, and closing the container.

2431           (c) Placing an oral dosage in the resident's hand or  
 2432 placing the dosage in another container and helping the resident  
 2433 by lifting the container to his or her mouth.

2434           (d) Applying topical medications.

2435           (e) Returning the medication container to proper storage.



2436 (f) Keeping a record of when a resident receives  
 2437 assistance with self-administration under this section.

2438 (4) Assistance with self-administration does not include:

2439 (a) Mixing, compounding, converting, or calculating  
 2440 medication doses, except for measuring a prescribed amount of  
 2441 liquid medication or breaking a scored tablet or crushing a  
 2442 tablet as prescribed.

2443 (b) The preparation of syringes for injection or the  
 2444 administration of medications by any injectable route.

2445 (c) Administration of medications through intermittent  
 2446 positive pressure breathing machines or a nebulizer.

2447 (d) Administration of medications by way of a tube  
 2448 inserted in a cavity of the body.

2449 (e) Administration of parenteral preparations.

2450 (f) Irrigations or debriding agents used in the treatment  
 2451 of a skin condition.

2452 (g) Rectal, urethral, or vaginal preparations.

2453 (h) Medications ordered by the physician or health care  
 2454 professional with prescriptive authority to be given "as  
 2455 needed," unless the order is written with specific parameters  
 2456 that preclude independent judgment on the part of the unlicensed  
 2457 person, and at the request of a competent resident.

2458 (i) Medications for which the time of administration, the  
 2459 amount, the strength of dosage, the method of administration, or  
 2460 the reason for administration requires judgment or discretion on  
 2461 the part of the unlicensed person.

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2462 (5) Assistance with the self-administration of medication  
2463 by an unlicensed person as described in this section shall not  
2464 be considered administration as defined in s. 465.003.

2465 (6) The department may by rule establish facility  
2466 procedures and interpret terms as necessary to implement this  
2467 section.

2468 Section 50. Section 400.426, Florida Statutes, is  
2469 renumbered as section 429.26, Florida Statutes, and amended to  
2470 read:

2471 429.26 ~~400.426~~ Appropriateness of placements; examinations  
2472 of residents.--

2473 (1) The owner or administrator of a facility is  
2474 responsible for determining the appropriateness of admission of  
2475 an individual to the facility and for determining the continued  
2476 appropriateness of residence of an individual in the facility.  
2477 A determination shall be based upon an assessment of the  
2478 strengths, needs, and preferences of the resident, the care and  
2479 services offered or arranged for by the facility in accordance  
2480 with facility policy, and any limitations in law or rule related  
2481 to admission criteria or continued residency for the type of  
2482 license held by the facility under this part. A resident may  
2483 not be moved from one facility to another without consultation  
2484 with and agreement from the resident or, if applicable, the  
2485 resident's representative or designee or the resident's family,  
2486 guardian, surrogate, or attorney in fact. In the case of a  
2487 resident who has been placed by the department or the Department  
2488 of Children and Family Services, the administrator must notify  
2489 the appropriate contact person in the applicable department.

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2490 (2) A physician or nurse practitioner who is employed by  
2491 an assisted living facility to provide an initial examination  
2492 for admission purposes may not have financial interest in the  
2493 facility.

2494 (3) Persons licensed under part I of chapter 464 who are  
2495 employed by or under contract with a facility shall, on a  
2496 routine basis or at least monthly, perform a nursing assessment  
2497 of the residents for whom they are providing nursing services  
2498 ordered by a physician, except administration of medication, and  
2499 shall document such assessment, including any substantial  
2500 changes in a resident's status which may necessitate relocation  
2501 to a nursing home, hospital, or specialized health care  
2502 facility. Such records shall be maintained in the facility for  
2503 inspection by the agency and shall be forwarded to the  
2504 resident's case manager, if applicable.

2505 (4) If possible, each resident shall have been examined by  
2506 a licensed physician or a licensed nurse practitioner within 60  
2507 days before admission to the facility. The signed and completed  
2508 medical examination report shall be submitted to the owner or  
2509 administrator of the facility who shall use the information  
2510 contained therein to assist in the determination of the  
2511 appropriateness of the resident's admission and continued stay  
2512 in the facility. The medical examination report shall become a  
2513 permanent part of the record of the resident at the facility and  
2514 shall be made available to the agency during inspection or upon  
2515 request. An assessment that has been completed through the  
2516 Comprehensive Assessment and Review for Long-Term Care Services  
2517 (CARES) Program fulfills the requirements for a medical

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2518 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~  
2519 ~~400.407(3)(b)6.~~

2520 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a  
2521 medical examination has not been completed within 60 days before  
2522 the admission of the resident to the facility, a licensed  
2523 physician or licensed nurse practitioner shall examine the  
2524 resident and complete a medical examination form provided by the  
2525 agency within 30 days following the admission to the facility to  
2526 enable the facility owner or administrator to determine the  
2527 appropriateness of the admission. The medical examination form  
2528 shall become a permanent part of the record of the resident at  
2529 the facility and shall be made available to the agency during  
2530 inspection by the agency or upon request.

2531 (6) Any resident accepted in a facility and placed by the  
2532 department or the Department of Children and Family Services  
2533 shall have been examined by medical personnel within 30 days  
2534 before placement in the facility. The examination shall include  
2535 an assessment of the appropriateness of placement in a facility.  
2536 The findings of this examination shall be recorded on the  
2537 examination form provided by the agency. The completed form  
2538 shall accompany the resident and shall be submitted to the  
2539 facility owner or administrator. Additionally, in the case of a  
2540 mental health resident, the Department of Children and Family  
2541 Services must provide documentation that the individual has been  
2542 assessed by a psychiatrist, clinical psychologist, clinical  
2543 social worker, or psychiatric nurse, or an individual who is  
2544 supervised by one of these professionals, and determined to be  
2545 appropriate to reside in an assisted living facility. The

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2546 | documentation must be in the facility within 30 days after the  
 2547 | mental health resident has been admitted to the facility. An  
 2548 | evaluation completed upon discharge from a state mental hospital  
 2549 | meets the requirements of this subsection related to  
 2550 | appropriateness for placement as a mental health resident  
 2551 | providing it was completed within 90 days prior to admission to  
 2552 | the facility. The applicable department shall provide to the  
 2553 | facility administrator any information about the resident that  
 2554 | would help the administrator meet his or her responsibilities  
 2555 | under subsection (1). Further, department personnel shall  
 2556 | explain to the facility operator any special needs of the  
 2557 | resident and advise the operator whom to call should problems  
 2558 | arise. The applicable department shall advise and assist the  
 2559 | facility administrator where the special needs of residents who  
 2560 | are recipients of optional state supplementation require such  
 2561 | assistance.

2562 |         (7) The facility must notify a licensed physician when a  
 2563 | resident exhibits signs of dementia or cognitive impairment or  
 2564 | has a change of condition in order to rule out the presence of  
 2565 | an underlying physiological condition that may be contributing  
 2566 | to such dementia or impairment. The notification must occur  
 2567 | within 30 days after the acknowledgment of such signs by  
 2568 | facility staff. If an underlying condition is determined to  
 2569 | exist, the facility shall arrange, with the appropriate health  
 2570 | care provider, the necessary care and services to treat the  
 2571 | condition.

2572 |         (8) The Department of Children and Family Services may  
 2573 | require an examination for supplemental security income and

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2574 optional state supplementation recipients residing in facilities  
 2575 at any time and shall provide the examination whenever a  
 2576 resident's condition requires it. Any facility administrator;  
 2577 personnel of the agency, the department, or the Department of  
 2578 Children and Family Services; or long-term care ombudsman  
 2579 council member who believes a resident needs to be evaluated  
 2580 shall notify the resident's case manager, who shall take  
 2581 appropriate action. A report of the examination findings shall  
 2582 be provided to the resident's case manager and the facility  
 2583 administrator to help the administrator meet his or her  
 2584 responsibilities under subsection (1).

2585 (9) If, at any time after admission to a facility, a  
 2586 resident appears to need care beyond that which the facility is  
 2587 licensed to provide, the agency shall require the resident to be  
 2588 physically examined by a licensed physician or licensed nurse  
 2589 practitioner. This examination shall, to the extent possible,  
 2590 be performed by the resident's preferred physician or nurse  
 2591 practitioner and shall be paid for by the resident with personal  
 2592 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.  
 2593 Following this examination, the examining physician or licensed  
 2594 nurse practitioner shall complete and sign a medical form  
 2595 provided by the agency. The completed medical form shall be  
 2596 submitted to the agency within 30 days after the date the  
 2597 facility owner or administrator is notified by the agency that  
 2598 the physical examination is required. After consultation with  
 2599 the physician or licensed nurse practitioner who performed the  
 2600 examination, a medical review team designated by the agency  
 2601 shall then determine whether the resident is appropriately

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2602 residing in the facility. The medical review team shall base  
2603 its decision on a comprehensive review of the resident's  
2604 physical and functional status, including the resident's  
2605 preferences, and not on an isolated health-related problem. In  
2606 the case of a mental health resident, if the resident appears to  
2607 have needs in addition to those identified in the community  
2608 living support plan, the agency may require an evaluation by a  
2609 mental health professional, as determined by the Department of  
2610 Children and Family Services. A facility may not be required to  
2611 retain a resident who requires more services or care than the  
2612 facility is able to provide in accordance with its policies and  
2613 criteria for admission and continued residency. Members of the  
2614 medical review team making the final determination may not  
2615 include the agency personnel who initially questioned the  
2616 appropriateness of a resident's placement. Such determination is  
2617 final and binding upon the facility and the resident. Any  
2618 resident who is determined by the medical review team to be  
2619 inappropriately residing in a facility shall be given 30 days'  
2620 written notice to relocate by the owner or administrator, unless  
2621 the resident's continued residence in the facility presents an  
2622 imminent danger to the health, safety, or welfare of the  
2623 resident or a substantial probability exists that death or  
2624 serious physical harm would result to the resident if allowed to  
2625 remain in the facility.

2626 (10) A terminally ill resident who no longer meets the  
2627 criteria for continued residency may remain in the facility if  
2628 the arrangement is mutually agreeable to the resident and the  
2629 facility; additional care is rendered through a licensed

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2630 hospice, and the resident is under the care of a physician who  
2631 agrees that the physical needs of the resident are being met.

2632 (11) Facilities licensed to provide extended congregate  
2633 care services shall promote aging in place by determining  
2634 appropriateness of continued residency based on a comprehensive  
2635 review of the resident's physical and functional status; the  
2636 ability of the facility, family members, friends, or any other  
2637 pertinent individuals or agencies to provide the care and  
2638 services required; and documentation that a written service plan  
2639 consistent with facility policy has been developed and  
2640 implemented to ensure that the resident's needs and preferences  
2641 are addressed.

2642 (12) No resident who requires 24-hour nursing supervision,  
2643 except for a resident who is an enrolled hospice patient  
2644 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in  
2645 a facility licensed under this part.

2646 Section 51. Section 400.427, Florida Statutes, is  
2647 renumbered as section 429.27, Florida Statutes, and amended to  
2648 read:

2649 429.27 ~~400.427~~ Property and personal affairs of  
2650 residents.--

2651 (1) (a) A resident shall be given the option of using his  
2652 or her own belongings, as space permits; choosing his or her  
2653 roommate; and, whenever possible, unless the resident is  
2654 adjudicated incompetent or incapacitated under state law,  
2655 managing his or her own affairs.

2656 (b) The admission of a resident to a facility and his or  
2657 her presence therein shall not confer on the facility or its



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2658 owner, administrator, employees, or representatives any  
2659 authority to manage, use, or dispose of any property of the  
2660 resident; nor shall such admission or presence confer on any of  
2661 such persons any authority or responsibility for the personal  
2662 affairs of the resident, except that which may be necessary for  
2663 the safe management of the facility or for the safety of the  
2664 resident.

2665 (2) A facility, or an owner, administrator, employee, or  
2666 representative thereof, may not act as the guardian, trustee, or  
2667 conservator for any resident of the assisted living facility or  
2668 any of such resident's property. An owner, administrator, or  
2669 staff member, or representative thereof, may not act as a  
2670 competent resident's payee for social security, veteran's, or  
2671 railroad benefits without the consent of the resident. Any  
2672 facility whose owner, administrator, or staff, or representative  
2673 thereof, serves as representative payee for any resident of the  
2674 facility shall file a surety bond with the agency in an amount  
2675 equal to twice the average monthly aggregate income or personal  
2676 funds due to residents, or expendable for their account, which  
2677 are received by a facility. Any facility whose owner,  
2678 administrator, or staff, or a representative thereof, is granted  
2679 power of attorney for any resident of the facility shall file a  
2680 surety bond with the agency for each resident for whom such  
2681 power of attorney is granted. The surety bond shall be in an  
2682 amount equal to twice the average monthly income of the  
2683 resident, plus the value of any resident's property under the  
2684 control of the attorney in fact. The bond shall be executed by  
2685 the facility as principal and a licensed surety company. The

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2686 bond shall be conditioned upon the faithful compliance of the  
2687 facility with this section and shall run to the agency for the  
2688 benefit of any resident who suffers a financial loss as a result  
2689 of the misuse or misappropriation by a facility of funds held  
2690 pursuant to this subsection. Any surety company that cancels or  
2691 does not renew the bond of any licensee shall notify the agency  
2692 in writing not less than 30 days in advance of such action,  
2693 giving the reason for the cancellation or nonrenewal. Any  
2694 facility owner, administrator, or staff, or representative  
2695 thereof, who is granted power of attorney for any resident of  
2696 the facility shall, on a monthly basis, be required to provide  
2697 the resident a written statement of any transaction made on  
2698 behalf of the resident pursuant to this subsection, and a copy  
2699 of such statement given to the resident shall be retained in  
2700 each resident's file and available for agency inspection.

2701 (3) A facility, upon mutual consent with the resident,  
2702 shall provide for the safekeeping in the facility of personal  
2703 effects not in excess of \$500 and funds of the resident not in  
2704 excess of \$200 cash, and shall keep complete and accurate  
2705 records of all such funds and personal effects received. If a  
2706 resident is absent from a facility for 24 hours or more, the  
2707 facility may provide for the safekeeping of the resident's  
2708 personal effects in excess of \$500.

2709 (4) Any funds or other property belonging to or due to a  
2710 resident, or expendable for his or her account, which is  
2711 received by a facility shall be trust funds which shall be kept  
2712 separate from the funds and property of the facility and other  
2713 residents or shall be specifically credited to such resident.

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2714 Such trust funds shall be used or otherwise expended only for  
2715 the account of the resident. At least once every 3 months,  
2716 unless upon order of a court of competent jurisdiction, the  
2717 facility shall furnish the resident and his or her guardian,  
2718 trustee, or conservator, if any, a complete and verified  
2719 statement of all funds and other property to which this  
2720 subsection applies, detailing the amount and items received,  
2721 together with their sources and disposition. In any event, the  
2722 facility shall furnish such statement annually and upon the  
2723 discharge or transfer of a resident. Any governmental agency or  
2724 private charitable agency contributing funds or other property  
2725 to the account of a resident shall also be entitled to receive  
2726 such statement annually and upon the discharge or transfer of  
2727 the resident.

2728 (5) Any personal funds available to facility residents may  
2729 be used by residents as they choose to obtain clothing, personal  
2730 items, leisure activities, and other supplies and services for  
2731 their personal use. A facility may not demand, require, or  
2732 contract for payment of all or any part of the personal funds in  
2733 satisfaction of the facility rate for supplies and services  
2734 beyond that amount agreed to in writing and may not levy an  
2735 additional charge to the individual or the account for any  
2736 supplies or services that the facility has agreed by contract to  
2737 provide as part of the standard monthly rate. Any service or  
2738 supplies provided by the facility which are charged separately  
2739 to the individual or the account may be provided only with the  
2740 specific written consent of the individual, who shall be  
2741 furnished in advance of the provision of the services or

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2742 supplies with an itemized written statement to be attached to  
2743 the contract setting forth the charges for the services or  
2744 supplies.

2745 (6) (a) In addition to any damages or civil penalties to  
2746 which a person is subject, any person who:

2747 1. Intentionally withholds a resident's personal funds,  
2748 personal property, or personal needs allowance, or who demands,  
2749 beneficially receives, or contracts for payment of all or any  
2750 part of a resident's personal property or personal needs  
2751 allowance in satisfaction of the facility rate for supplies and  
2752 services; or

2753 2. Borrows from or pledges any personal funds of a  
2754 resident, other than the amount agreed to by written contract  
2755 under s. 429.24 ~~s. 400.424~~,

2756  
2757 commits a misdemeanor of the first degree, punishable as  
2758 provided in s. 775.082 or s. 775.083.

2759 (b) Any facility owner, administrator, or staff, or  
2760 representative thereof, who is granted power of attorney for any  
2761 resident of the facility and who misuses or misappropriates  
2762 funds obtained through this power commits a felony of the third  
2763 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
2764 775.084.

2765 (7) In the event of the death of a resident, a licensee  
2766 shall return all refunds, funds, and property held in trust to  
2767 the resident's personal representative, if one has been  
2768 appointed at the time the facility disburses such funds, and, if  
2769 not, to the resident's spouse or adult next of kin named in a

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2770 beneficiary designation form provided by the facility to the  
 2771 resident. If the resident has no spouse or adult next of kin or  
 2772 such person cannot be located, funds due the resident shall be  
 2773 placed in an interest-bearing account, and all property held in  
 2774 trust by the facility shall be safeguarded until such time as  
 2775 the funds and property are disbursed pursuant to the Florida  
 2776 Probate Code. Such funds shall be kept separate from the funds  
 2777 and property of the facility and other residents of the  
 2778 facility. If the funds of the deceased resident are not  
 2779 disbursed pursuant to the Florida Probate Code within 2 years  
 2780 after the resident's death, the funds shall be deposited in the  
 2781 Health Care Trust Fund administered by the agency.

2782 (8) The department may by rule clarify terms and specify  
 2783 procedures and documentation necessary to administer the  
 2784 provisions of this section relating to the proper management of  
 2785 residents' funds and personal property and the execution of  
 2786 surety bonds.

2787 Section 52. Section 400.428, Florida Statutes, is  
 2788 renumbered as section 429.28, Florida Statutes, and amended to  
 2789 read:

2790 429.28 ~~400.428~~ Resident bill of rights.--

2791 (1) No resident of a facility shall be deprived of any  
 2792 civil or legal rights, benefits, or privileges guaranteed by  
 2793 law, the Constitution of the State of Florida, or the  
 2794 Constitution of the United States as a resident of a facility.  
 2795 Every resident of a facility shall have the right to:

2796 (a) Live in a safe and decent living environment, free  
 2797 from abuse and neglect.

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2798 (b) Be treated with consideration and respect and with due  
2799 recognition of personal dignity, individuality, and the need for  
2800 privacy.

2801 (c) Retain and use his or her own clothes and other  
2802 personal property in his or her immediate living quarters, so as  
2803 to maintain individuality and personal dignity, except when the  
2804 facility can demonstrate that such would be unsafe, impractical,  
2805 or an infringement upon the rights of other residents.

2806 (d) Unrestricted private communication, including  
2807 receiving and sending unopened correspondence, access to a  
2808 telephone, and visiting with any person of his or her choice, at  
2809 any time between the hours of 9 a.m. and 9 p.m. at a minimum.  
2810 Upon request, the facility shall make provisions to extend  
2811 visiting hours for caregivers and out-of-town guests, and in  
2812 other similar situations.

2813 (e) Freedom to participate in and benefit from community  
2814 services and activities and to achieve the highest possible  
2815 level of independence, autonomy, and interaction within the  
2816 community.

2817 (f) Manage his or her financial affairs unless the  
2818 resident or, if applicable, the resident's representative,  
2819 designee, surrogate, guardian, or attorney in fact authorizes  
2820 the administrator of the facility to provide safekeeping for  
2821 funds as provided in s. 429.27 ~~s. 400.427~~.

2822 (g) Share a room with his or her spouse if both are  
2823 residents of the facility.

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2824 (h) Reasonable opportunity for regular exercise several  
2825 times a week and to be outdoors at regular and frequent  
2826 intervals except when prevented by inclement weather.

2827 (i) Exercise civil and religious liberties, including the  
2828 right to independent personal decisions. No religious beliefs  
2829 or practices, nor any attendance at religious services, shall be  
2830 imposed upon any resident.

2831 (j) Access to adequate and appropriate health care  
2832 consistent with established and recognized standards within the  
2833 community.

2834 (k) At least 45 days' notice of relocation or termination  
2835 of residency from the facility unless, for medical reasons, the  
2836 resident is certified by a physician to require an emergency  
2837 relocation to a facility providing a more skilled level of care  
2838 or the resident engages in a pattern of conduct that is harmful  
2839 or offensive to other residents. In the case of a resident who  
2840 has been adjudicated mentally incapacitated, the guardian shall  
2841 be given at least 45 days' notice of a nonemergency relocation  
2842 or residency termination. Reasons for relocation shall be set  
2843 forth in writing. In order for a facility to terminate the  
2844 residency of an individual without notice as provided herein,  
2845 the facility shall show good cause in a court of competent  
2846 jurisdiction.

2847 (l) Present grievances and recommend changes in policies,  
2848 procedures, and services to the staff of the facility, governing  
2849 officials, or any other person without restraint, interference,  
2850 coercion, discrimination, or reprisal. Each facility shall  
2851 establish a grievance procedure to facilitate the residents'

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2852 exercise of this right. This right includes access to ombudsman  
2853 volunteers and advocates and the right to be a member of, to be  
2854 active in, and to associate with advocacy or special interest  
2855 groups.

2856 (2) The administrator of a facility shall ensure that a  
2857 written notice of the rights, obligations, and prohibitions set  
2858 forth in this part is posted in a prominent place in each  
2859 facility and read or explained to residents who cannot read.  
2860 This notice shall include the name, address, and telephone  
2861 numbers of the local ombudsman council and central abuse hotline  
2862 and, when applicable, the Advocacy Center for Persons with  
2863 Disabilities, Inc., and the Florida local advocacy council,  
2864 where complaints may be lodged. The facility must ensure a  
2865 resident's access to a telephone to call the local ombudsman  
2866 council, central abuse hotline, Advocacy Center for Persons with  
2867 Disabilities, Inc., and the Florida local advocacy council.

2868 (3) (a) The agency shall conduct a survey to determine  
2869 general compliance with facility standards and compliance with  
2870 residents' rights as a prerequisite to initial licensure or  
2871 licensure renewal.

2872 (b) In order to determine whether the facility is  
2873 adequately protecting residents' rights, the biennial survey  
2874 shall include private informal conversations with a sample of  
2875 residents and consultation with the ombudsman council in the  
2876 planning and service area in which the facility is located to  
2877 discuss residents' experiences within the facility.

2878 (c) During any calendar year in which no survey is  
2879 conducted, the agency shall conduct at least one monitoring



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2880 visit of each facility cited in the previous year for a class I  
2881 or class II violation, or more than three uncorrected class III  
2882 violations.

2883 (d) The agency may conduct periodic followup inspections  
2884 as necessary to monitor the compliance of facilities with a  
2885 history of any class I, class II, or class III violations that  
2886 threaten the health, safety, or security of residents.

2887 (e) The agency may conduct complaint investigations as  
2888 warranted to investigate any allegations of noncompliance with  
2889 requirements required under this part or rules adopted under  
2890 this part.

2891 (4) The facility shall not hamper or prevent residents  
2892 from exercising their rights as specified in this section.

2893 (5) No facility or employee of a facility may serve notice  
2894 upon a resident to leave the premises or take any other  
2895 retaliatory action against any person who:

2896 (a) Exercises any right set forth in this section.

2897 (b) Appears as a witness in any hearing, inside or outside  
2898 the facility.

2899 (c) Files a civil action alleging a violation of the  
2900 provisions of this part or notifies a state attorney or the  
2901 Attorney General of a possible violation of such provisions.

2902 (6) Any facility which terminates the residency of an  
2903 individual who participated in activities specified in  
2904 subsection (5) shall show good cause in a court of competent  
2905 jurisdiction.

2906 (7) Any person who submits or reports a complaint  
2907 concerning a suspected violation of the provisions of this part

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2908 or concerning services and conditions in facilities, or who  
 2909 testifies in any administrative or judicial proceeding arising  
 2910 from such a complaint, shall have immunity from any civil or  
 2911 criminal liability therefor, unless such person has acted in bad  
 2912 faith or with malicious purpose or the court finds that there  
 2913 was a complete absence of a justiciable issue of either law or  
 2914 fact raised by the losing party.

2915 Section 53. Section 400.429, Florida Statutes, is  
 2916 renumbered as section 429.29, Florida Statutes, and amended to  
 2917 read:

2918 429.29 ~~400.429~~ Civil actions to enforce rights.--

2919 (1) Any person or resident whose rights as specified in  
 2920 this part are violated shall have a cause of action. The action  
 2921 may be brought by the resident or his or her guardian, or by a  
 2922 person or organization acting on behalf of a resident with the  
 2923 consent of the resident or his or her guardian, or by the  
 2924 personal representative of the estate of a deceased resident  
 2925 regardless of the cause of death. If the action alleges a claim  
 2926 for the resident's rights or for negligence that caused the  
 2927 death of the resident, the claimant shall be required to elect  
 2928 either survival damages pursuant to s. 46.021 or wrongful death  
 2929 damages pursuant to s. 768.21. If the action alleges a claim for  
 2930 the resident's rights or for negligence that did not cause the  
 2931 death of the resident, the personal representative of the estate  
 2932 may recover damages for the negligence that caused injury to the  
 2933 resident. The action may be brought in any court of competent  
 2934 jurisdiction to enforce such rights and to recover actual  
 2935 damages, and punitive damages for violation of the rights of a

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2936 resident or negligence. Any resident who prevails in seeking  
 2937 injunctive relief or a claim for an administrative remedy is  
 2938 entitled to recover the costs of the action and a reasonable  
 2939 attorney's fee assessed against the defendant not to exceed  
 2940 \$25,000. Fees shall be awarded solely for the injunctive or  
 2941 administrative relief and not for any claim or action for  
 2942 damages whether such claim or action is brought together with a  
 2943 request for an injunction or administrative relief or as a  
 2944 separate action, except as provided under s. 768.79 or the  
 2945 Florida Rules of Civil Procedure. Sections 429.29-429.298  
 2946 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of  
 2947 action for recovery of damages for the personal injury or death  
 2948 of a resident arising out of negligence or a violation of rights  
 2949 specified in s. 429.28 ~~s. 400.428~~. This section does not  
 2950 preclude theories of recovery not arising out of negligence or  
 2951 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the  
 2952 agency. The provisions of chapter 766 do not apply to any cause  
 2953 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.

2954 (2) In any claim brought pursuant to this part alleging a  
 2955 violation of resident's rights or negligence causing injury to  
 2956 or the death of a resident, the claimant shall have the burden  
 2957 of proving, by a preponderance of the evidence, that:

- 2958 (a) The defendant owed a duty to the resident;
- 2959 (b) The defendant breached the duty to the resident;
- 2960 (c) The breach of the duty is a legal cause of loss,  
 2961 injury, death, or damage to the resident; and
- 2962 (d) The resident sustained loss, injury, death, or damage  
 2963 as a result of the breach.

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2964  
2965 Nothing in this part shall be interpreted to create strict  
2966 liability. A violation of the rights set forth in s. 429.28 ~~s.~~  
2967 ~~400.428~~ or in any other standard or guidelines specified in this  
2968 part or in any applicable administrative standard or guidelines  
2969 of this state or a federal regulatory agency shall be evidence  
2970 of negligence but shall not be considered negligence per se.

2971 (3) In any claim brought pursuant to this section, a  
2972 licensee, person, or entity shall have a duty to exercise  
2973 reasonable care. Reasonable care is that degree of care which a  
2974 reasonably careful licensee, person, or entity would use under  
2975 like circumstances.

2976 (4) In any claim for resident's rights violation or  
2977 negligence by a nurse licensed under part I of chapter 464, such  
2978 nurse shall have the duty to exercise care consistent with the  
2979 prevailing professional standard of care for a nurse. The  
2980 prevailing professional standard of care for a nurse shall be  
2981 that level of care, skill, and treatment which, in light of all  
2982 relevant surrounding circumstances, is recognized as acceptable  
2983 and appropriate by reasonably prudent similar nurses.

2984 (5) Discovery of financial information for the purpose of  
2985 determining the value of punitive damages may not be had unless  
2986 the plaintiff shows the court by proffer or evidence in the  
2987 record that a reasonable basis exists to support a claim for  
2988 punitive damages.

2989 (6) In addition to any other standards for punitive  
2990 damages, any award of punitive damages must be reasonable in  
2991 light of the actual harm suffered by the resident and the

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2992 | egregiousness of the conduct that caused the actual harm to the  
2993 | resident.

2994 |         (7) The resident or the resident's legal representative  
2995 | shall serve a copy of any complaint alleging in whole or in part  
2996 | a violation of any rights specified in this part to the Agency  
2997 | for Health Care Administration at the time of filing the initial  
2998 | complaint with the clerk of the court for the county in which  
2999 | the action is pursued. The requirement of providing a copy of  
3000 | the complaint to the agency does not impair the resident's legal  
3001 | rights or ability to seek relief for his or her claim.

3002 |         Section 54. Section 400.4293, Florida Statutes, is  
3003 | renumbered as section 429.293, Florida Statutes, and amended to  
3004 | read:

3005 |         429.293 ~~400.4293~~ Presuit notice; investigation;  
3006 | notification of violation of residents' rights or alleged  
3007 | negligence; claims evaluation procedure; informal discovery;  
3008 | review; settlement offer; mediation.--

3009 |         (1) As used in this section, the term:

3010 |         (a) "Claim for residents' rights violation or negligence"  
3011 | means a negligence claim alleging injury to or the death of a  
3012 | resident arising out of an asserted violation of the rights of a  
3013 | resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation  
3014 | from the applicable standard of care.

3015 |         (b) "Insurer" means any self-insurer authorized under s.  
3016 | 627.357, liability insurance carrier, joint underwriting  
3017 | association, or uninsured prospective defendant.

3018 |         (2) Prior to filing a claim for a violation of a  
3019 | resident's rights or a claim for negligence, a claimant alleging

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3020 injury to or the death of a resident shall notify each  
 3021 prospective defendant by certified mail, return receipt  
 3022 requested, of an asserted violation of a resident's rights  
 3023 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard  
 3024 of care. Such notification shall include an identification of  
 3025 the rights the prospective defendant has violated and the  
 3026 negligence alleged to have caused the incident or incidents and  
 3027 a brief description of the injuries sustained by the resident  
 3028 which are reasonably identifiable at the time of notice. The  
 3029 notice shall contain a certificate of counsel that counsel's  
 3030 reasonable investigation gave rise to a good faith belief that  
 3031 grounds exist for an action against each prospective defendant.

3032 (3) (a) No suit may be filed for a period of 75 days after  
 3033 notice is mailed to any prospective defendant. During the 75-day  
 3034 period, the prospective defendants or their insurers shall  
 3035 conduct an evaluation of the claim to determine the liability of  
 3036 each defendant and to evaluate the damages of the claimants.  
 3037 Each defendant or insurer of the defendant shall have a  
 3038 procedure for the prompt evaluation of claims during the 75-day  
 3039 period. The procedure shall include one or more of the  
 3040 following:

- 3041 1. Internal review by a duly qualified facility risk  
 3042 manager or claims adjuster;
- 3043 2. Internal review by counsel for each prospective  
 3044 defendant;
- 3045 3. A quality assurance committee authorized under any  
 3046 applicable state or federal statutes or regulations; or

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3047 4. Any other similar procedure that fairly and promptly  
3048 evaluates the claims.

3049

3050 Each defendant or insurer of the defendant shall evaluate the  
3051 claim in good faith.

3052 (b) At or before the end of the 75 days, the defendant or  
3053 insurer of the defendant shall provide the claimant with a  
3054 written response:

3055 1. Rejecting the claim; or

3056 2. Making a settlement offer.

3057 (c) The response shall be delivered to the claimant if not  
3058 represented by counsel or to the claimant's attorney, by  
3059 certified mail, return receipt requested. Failure of the  
3060 prospective defendant or insurer of the defendant to reply to  
3061 the notice within 75 days after receipt shall be deemed a  
3062 rejection of the claim for purposes of this section.

3063 (4) The notification of a violation of a resident's rights  
3064 or alleged negligence shall be served within the applicable  
3065 statute of limitations period; however, during the 75-day  
3066 period, the statute of limitations is tolled as to all  
3067 prospective defendants. Upon stipulation by the parties, the 75-  
3068 day period may be extended and the statute of limitations is  
3069 tolled during any such extension. Upon receiving written notice  
3070 by certified mail, return receipt requested, of termination of  
3071 negotiations in an extended period, the claimant shall have 60  
3072 days or the remainder of the period of the statute of  
3073 limitations, whichever is greater, within which to file suit.

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3074 (5) No statement, discussion, written document, report, or  
3075 other work product generated by presuit claims evaluation  
3076 procedures under this section is discoverable or admissible in  
3077 any civil action for any purpose by the opposing party. All  
3078 participants, including, but not limited to, physicians,  
3079 investigators, witnesses, and employees or associates of the  
3080 defendant, are immune from civil liability arising from  
3081 participation in the presuit claims evaluation procedure. Any  
3082 licensed physician or registered nurse may be retained by either  
3083 party to provide an opinion regarding the reasonable basis of  
3084 the claim. The presuit opinions of the expert are not  
3085 discoverable or admissible in any civil action for any purpose  
3086 by the opposing party.

3087 (6) Upon receipt by a prospective defendant of a notice of  
3088 claim, the parties shall make discoverable information available  
3089 without formal discovery as provided in subsection (7).

3090 (7) Informal discovery may be used by a party to obtain  
3091 unsworn statements and the production of documents or things, as  
3092 follows:

3093 (a) Unsworn statements.--Any party may require other  
3094 parties to appear for the taking of an unsworn statement. Such  
3095 statements may be used only for the purpose of claims evaluation  
3096 and are not discoverable or admissible in any civil action for  
3097 any purpose by any party. A party seeking to take the unsworn  
3098 statement of any party must give reasonable notice in writing to  
3099 all parties. The notice must state the time and place for taking  
3100 the statement and the name and address of the party to be  
3101 examined. Unless otherwise impractical, the examination of any



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3102 party must be done at the same time by all other parties. Any  
3103 party may be represented by counsel at the taking of an unsworn  
3104 statement. An unsworn statement may be recorded electronically,  
3105 stenographically, or on videotape. The taking of unsworn  
3106 statements is subject to the provisions of the Florida Rules of  
3107 Civil Procedure and may be terminated for abuses.

3108 (b) Documents or things.--Any party may request discovery  
3109 of relevant documents or things. The documents or things must be  
3110 produced, at the expense of the requesting party, within 20 days  
3111 after the date of receipt of the request. A party is required to  
3112 produce relevant and discoverable documents or things within  
3113 that party's possession or control, if in good faith it can  
3114 reasonably be done within the timeframe of the claims evaluation  
3115 process.

3116 (8) Each request for and notice concerning informal  
3117 discovery pursuant to this section must be in writing, and a  
3118 copy thereof must be sent to all parties. Such a request or  
3119 notice must bear a certificate of service identifying the name  
3120 and address of the person to whom the request or notice is  
3121 served, the date of the request or notice, and the manner of  
3122 service thereof.

3123 (9) If a prospective defendant makes a written settlement  
3124 offer, the claimant shall have 15 days from the date of receipt  
3125 to accept the offer. An offer shall be deemed rejected unless  
3126 accepted by delivery of a written notice of acceptance.

3127 (10) To the extent not inconsistent with this part, the  
3128 provisions of the Florida Mediation Code, Florida Rules of Civil  
3129 Procedure, shall be applicable to such proceedings.

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3130 (11) Within 30 days after the claimant's receipt of  
 3131 defendant's response to the claim, the parties or their  
 3132 designated representatives shall meet in mediation to discuss  
 3133 the issues of liability and damages in accordance with the  
 3134 mediation rules of practice and procedures adopted by the  
 3135 Supreme Court. Upon stipulation of the parties, this 30-day  
 3136 period may be extended and the statute of limitations is tolled  
 3137 during the mediation and any such extension. At the conclusion  
 3138 of mediation, the claimant shall have 60 days or the remainder  
 3139 of the period of the statute of limitations, whichever is  
 3140 greater, within which to file suit.

3141 Section 55. Section 400.431, Florida Statutes, is  
 3142 renumbered as section 429.31, Florida Statutes, and amended to  
 3143 read:

3144 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

3145 (1) Whenever a facility voluntarily discontinues  
 3146 operation, it shall inform the agency in writing at least 90  
 3147 days prior to the discontinuance of operation. The facility  
 3148 shall also inform each resident or the next of kin, legal  
 3149 representative, or agency acting on each resident's behalf, of  
 3150 the fact and the proposed time of such discontinuance, following  
 3151 the notification requirements provided in s. 429.28(1)(k) ~~s.~~  
 3152 ~~400.428(1)(k)~~. In the event a resident has no person to  
 3153 represent him or her, the facility shall be responsible for  
 3154 referral to an appropriate social service agency for placement.

3155 (2) Immediately upon the notice by the agency of the  
 3156 voluntary or involuntary termination of such operation, the  
 3157 agency shall monitor the transfer of residents to other

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3158 facilities and ensure that residents' rights are being  
3159 protected. The department, in consultation with the Department  
3160 of Children and Family Services, shall specify procedures for  
3161 ensuring that all residents who receive services are  
3162 appropriately relocated.

3163 (3) All charges shall be prorated as of the date on which  
3164 the facility discontinues operation, and if any payments have  
3165 been made in advance, the payments for services not received  
3166 shall be refunded to the resident or the resident's guardian  
3167 within 10 working days of voluntary or involuntary closure of  
3168 the facility, whether or not such refund is requested by the  
3169 resident or guardian.

3170 (4) Immediately upon discontinuance of the operation of a  
3171 facility, the owner shall surrender the license therefor to the  
3172 agency, and the license shall be canceled.

3173 (5) The agency may levy a fine in an amount no greater  
3174 than \$5,000 upon each person or business entity that owns any  
3175 interest in a facility that terminates operation without  
3176 providing notice to the agency and the residents of the facility  
3177 at least 30 days before operation ceases. This fine shall not  
3178 be levied against any facility involuntarily closed at the  
3179 initiation of the agency. The agency shall use the proceeds of  
3180 the fines to operate the facility until all residents of the  
3181 facility are relocated and shall deposit any balance of the  
3182 proceeds into the Health Care Trust Fund established pursuant to  
3183 s. 429.18 ~~s. 400.418~~.

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3184 Section 56. Section 400.441, Florida Statutes, is  
3185 renumbered as section 429.41, Florida Statutes, and amended to  
3186 read:

3187 429.41 ~~400.441~~ Rules establishing standards.--

3188 (1) It is the intent of the Legislature that rules  
3189 published and enforced pursuant to this section shall include  
3190 criteria by which a reasonable and consistent quality of  
3191 resident care and quality of life may be ensured and the results  
3192 of such resident care may be demonstrated. Such rules shall  
3193 also ensure a safe and sanitary environment that is residential  
3194 and noninstitutional in design or nature. It is further  
3195 intended that reasonable efforts be made to accommodate the  
3196 needs and preferences of residents to enhance the quality of  
3197 life in a facility. In order to provide safe and sanitary  
3198 facilities and the highest quality of resident care  
3199 accommodating the needs and preferences of residents, the  
3200 department, in consultation with the agency, the Department of  
3201 Children and Family Services, and the Department of Health,  
3202 shall adopt rules, policies, and procedures to administer this  
3203 part, which must include reasonable and fair minimum standards  
3204 in relation to:

3205 (a) The requirements for and maintenance of facilities,  
3206 not in conflict with the provisions of chapter 553, relating to  
3207 plumbing, heating, cooling, lighting, ventilation, living space,  
3208 and other housing conditions, which will ensure the health,  
3209 safety, and comfort of residents and protection from fire  
3210 hazard, including adequate provisions for fire alarm and other  
3211 fire protection suitable to the size of the structure. Uniform

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3212 firesafety standards shall be established and enforced by the  
3213 State Fire Marshal in cooperation with the agency, the  
3214 department, and the Department of Health.

3215 1. Evacuation capability determination.--

3216 a. The provisions of the National Fire Protection  
3217 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used  
3218 for determining the ability of the residents, with or without  
3219 staff assistance, to relocate from or within a licensed facility  
3220 to a point of safety as provided in the fire codes adopted  
3221 herein. An evacuation capability evaluation for initial  
3222 licensure shall be conducted within 6 months after the date of  
3223 licensure. For existing licensed facilities that are not  
3224 equipped with an automatic fire sprinkler system, the  
3225 administrator shall evaluate the evacuation capability of  
3226 residents at least annually. The evacuation capability  
3227 evaluation for each facility not equipped with an automatic fire  
3228 sprinkler system shall be validated, without liability, by the  
3229 State Fire Marshal, by the local fire marshal, or by the local  
3230 authority having jurisdiction over firesafety, before the  
3231 license renewal date. If the State Fire Marshal, local fire  
3232 marshal, or local authority having jurisdiction over firesafety  
3233 has reason to believe that the evacuation capability of a  
3234 facility as reported by the administrator may have changed, it  
3235 may, with assistance from the facility administrator, reevaluate  
3236 the evacuation capability through timed exiting drills.  
3237 Translation of timed fire exiting drills to evacuation  
3238 capability may be determined:

3239 (I) Three minutes or less: prompt.

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3240 (II) More than 3 minutes, but not more than 13 minutes:  
3241 slow.

3242 (III) More than 13 minutes: impractical.

3243 b. The Office of the State Fire Marshal shall provide or  
3244 cause the provision of training and education on the proper  
3245 application of Chapter 5, NFPA 101A, 1995 edition, to its  
3246 employees, to staff of the Agency for Health Care Administration  
3247 who are responsible for regulating facilities under this part,  
3248 and to local governmental inspectors. The Office of the State  
3249 Fire Marshal shall provide or cause the provision of this  
3250 training within its existing budget, but may charge a fee for  
3251 this training to offset its costs. The initial training must be  
3252 delivered within 6 months after July 1, 1995, and as needed  
3253 thereafter.

3254 c. The Office of the State Fire Marshal, in cooperation  
3255 with provider associations, shall provide or cause the provision  
3256 of a training program designed to inform facility operators on  
3257 how to properly review bid documents relating to the  
3258 installation of automatic fire sprinklers. The Office of the  
3259 State Fire Marshal shall provide or cause the provision of this  
3260 training within its existing budget, but may charge a fee for  
3261 this training to offset its costs. The initial training must be  
3262 delivered within 6 months after July 1, 1995, and as needed  
3263 thereafter.

3264 d. The administrator of a licensed facility shall sign an  
3265 affidavit verifying the number of residents occupying the  
3266 facility at the time of the evacuation capability evaluation.

3267 2. Firesafety requirements.--

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3268 a. Except for the special applications provided herein,  
 3269 effective January 1, 1996, the provisions of the National Fire  
 3270 Protection Association, Life Safety Code, NFPA 101, 1994  
 3271 edition, Chapter 22 for new facilities and Chapter 23 for  
 3272 existing facilities shall be the uniform fire code applied by  
 3273 the State Fire Marshal for assisted living facilities, pursuant  
 3274 to s. 633.022.

3275 b. Any new facility, regardless of size, that applies for  
 3276 a license on or after January 1, 1996, must be equipped with an  
 3277 automatic fire sprinkler system. The exceptions as provided in  
 3278 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,  
 3279 apply to any new facility housing eight or fewer residents. On  
 3280 July 1, 1995, local governmental entities responsible for the  
 3281 issuance of permits for construction shall inform, without  
 3282 liability, any facility whose permit for construction is  
 3283 obtained prior to January 1, 1996, of this automatic fire  
 3284 sprinkler requirement. As used in this part, the term "a new  
 3285 facility" does not mean an existing facility that has undergone  
 3286 change of ownership.

3287 c. Notwithstanding any provision of s. 633.022 or of the  
 3288 National Fire Protection Association, NFPA 101A, Chapter 5, 1995  
 3289 edition, to the contrary, any existing facility housing eight or  
 3290 fewer residents is not required to install an automatic fire  
 3291 sprinkler system, nor to comply with any other requirement in  
 3292 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety  
 3293 requirements of NFPA 101, 1988 edition, that applies to this  
 3294 size facility, unless the facility has been classified as  
 3295 impractical to evacuate. Any existing facility housing eight or

3296 fewer residents that is classified as impractical to evacuate  
 3297 must install an automatic fire sprinkler system within the  
 3298 timeframes granted in this section.

3299 d. Any existing facility that is required to install an  
 3300 automatic fire sprinkler system under this paragraph need not  
 3301 meet other firesafety requirements of Chapter 23, NFPA 101, 1994  
 3302 edition, which exceed the provisions of NFPA 101, 1988 edition.  
 3303 The mandate contained in this paragraph which requires certain  
 3304 facilities to install an automatic fire sprinkler system  
 3305 supersedes any other requirement.

3306 e. This paragraph does not supersede the exceptions  
 3307 granted in NFPA 101, 1988 edition or 1994 edition.

3308 f. This paragraph does not exempt facilities from other  
 3309 firesafety provisions adopted under s. 633.022 and local  
 3310 building code requirements in effect before July 1, 1995.

3311 g. A local government may charge fees only in an amount  
 3312 not to exceed the actual expenses incurred by local government  
 3313 relating to the installation and maintenance of an automatic  
 3314 fire sprinkler system in an existing and properly licensed  
 3315 assisted living facility structure as of January 1, 1996.

3316 h. If a licensed facility undergoes major reconstruction  
 3317 or addition to an existing building on or after January 1, 1996,  
 3318 the entire building must be equipped with an automatic fire  
 3319 sprinkler system. Major reconstruction of a building means  
 3320 repair or restoration that costs in excess of 50 percent of the  
 3321 value of the building as reported on the tax rolls, excluding  
 3322 land, before reconstruction. Multiple reconstruction projects  
 3323 within a 5-year period the total costs of which exceed 50



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3324 percent of the initial value of the building at the time the  
3325 first reconstruction project was permitted are to be considered  
3326 as major reconstruction. Application for a permit for an  
3327 automatic fire sprinkler system is required upon application for  
3328 a permit for a reconstruction project that creates costs that go  
3329 over the 50-percent threshold.

3330 i. Any facility licensed before January 1, 1996, that is  
3331 required to install an automatic fire sprinkler system shall  
3332 ensure that the installation is completed within the following  
3333 timeframes based upon evacuation capability of the facility as  
3334 determined under subparagraph 1.:

3335 (I) Impractical evacuation capability, 24 months.

3336 (II) Slow evacuation capability, 48 months.

3337 (III) Prompt evacuation capability, 60 months.

3338

3339 The beginning date from which the deadline for the automatic  
3340 fire sprinkler installation requirement must be calculated is  
3341 upon receipt of written notice from the local fire official that  
3342 an automatic fire sprinkler system must be installed. The local  
3343 fire official shall send a copy of the document indicating the  
3344 requirement of a fire sprinkler system to the Agency for Health  
3345 Care Administration.

3346 j. It is recognized that the installation of an automatic  
3347 fire sprinkler system may create financial hardship for some  
3348 facilities. The appropriate local fire official shall, without  
3349 liability, grant two 1-year extensions to the timeframes for  
3350 installation established herein, if an automatic fire sprinkler  
3351 installation cost estimate and proof of denial from two

3352 financial institutions for a construction loan to install the  
 3353 automatic fire sprinkler system are submitted. However, for any  
 3354 facility with a class I or class II, or a history of uncorrected  
 3355 class III, firesafety deficiencies, an extension must not be  
 3356 granted. The local fire official shall send a copy of the  
 3357 document granting the time extension to the Agency for Health  
 3358 Care Administration.

3359 k. A facility owner whose facility is required to be  
 3360 equipped with an automatic fire sprinkler system under Chapter  
 3361 23, NFPA 101, 1994 edition, as adopted herein, must disclose to  
 3362 any potential buyer of the facility that an installation of an  
 3363 automatic fire sprinkler requirement exists. The sale of the  
 3364 facility does not alter the timeframe for the installation of  
 3365 the automatic fire sprinkler system.

3366 l. Existing facilities required to install an automatic  
 3367 fire sprinkler system as a result of construction-type  
 3368 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted  
 3369 herein, or evacuation capability requirements shall be notified  
 3370 by the local fire official in writing of the automatic fire  
 3371 sprinkler requirement, as well as the appropriate date for final  
 3372 compliance as provided in this subparagraph. The local fire  
 3373 official shall send a copy of the document to the Agency for  
 3374 Health Care Administration.

3375 m. Except in cases of life-threatening fire hazards, if an  
 3376 existing facility experiences a change in the evacuation  
 3377 capability, or if the local authority having jurisdiction  
 3378 identifies a construction-type restriction, such that an

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3379 automatic fire sprinkler system is required, it shall be  
3380 afforded time for installation as provided in this subparagraph.

3381  
3382 Facilities that are fully sprinkled and in compliance with other  
3383 firesafety standards are not required to conduct more than one  
3384 of the required fire drills between the hours of 11 p.m. and 7  
3385 a.m., per year. In lieu of the remaining drills, staff  
3386 responsible for residents during such hours may be required to  
3387 participate in a mock drill that includes a review of evacuation  
3388 procedures. Such standards must be included or referenced in the  
3389 rules adopted by the State Fire Marshal. Pursuant to s.

3390 633.022(1)(b), the State Fire Marshal is the final  
3391 administrative authority for firesafety standards established  
3392 and enforced pursuant to this section. All licensed facilities  
3393 must have an annual fire inspection conducted by the local fire  
3394 marshal or authority having jurisdiction.

3395 3. Resident elopement requirements.--Facilities are  
3396 required to conduct a minimum of two resident elopement  
3397 prevention and response drills per year. All administrators and  
3398 direct care staff must participate in the drills which shall  
3399 include a review of procedures to address resident elopement.  
3400 Facilities must document the implementation of the drills and  
3401 ensure that the drills are conducted in a manner consistent with  
3402 the facility's resident elopement policies and procedures.

3403 (b) The preparation and annual update of a comprehensive  
3404 emergency management plan. Such standards must be included in  
3405 the rules adopted by the department after consultation with the  
3406 Department of Community Affairs. At a minimum, the rules must

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3407 provide for plan components that address emergency evacuation  
3408 transportation; adequate sheltering arrangements; postdisaster  
3409 activities, including provision of emergency power, food, and  
3410 water; postdisaster transportation; supplies; staffing;  
3411 emergency equipment; individual identification of residents and  
3412 transfer of records; communication with families; and responses  
3413 to family inquiries. The comprehensive emergency management  
3414 plan is subject to review and approval by the local emergency  
3415 management agency. During its review, the local emergency  
3416 management agency shall ensure that the following agencies, at a  
3417 minimum, are given the opportunity to review the plan: the  
3418 Department of Elderly Affairs, the Department of Health, the  
3419 Agency for Health Care Administration, and the Department of  
3420 Community Affairs. Also, appropriate volunteer organizations  
3421 must be given the opportunity to review the plan. The local  
3422 emergency management agency shall complete its review within 60  
3423 days and either approve the plan or advise the facility of  
3424 necessary revisions.

3425 (c) The number, training, and qualifications of all  
3426 personnel having responsibility for the care of residents. The  
3427 rules must require adequate staff to provide for the safety of  
3428 all residents. Facilities licensed for 17 or more residents are  
3429 required to maintain an alert staff for 24 hours per day.

3430 (d) All sanitary conditions within the facility and its  
3431 surroundings which will ensure the health and comfort of  
3432 residents. The rules must clearly delineate the  
3433 responsibilities of the agency's licensure and survey staff, the  
3434 county health departments, and the local authority having

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3435 jurisdiction over fire safety and ensure that inspections are  
 3436 not duplicative. The agency may collect fees for food service  
 3437 inspections conducted by the county health departments and  
 3438 transfer such fees to the Department of Health.

3439 (e) License application and license renewal, transfer of  
 3440 ownership, proper management of resident funds and personal  
 3441 property, surety bonds, resident contracts, refund policies,  
 3442 financial ability to operate, and facility and staff records.

3443 (f) Inspections, complaint investigations, moratoriums,  
 3444 classification of deficiencies, levying and enforcement of  
 3445 penalties, and use of income from fees and fines.

3446 (g) The enforcement of the resident bill of rights  
 3447 specified in s. 429.28 ~~s. 400.428~~.

3448 (h) The care and maintenance of residents, which must  
 3449 include, but is not limited to:

- 3450 1. The supervision of residents;
- 3451 2. The provision of personal services;
- 3452 3. The provision of, or arrangement for, social and  
 3453 leisure activities;
- 3454 4. The arrangement for appointments and transportation to  
 3455 appropriate medical, dental, nursing, or mental health services,  
 3456 as needed by residents;
- 3457 5. The management of medication;
- 3458 6. The nutritional needs of residents;
- 3459 7. Resident records; and
- 3460 8. Internal risk management and quality assurance.

3461 (i) Facilities holding a limited nursing, extended  
 3462 congregate care, or limited mental health license.

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3463 (j) The establishment of specific criteria to define  
 3464 appropriateness of resident admission and continued residency in  
 3465 a facility holding a standard, limited nursing, extended  
 3466 congregate care, and limited mental health license.

3467 (k) The use of physical or chemical restraints. The use  
 3468 of physical restraints is limited to half-bed rails as  
 3469 prescribed and documented by the resident's physician with the  
 3470 consent of the resident or, if applicable, the resident's  
 3471 representative or designee or the resident's surrogate,  
 3472 guardian, or attorney in fact. The use of chemical restraints  
 3473 is limited to prescribed dosages of medications authorized by  
 3474 the resident's physician and must be consistent with the  
 3475 resident's diagnosis. Residents who are receiving medications  
 3476 that can serve as chemical restraints must be evaluated by their  
 3477 physician at least annually to assess:

- 3478 1. The continued need for the medication.
- 3479 2. The level of the medication in the resident's blood.
- 3480 3. The need for adjustments in the prescription.

3481 (1) The establishment of specific policies and procedures  
 3482 on resident elopement. Facilities shall conduct a minimum of two  
 3483 resident elopement drills each year. All administrators and  
 3484 direct care staff shall participate in the drills. Facilities  
 3485 shall document the drills.

3486 (2) In adopting any rules pursuant to this part, the  
 3487 department, in conjunction with the agency, shall make distinct  
 3488 standards for facilities based upon facility size; the types of  
 3489 care provided; the physical and mental capabilities and needs of  
 3490 residents; the type, frequency, and amount of services and care

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3491 offered; and the staffing characteristics of the facility. Rules  
3492 developed pursuant to this section shall not restrict the use of  
3493 shared staffing and shared programming in facilities that are  
3494 part of retirement communities that provide multiple levels of  
3495 care and otherwise meet the requirements of law and rule.

3496 Except for uniform firesafety standards, the department shall  
3497 adopt by rule separate and distinct standards for facilities  
3498 with 16 or fewer beds and for facilities with 17 or more beds.  
3499 The standards for facilities with 16 or fewer beds shall be  
3500 appropriate for a noninstitutional residential environment,  
3501 provided that the structure is no more than two stories in  
3502 height and all persons who cannot exit the facility unassisted  
3503 in an emergency reside on the first floor. The department, in  
3504 conjunction with the agency, may make other distinctions among  
3505 types of facilities as necessary to enforce the provisions of  
3506 this part. Where appropriate, the agency shall offer alternate  
3507 solutions for complying with established standards, based on  
3508 distinctions made by the department and the agency relative to  
3509 the physical characteristics of facilities and the types of care  
3510 offered therein.

3511 (3) The department shall submit a copy of proposed rules  
3512 to the Speaker of the House of Representatives, the President of  
3513 the Senate, and appropriate committees of substance for review  
3514 and comment prior to the promulgation thereof.

3515 (a) Rules promulgated by the department shall encourage  
3516 the development of homelike facilities which promote the  
3517 dignity, individuality, personal strengths, and decisionmaking  
3518 ability of residents.

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3519 (b) The agency, in consultation with the department, may  
3520 waive rules promulgated pursuant to this part in order to  
3521 demonstrate and evaluate innovative or cost-effective congregate  
3522 care alternatives which enable individuals to age in place.  
3523 Such waivers may be granted only in instances where there is  
3524 reasonable assurance that the health, safety, or welfare of  
3525 residents will not be endangered. To apply for a waiver, the  
3526 licensee shall submit to the agency a written description of the  
3527 concept to be demonstrated, including goals, objectives, and  
3528 anticipated benefits; the number and types of residents who will  
3529 be affected, if applicable; a brief description of how the  
3530 demonstration will be evaluated; and any other information  
3531 deemed appropriate by the agency. Any facility granted a waiver  
3532 shall submit a report of findings to the agency and the  
3533 department within 12 months. At such time, the agency may renew  
3534 or revoke the waiver or pursue any regulatory or statutory  
3535 changes necessary to allow other facilities to adopt the same  
3536 practices. The department may by rule clarify terms and  
3537 establish waiver application procedures, criteria for reviewing  
3538 waiver proposals, and procedures for reporting findings, as  
3539 necessary to implement this subsection.

3540 (4) The agency may use an abbreviated biennial standard  
3541 licensure inspection that consists of a review of key quality-  
3542 of-care standards in lieu of a full inspection in facilities  
3543 which have a good record of past performance. However, a full  
3544 inspection shall be conducted in facilities which have had a  
3545 history of class I or class II violations, uncorrected class III  
3546 violations, confirmed ombudsman council complaints, or confirmed



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3547 licensure complaints, within the previous licensure period  
 3548 immediately preceding the inspection or when a potentially  
 3549 serious problem is identified during the abbreviated inspection.  
 3550 The agency, in consultation with the department, shall develop  
 3551 the key quality-of-care standards with input from the State  
 3552 Long-Term Care Ombudsman Council and representatives of provider  
 3553 groups for incorporation into its rules. The department, in  
 3554 consultation with the agency, shall report annually to the  
 3555 Legislature concerning its implementation of this subsection.  
 3556 The report shall include, at a minimum, the key quality-of-care  
 3557 standards which have been developed; the number of facilities  
 3558 identified as being eligible for the abbreviated inspection; the  
 3559 number of facilities which have received the abbreviated  
 3560 inspection and, of those, the number that were converted to full  
 3561 inspection; the number and type of subsequent complaints  
 3562 received by the agency or department on facilities which have  
 3563 had abbreviated inspections; any recommendations for  
 3564 modification to this subsection; any plans by the agency to  
 3565 modify its implementation of this subsection; and any other  
 3566 information which the department believes should be reported.

3567 (5) A fee shall be charged by the department to any person  
 3568 requesting a copy of this part or rules promulgated under this  
 3569 part. Such fees shall not exceed the actual cost of duplication  
 3570 and postage.

3571 Section 57. Section 400.442, Florida Statutes, is  
 3572 renumbered as section 429.42, Florida Statutes, and amended to  
 3573 read:

3574 429.42 ~~400.442~~ Pharmacy and dietary services.--

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3575 (1) Any assisted living facility in which the agency has  
 3576 documented a class I or class II deficiency or uncorrected class  
 3577 III deficiencies regarding medicinal drugs or over-the-counter  
 3578 preparations, including their storage, use, delivery, or  
 3579 administration, or dietary services, or both, during a biennial  
 3580 survey or a monitoring visit or an investigation in response to  
 3581 a complaint, shall, in addition to or as an alternative to any  
 3582 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to  
 3583 employ the consultant services of a licensed pharmacist, a  
 3584 licensed registered nurse, or a registered or licensed  
 3585 dietitian, as applicable. The consultant shall, at a minimum,  
 3586 provide onsite quarterly consultation until the inspection team  
 3587 from the agency determines that such consultation services are  
 3588 no longer required.

3589 (2) A corrective action plan for deficiencies related to  
 3590 assistance with the self-administration of medication or the  
 3591 administration of medication must be developed and implemented  
 3592 by the facility within 48 hours after notification of such  
 3593 deficiency, or sooner if the deficiency is determined by the  
 3594 agency to be life-threatening.

3595 (3) The agency shall employ at least two pharmacists  
 3596 licensed pursuant to chapter 465 among its personnel who  
 3597 biennially inspect assisted living facilities licensed under  
 3598 this part, to participate in biennial inspections or consult  
 3599 with the agency regarding deficiencies relating to medicinal  
 3600 drugs or over-the-counter preparations.

3601 (4) The department may by rule establish procedures and  
 3602 specify documentation as necessary to implement this section.

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3603 Section 58. Section 400.444, Florida Statutes, is  
3604 renumbered as section 429.44, Florida Statutes, and amended to  
3605 read:

3606 429.44 ~~400.444~~ Construction and renovation;  
3607 requirements.--

3608 (1) The requirements for the construction and renovation  
3609 of a facility shall comply with the provisions of chapter 553  
3610 which pertain to building construction standards, including  
3611 plumbing, electrical code, glass, manufactured buildings,  
3612 accessibility for persons with disabilities, and the state  
3613 minimum building code and with the provisions of s. 633.022,  
3614 which pertain to uniform firesafety standards.

3615 (2) Upon notification by the local authority having  
3616 jurisdiction over life-threatening violations which seriously  
3617 threaten the health, safety, or welfare of a resident of a  
3618 facility, the agency shall take action as specified in s. 429.14  
3619 ~~s. 400.414~~.

3620 (3) The department may adopt rules to establish procedures  
3621 and specify the documentation necessary to implement this  
3622 section.

3623 Section 59. Section 400.447, Florida Statutes, is  
3624 renumbered as section 429.47, Florida Statutes, and amended to  
3625 read:

3626 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--

3627 (1) It is unlawful for any person or public body to offer  
3628 or advertise to the public, in any way by any medium whatever,  
3629 personal services as defined in this act, without obtaining a  
3630 valid current license. It is unlawful for any holder of a

3631 license issued pursuant to the provisions of this act to  
 3632 advertise or hold out to the public that it holds a license for  
 3633 a facility other than that for which it actually holds a  
 3634 license.

3635 (2) It is unlawful for any holder of a license issued  
 3636 pursuant to the provisions of this act to withhold from the  
 3637 agency any evidence of financial instability, including, but not  
 3638 limited to, bad checks, delinquent accounts, nonpayment of  
 3639 withholding taxes, unpaid utility expenses, nonpayment for  
 3640 essential services, or adverse court action concerning the  
 3641 financial viability of the facility or any other facility  
 3642 licensed under this part or under part II of chapter 400 ~~or part~~  
 3643 ~~III of this chapter~~ which is owned by the licensee.

3644 (3) Any person found guilty of violating subsection (1) or  
 3645 subsection (2) commits a misdemeanor of the second degree,  
 3646 punishable as provided in s. 775.083. Each day of continuing  
 3647 violation shall be considered a separate offense.

3648 (4) While a facility is under construction, the owner may  
 3649 advertise to the public prior to obtaining a license. Facilities  
 3650 that are certified under chapter 651 shall comply with the  
 3651 advertising provisions of s. 651.095 rather than those provided  
 3652 for in this subsection.

3653 (5) A freestanding facility shall not advertise or imply  
 3654 that any part of it is a nursing home. For the purpose of this  
 3655 subsection, "freestanding facility" means a facility that is not  
 3656 operated in conjunction with a nursing home to which residents  
 3657 of the facility are given priority when nursing care is

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3658 required. A person who violates this subsection is subject to  
3659 fine as specified in s. 429.19 ~~s. 400.419~~.

3660 (6) Any facility which is affiliated with any religious  
3661 organization or which has a name implying religious affiliation  
3662 shall include in its advertising whether or not it is affiliated  
3663 with any religious organization and, if so, which organization.

3664 (7) A facility licensed under this part which is not part  
3665 of a facility authorized under chapter 651 shall include the  
3666 facility's license number as given by the agency in all  
3667 advertising. A company or person owning more than one facility  
3668 shall include at least one license number per advertisement.  
3669 All advertising shall include the term "assisted living  
3670 facility" before the license number.

3671 Section 60. Section 400.452, Florida Statutes, is  
3672 renumbered as section 429.52, Florida Statutes, and amended to  
3673 read:

3674 429.52 ~~400.452~~ Staff training and educational programs;  
3675 core educational requirement.--

3676 (1) Administrators and other assisted living facility  
3677 staff must meet minimum training and education requirements  
3678 established by the Department of Elderly Affairs by rule. This  
3679 training and education is intended to assist facilities to  
3680 appropriately respond to the needs of residents, to maintain  
3681 resident care and facility standards, and to meet licensure  
3682 requirements.

3683 (2) The department shall establish a competency test and a  
3684 minimum required score to indicate successful completion of the  
3685 training and educational requirements. The competency test must

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3686 be developed by the department in conjunction with the agency  
3687 and providers. The required training and education must cover at  
3688 least the following topics:

3689 (a) State law and rules relating to assisted living  
3690 facilities.

3691 (b) Resident rights and identifying and reporting abuse,  
3692 neglect, and exploitation.

3693 (c) Special needs of elderly persons, persons with mental  
3694 illness, and persons with developmental disabilities and how to  
3695 meet those needs.

3696 (d) Nutrition and food service, including acceptable  
3697 sanitation practices for preparing, storing, and serving food.

3698 (e) Medication management, recordkeeping, and proper  
3699 techniques for assisting residents with self-administered  
3700 medication.

3701 (f) Firesafety requirements, including fire evacuation  
3702 drill procedures and other emergency procedures.

3703 (g) Care of persons with Alzheimer's disease and related  
3704 disorders.

3705 (3) Effective January 1, 2004, a new facility  
3706 administrator must complete the required training and education,  
3707 including the competency test, within a reasonable time after  
3708 being employed as an administrator, as determined by the  
3709 department. Failure to do so is a violation of this part and  
3710 subjects the violator to an administrative fine as prescribed in  
3711 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with  
3712 chapter 468, part II, are exempt from this requirement. Other

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3713 licensed professionals may be exempted, as determined by the  
3714 department by rule.

3715 (4) Administrators are required to participate in  
3716 continuing education for a minimum of 12 contact hours every 2  
3717 years.

3718 (5) Staff involved with the management of medications and  
3719 assisting with the self-administration of medications under s.  
3720 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional  
3721 hours of training provided by a registered nurse, licensed  
3722 pharmacist, or department staff. The department shall establish  
3723 by rule the minimum requirements of this additional training.

3724 (6) Other facility staff shall participate in training  
3725 relevant to their job duties as specified by rule of the  
3726 department.

3727 (7) If the department or the agency determines that there  
3728 are problems in a facility that could be reduced through  
3729 specific staff training or education beyond that already  
3730 required under this section, the department or the agency may  
3731 require, and provide, or cause to be provided, the training or  
3732 education of any personal care staff in the facility.

3733 (8) The department shall adopt rules related to these  
3734 training requirements, the competency test, necessary  
3735 procedures, and competency test fees.

3736 Section 61. Subsections (1), (10), and (18) of section  
3737 400.462, Florida Statutes, are amended to read:

3738 400.462 Definitions.--As used in this part, the term:

3739 (1) "Administrator" means a direct employee, as defined in  
3740 subsection (9). The administrator must be a licensed physician,

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3741 physician assistant, or registered nurse licensed to practice in  
3742 this state or an individual having at least 1 year of  
3743 supervisory or administrative experience in home health care or  
3744 in a facility licensed under chapter 395, ~~or under part II or~~  
3745 ~~part III~~ of this chapter, or chapter 429. An administrator may  
3746 manage a maximum of five licensed home health agencies located  
3747 within one agency service district or within an immediately  
3748 contiguous county. If the home health agency is licensed under  
3749 this chapter and is part of a retirement community that provides  
3750 multiple levels of care, an employee of the retirement community  
3751 may administer the home health agency and up to a maximum of  
3752 four entities licensed under this chapter or chapter 429 that  
3753 are owned, operated, or managed by the same corporate entity. An  
3754 administrator shall designate, in writing, for each licensed  
3755 entity, a qualified alternate administrator to serve during  
3756 absences.

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



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3769 | levels of care, an employee of the retirement community may  
 3770 | serve as the director of nursing of the home health agency and  
 3771 | of up to four entities licensed under this chapter or chapter  
 3772 | 429 which are owned, operated, or managed by the same corporate  
 3773 | entity.

3774 | (18) "Nurse registry" means any person that procures,  
 3775 | offers, promises, or attempts to secure health-care-related  
 3776 | contracts for registered nurses, licensed practical nurses,  
 3777 | certified nursing assistants, home health aides, companions, or  
 3778 | homemakers, who are compensated by fees as independent  
 3779 | contractors, including, but not limited to, contracts for the  
 3780 | provision of services to patients and contracts to provide  
 3781 | private duty or staffing services to health care facilities  
 3782 | licensed under chapter 395, ~~or this chapter,~~ or chapter 429 or  
 3783 | other business entities.

3784 | Section 62. Paragraphs (h), (i), and (n) of subsection (5)  
 3785 | of section 400.464, Florida Statutes, are amended to read:

3786 | 400.464 Home health agencies to be licensed; expiration of  
 3787 | license; exemptions; unlawful acts; penalties.--

3788 | (5) The following are exempt from the licensure  
 3789 | requirements of this part:

3790 | (h) The delivery of assisted living facility services for  
 3791 | which the assisted living facility is licensed under part I ~~III~~  
 3792 | of ~~this~~ chapter 429, to serve its residents in its facility.

3793 | (i) The delivery of hospice services for which the hospice  
 3794 | is licensed under part IV ~~VI~~ of this chapter, to serve hospice  
 3795 | patients admitted to its service.

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3796 (n) The delivery of adult family care home services for  
3797 which the adult family care home is licensed under part II ~~VII~~  
3798 of ~~this~~ chapter 429, to serve the residents in its facility.

3799 Section 63. Subsection (2) of section 400.497, Florida  
3800 Statutes, is amended to read:

3801 400.497 Rules establishing minimum standards.--The agency  
3802 shall adopt, publish, and enforce rules to implement this part,  
3803 including, as applicable, ss. 400.506 and 400.509, which must  
3804 provide reasonable and fair minimum standards relating to:

3805 (2) Shared staffing. The agency shall allow shared  
3806 staffing if the home health agency is part of a retirement  
3807 community that provides multiple levels of care, is located on  
3808 one campus, is licensed under this chapter or chapter 429, and  
3809 otherwise meets the requirements of law and rule.

3810 Section 64. Section 400.552, Florida Statutes, is  
3811 renumbered as section 429.903, Florida Statutes, and amended to  
3812 read:

3813 429.903 ~~400.552~~ Applicability.--Any facility that comes  
3814 within the definition of an adult day care center which is not  
3815 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the  
3816 agency as an adult day care center.

3817 Section 65. Section 400.555, Florida Statutes, is  
3818 renumbered as section 429.909, Florida Statutes, and amended to  
3819 read:

3820 429.909 ~~400.555~~ Application for license.--

3821 (1) An application for a license to operate an adult day  
3822 care center must be made to the agency on forms furnished by the  
3823 agency and must be accompanied by the appropriate license fee

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3824 unless the applicant is exempt from payment of the fee as  
3825 provided in s. 429.907(4) ~~s. 400.554(4)~~.

3826 (2) The applicant for licensure must furnish:

3827 (a) A description of the physical and mental capabilities  
3828 and needs of the participants to be served and the availability,  
3829 frequency, and intensity of basic services and of supportive and  
3830 optional services to be provided;

3831 (b) Satisfactory proof of financial ability to operate and  
3832 conduct the center in accordance with the requirements of this  
3833 part, which must include, in the case of an initial application,  
3834 a 1-year operating plan and proof of a 3-month operating reserve  
3835 fund; and

3836 (c) Proof of adequate liability insurance coverage.

3837 (d) Proof of compliance with level 2 background screening  
3838 as required under s. 429.919 ~~s. 400.5572~~.

3839 (e) A description and explanation of any exclusions,  
3840 permanent suspensions, or terminations of the application from  
3841 the Medicare or Medicaid programs. Proof of compliance with  
3842 disclosure of ownership and control interest requirements of the  
3843 Medicare or Medicaid programs shall be accepted in lieu of this  
3844 submission.

3845 Section 66. Section 400.556, Florida Statutes, is  
3846 renumbered as section 429.911, Florida Statutes, and amended to  
3847 read:

3848 429.911 ~~400.556~~ Denial, suspension, revocation of license;  
3849 administrative fines; investigations and inspections.--

3850 (1) The agency may deny, revoke, or suspend a license  
3851 under this part or may impose an administrative fine against the

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3852 owner of an adult day care center or its operator or employee in  
3853 the manner provided in chapter 120.

3854 (2) Each of the following actions by the owner of an adult  
3855 day care center or by its operator or employee is a ground for  
3856 action by the agency against the owner of the center or its  
3857 operator or employee:

3858 (a) An intentional or negligent act materially affecting  
3859 the health or safety of center participants.

3860 (b) A violation of this part or of any standard or rule  
3861 under this part.

3862 (c) A failure of persons subject to level 2 background  
3863 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the  
3864 screening standards of s. 435.04, or the retention by the center  
3865 of an employee subject to level 1 background screening standards  
3866 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the  
3867 screening standards of s. 435.03 and for whom exemptions from  
3868 disqualification have not been provided by the agency.

3869 (d) Failure to follow the criteria and procedures provided  
3870 under part I of chapter 394 relating to the transportation,  
3871 voluntary admission, and involuntary examination of center  
3872 participants.

3873 (e) Multiple or repeated violations of this part or of any  
3874 standard or rule adopted under this part.

3875 (f) Exclusion, permanent suspension, or termination of the  
3876 owner, if an individual, officer, or board member of the adult  
3877 day care center, if the owner is a firm, corporation,  
3878 partnership, or association, or any person owning 5 percent or  
3879 more of the center, from the Medicare or Medicaid program.

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3880 (3) The agency is responsible for all investigations and  
3881 inspections conducted pursuant to this part.

3882 Section 67. Section 400.557, Florida Statutes, is  
3883 renumbered as section 429.915, Florida Statutes, and amended to  
3884 read:

3885 429.915 ~~400.557~~ Expiration of license; renewal;  
3886 conditional license or permit.--

3887 (1) A license issued for the operation of an adult day  
3888 care center, unless sooner suspended or revoked, expires 2 years  
3889 after the date of issuance. The agency shall notify a licensee  
3890 at least 120 days before the expiration date that license  
3891 renewal is required to continue operation. The notification must  
3892 be provided electronically or by mail delivery. At least 90 days  
3893 prior to the expiration date, an application for renewal must be  
3894 submitted to the agency. A license shall be renewed, upon the  
3895 filing of an application on forms furnished by the agency, if  
3896 the applicant has first met the requirements of this part and of  
3897 the rules adopted under this part. The applicant must file with  
3898 the application satisfactory proof of financial ability to  
3899 operate the center in accordance with the requirements of this  
3900 part and in accordance with the needs of the participants to be  
3901 served and an affidavit of compliance with the background  
3902 screening requirements of s. 429.919 ~~s. 400.5572~~.

3903 (2) A licensee against whom a revocation or suspension  
3904 proceeding is pending at the time for license renewal may be  
3905 issued a conditional license effective until final disposition  
3906 by the agency of the proceeding. If judicial relief is sought  
3907 from the final disposition, the court having jurisdiction may

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3908 | issue a conditional permit effective for the duration of the  
3909 | judicial proceeding.

3910 |         (3) The agency may issue a conditional license to an  
3911 | applicant for license renewal or change of ownership if the  
3912 | applicant fails to meet all standards and requirements for  
3913 | licensure. A conditional license issued under this subsection  
3914 | must be limited to a specific period not exceeding 6 months, as  
3915 | determined by the agency, and must be accompanied by an approved  
3916 | plan of correction.

3917 |         Section 68. Section 400.5572, Florida Statutes, is  
3918 | renumbered as section 429.919, Florida Statutes, and amended to  
3919 | read:

3920 |         429.919 ~~400.5572~~ Background screening.--

3921 |         (1) (a) Level 2 background screening must be conducted on  
3922 | each of the following persons, who shall be considered employees  
3923 | for the purposes of conducting screening under chapter 435:

3924 |             1. The adult day care center owner if an individual, the  
3925 | operator, and the financial officer.

3926 |             2. An officer or board member if the owner of the adult  
3927 | day care center is a firm, corporation, partnership, or  
3928 | association, or any person owning 5 percent or more of the  
3929 | facility, if the agency has probable cause to believe that such  
3930 | person has been convicted of any offense prohibited by s.

3931 | 435.04. For each officer, board member, or person owning 5  
3932 | percent or more who has been convicted of any such offense, the  
3933 | facility shall submit to the agency a description and  
3934 | explanation of the conviction at the time of license  
3935 | application. This subparagraph does not apply to a board member

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3936 of a not-for-profit corporation or organization if the board  
3937 member serves solely in a voluntary capacity, does not regularly  
3938 take part in the day-to-day operational decisions of the  
3939 corporation or organization, receives no remuneration for his or  
3940 her services, and has no financial interest and has no family  
3941 members with a financial interest in the corporation or  
3942 organization, provided that the board member and facility submit  
3943 a statement affirming that the board member's relationship to  
3944 the facility satisfies the requirements of this subparagraph.

3945 (b) Proof of compliance with level 2 screening standards  
3946 which has been submitted within the previous 5 years to meet any  
3947 facility or professional licensure requirements of the agency or  
3948 the Department of Health satisfies the requirements of this  
3949 subsection.

3950 (c) The agency may grant a provisional license to an adult  
3951 day care center applying for an initial license when each  
3952 individual required by this subsection to undergo screening has  
3953 completed the Department of Law Enforcement background check,  
3954 but has not yet received results from the Federal Bureau of  
3955 Investigation, or when a request for an exemption from  
3956 disqualification has been submitted to the agency pursuant to s.  
3957 435.07, but a response has not been issued.

3958 (2) The owner or administrator of an adult day care center  
3959 must conduct level 1 background screening as set forth in  
3960 chapter 435 on all employees hired on or after October 1, 1998,  
3961 who provide basic services or supportive and optional services  
3962 to the participants. Such persons satisfy this requirement if:

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3963 (a) Proof of compliance with level 1 screening  
 3964 requirements obtained to meet any professional license  
 3965 requirements in this state is provided and accompanied, under  
 3966 penalty of perjury, by a copy of the person's current  
 3967 professional license and an affidavit of current compliance with  
 3968 the background screening requirements.

3969 (b) The person required to be screened has been  
 3970 continuously employed, without a breach in service that exceeds  
 3971 180 days, in the same type of occupation for which the person is  
 3972 seeking employment and provides proof of compliance with the  
 3973 level 1 screening requirement which is no more than 2 years old.  
 3974 Proof of compliance must be provided directly from one employer  
 3975 or contractor to another, and not from the person screened. Upon  
 3976 request, a copy of screening results shall be provided to the  
 3977 person screened by the employer retaining documentation of the  
 3978 screening.

3979 (c) The person required to be screened is employed by a  
 3980 corporation or business entity or related corporation or  
 3981 business entity that owns, operates, or manages more than one  
 3982 facility or agency licensed under this chapter or under chapter  
 3983 400, and for whom a level 1 screening was conducted by the  
 3984 corporation or business entity as a condition of initial or  
 3985 continued employment.

3986 Section 69. Subsection (5) of section 400.601, Florida  
 3987 Statutes, is amended to read:

3988 400.601 Definitions.--As used in this part, the term:

3989 (5) "Hospice residential unit" means a homelike living  
 3990 facility, other than a facility licensed under other parts of



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3991 this chapter, ~~or~~ under chapter 395, or under chapter 429, that  
 3992 is operated by a hospice for the benefit of its patients and is  
 3993 considered by a patient who lives there to be his or her primary  
 3994 residence.

3995 Section 70. Section 400.618, Florida Statutes, is  
 3996 renumbered as section 429.65, Florida Statutes, and amended to  
 3997 read:

3998 429.65 ~~400.618~~ Definitions.--As used in this part, the  
 3999 term:

4000 (1) "Activities of daily living" means functions and tasks  
 4001 for self-care, including eating, bathing, grooming, dressing,  
 4002 ambulating, and other similar tasks.

4003 (2) "Adult family-care home" means a full-time, family-  
 4004 type living arrangement, in a private home, under which a person  
 4005 who owns or rents the home provides room, board, and personal  
 4006 care, on a 24-hour basis, for no more than five disabled adults  
 4007 or frail elders who are not relatives. The following family-type  
 4008 living arrangements are not required to be licensed as an adult  
 4009 family-care home:

4010 (a) An arrangement whereby the person who owns or rents  
 4011 the home provides room, board, and personal services for not  
 4012 more than two adults who do not receive optional state  
 4013 supplementation under s. 409.212. The person who provides the  
 4014 housing, meals, and personal care must own or rent the home and  
 4015 reside therein.

4016 (b) An arrangement whereby the person who owns or rents  
 4017 the home provides room, board, and personal services only to his  
 4018 or her relatives.

4019 (c) An establishment that is licensed as an assisted  
4020 living facility under this chapter ~~part III~~.

4021 (3) "Agency" means the Agency for Health Care  
4022 Administration.

4023 (4) "Aging in place" means remaining in a noninstitutional  
4024 living environment despite the physical or mental changes that  
4025 may occur in a person who is aging. For aging in place to occur,  
4026 needed services are added, increased, or adjusted to compensate  
4027 for a person's physical or mental changes.

4028 (5) "Appropriate placement" means that the resident's  
4029 needs can be met by the adult family-care home or can be met by  
4030 services arranged by the adult family-care home or the resident.

4031 (6) "Chemical restraint" means a pharmacologic drug that  
4032 physically limits, restricts, or deprives an individual of  
4033 movement or mobility, and is used for discipline or convenience  
4034 and not required for the treatment of medical symptoms.

4035 (7) "Department" means the Department of Elderly Affairs.

4036 (8) "Disabled adult" means any person between 18 and 59  
4037 years of age, inclusive, who is a resident of the state and who  
4038 has one or more permanent physical or mental limitations that  
4039 restrict the person's ability to perform the normal activities  
4040 of daily living.

4041 (9) "Frail elder" means a functionally impaired elderly  
4042 person who is 60 years of age or older and who has physical or  
4043 mental limitations that restrict the person's ability to perform  
4044 the normal activities of daily living and that impede the  
4045 person's capacity to live independently.

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4046 (10) "Personal services" or "personal care" includes  
 4047 individual assistance with or supervision of the activities of  
 4048 daily living and the self-administration of medication, and  
 4049 other similar services.

4050 (11) "Provider" means a person who is licensed to operate  
 4051 an adult family-care home.

4052 (12) "Relative" means an individual who is the father,  
 4053 mother, son, daughter, brother, sister, grandfather,  
 4054 grandmother, great-grandfather, great-grandmother, uncle, aunt,  
 4055 first cousin, nephew, niece, husband, wife, father-in-law,  
 4056 mother-in-law, son-in-law, daughter-in-law, brother-in-law,  
 4057 sister-in-law, stepfather, stepmother, stepson, stepdaughter,  
 4058 stepbrother, stepsister, half brother, or half sister of a  
 4059 provider.

4060 (13) "Relief person" means an adult designated by the  
 4061 provider to supervise the residents during the provider's  
 4062 absence.

4063 (14) "Resident" means a person receiving room, board, and  
 4064 personal care in an adult family-care home.

4065 Section 71. Section 400.6194, Florida Statutes, is  
 4066 renumbered as section 429.69, Florida Statutes, and amended to  
 4067 read:

4068 429.69 ~~400.6194~~ Denial, revocation, or suspension of a  
 4069 license.--The agency may deny, suspend, or revoke a license for  
 4070 any of the following reasons:

4071 (1) Failure of any of the persons required to undergo  
 4072 background screening under s. 429.67 ~~s. 400.619~~ to meet the

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4073 level 1 screening standards of s. 435.03, unless an exemption  
4074 from disqualification has been provided by the agency.

4075 (2) An intentional or negligent act materially affecting  
4076 the health, safety, or welfare of the adult family-care home  
4077 residents.

4078 (3) Submission of fraudulent information or omission of  
4079 any material fact on a license application or any other document  
4080 required by the agency.

4081 (4) Failure to pay an administrative fine assessed under  
4082 this part.

4083 (5) A violation of this part or adopted rules which  
4084 results in conditions or practices that directly threaten the  
4085 physical or emotional health, safety, or welfare of residents.

4086 (6) Failure to correct cited fire code violations that  
4087 threaten the health, safety, or welfare of residents.

4088 (7) Failure to submit a completed initial license  
4089 application or to complete an application for license renewal  
4090 within the specified timeframes.

4091 (8) Exclusion, permanent suspension, or termination of the  
4092 provider from the Medicare or Medicaid program.

4093 Section 72. Section 400.621, Florida Statutes, is  
4094 renumbered as section 429.73, Florida Statutes, and amended to  
4095 read:

4096 429.73 ~~400.621~~ Rules and standards relating to adult  
4097 family-care homes.--

4098 (1) The department, in consultation with the Department of  
4099 Health, the Department of Children and Family Services, and the  
4100 agency shall, by rule, establish minimum standards to ensure the

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4101 health, safety, and well-being of each resident in the adult  
 4102 family-care home. The rules must address:

4103 (a) Requirements for the physical site of the facility and  
 4104 facility maintenance.

4105 (b) Services that must be provided to all residents of an  
 4106 adult family-care home and standards for such services, which  
 4107 must include, but need not be limited to:

4108 1. Room and board.

4109 2. Assistance necessary to perform the activities of daily  
 4110 living.

4111 3. Assistance necessary to administer medication.

4112 4. Supervision of residents.

4113 5. Health monitoring.

4114 6. Social and leisure activities.

4115 (c) Standards and procedures for license application and  
 4116 annual license renewal, advertising, proper management of each  
 4117 resident's funds and personal property and personal affairs,  
 4118 financial ability to operate, medication management,  
 4119 inspections, complaint investigations, and facility, staff, and  
 4120 resident records.

4121 (d) Qualifications, training, standards, and  
 4122 responsibilities for providers and staff.

4123 (e) Compliance with chapter 419, relating to community  
 4124 residential homes.

4125 (f) Criteria and procedures for determining the  
 4126 appropriateness of a resident's placement and continued  
 4127 residency in an adult family-care home. A resident who requires  
 4128 24-hour nursing supervision may not be retained in an adult

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4129 family-care home unless such resident is an enrolled hospice  
4130 patient and the resident's continued residency is mutually  
4131 agreeable to the resident and the provider.

4132 (g) Procedures for providing notice and assuring the least  
4133 possible disruption of residents' lives when residents are  
4134 relocated, an adult family-care home is closed, or the ownership  
4135 of an adult family-care home is transferred.

4136 (h) Procedures to protect the residents' rights as  
4137 provided in s. 429.85 ~~s. 400.628~~.

4138 (i) Procedures to promote the growth of adult family-care  
4139 homes as a component of a long-term care system.

4140 (j) Procedures to promote the goal of aging in place for  
4141 residents of adult family-care homes.

4142 (2) The department shall by rule provide minimum standards  
4143 and procedures for emergencies. Pursuant to s. 633.022, the  
4144 State Fire Marshal, in consultation with the department and the  
4145 agency, shall adopt uniform firesafety standards for adult  
4146 family-care homes.

4147 (3) The department shall adopt rules providing for the  
4148 implementation of orders not to resuscitate. The provider may  
4149 withhold or withdraw cardiopulmonary resuscitation if presented  
4150 with an order not to resuscitate executed pursuant to s. 401.45.  
4151 The provider shall not be subject to criminal prosecution or  
4152 civil liability, nor be considered to have engaged in negligent  
4153 or unprofessional conduct, for withholding or withdrawing  
4154 cardiopulmonary resuscitation pursuant to such an order and  
4155 rules adopted by the department.

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4156 (4) The provider of any adult family-care home that is in  
4157 operation at the time any rules are adopted or amended under  
4158 this part may be given a reasonable time, not exceeding 6  
4159 months, within which to comply with the new or revised rules and  
4160 standards.

4161 Section 73. Section 400.628, Florida Statutes, is  
4162 renumbered as section 429.85, Florida Statutes, and amended to  
4163 read:

4164 429.85 ~~400.628~~ Residents' bill of rights.--

4165 (1) A resident of an adult family-care home may not be  
4166 deprived of any civil or legal rights, benefits, or privileges  
4167 guaranteed by law, the State Constitution, or the Constitution  
4168 of the United States solely by reason of status as a resident of  
4169 the home. Each resident has the right to:

4170 (a) Live in a safe and decent living environment, free  
4171 from abuse and neglect.

4172 (b) Be treated with consideration and respect and with due  
4173 recognition of personal dignity, individuality, and privacy.

4174 (c) Keep and use the resident's own clothes and other  
4175 personal property in the resident's immediate living quarters,  
4176 so as to maintain individuality and personal dignity, except  
4177 when the provider can demonstrate that to do so would be unsafe  
4178 or an infringement upon the rights of other residents.

4179 (d) Have unrestricted private communication, including  
4180 receiving and sending unopened correspondence, having access to  
4181 a telephone, and visiting with any person of his or her choice,  
4182 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

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4183 (e) Be free to participate in and benefit from community  
4184 services and activities and to achieve the highest possible  
4185 level of independence, autonomy, and interaction within the  
4186 community.

4187 (f) Manage the resident's own financial affairs unless the  
4188 resident or the resident's guardian authorizes the provider to  
4189 provide safekeeping for funds in accordance with procedures  
4190 equivalent to those provided in s. 429.27 ~~s. 400.427~~.

4191 (g) Share a room with the resident's spouse if both are  
4192 residents of the home.

4193 (h) Have reasonable opportunity for regular exercise  
4194 several times a week and to be outdoors at regular and frequent  
4195 intervals.

4196 (i) Exercise civil and religious liberties, including the  
4197 right to independent personal decisions. Religious beliefs or  
4198 practices and attendance at religious services may not be  
4199 imposed upon a resident.

4200 (j) Have access to adequate and appropriate health care.

4201 (k) Be free from chemical and physical restraints.

4202 (l) Have at least 30 days' notice of relocation or  
4203 termination of residency from the home unless, for medical  
4204 reasons, the resident is certified by a physician to require an  
4205 emergency relocation to a facility providing a more skilled  
4206 level of care or the resident engages in a pattern of conduct  
4207 that is harmful or offensive to other residents. If a resident  
4208 has been adjudicated mentally incompetent, the resident's  
4209 guardian must be given at least 30 days' notice, except in an  
4210 emergency, of the relocation of a resident or of the termination



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4211 of a residency. The reasons for relocating a resident must be  
4212 set forth in writing.

4213 (m) Present grievances and recommend changes to the  
4214 provider, to staff, or to any other person without restraint,  
4215 interference, coercion, discrimination, or reprisal. This right  
4216 includes the right to have access to ombudsman volunteers and  
4217 advocates and the right to be a member of, to be active in, and  
4218 to associate with advocacy or special interest groups.

4219 (2) The provider shall ensure that residents and their  
4220 legal representatives are made aware of the rights, obligations,  
4221 and prohibitions set forth in this part. Residents must also be  
4222 given the names, addresses, and telephone numbers of the local  
4223 ombudsman council and the central abuse hotline where they may  
4224 lodge complaints.

4225 (3) The adult family-care home may not hamper or prevent  
4226 residents from exercising the rights specified in this section.

4227 (4) A provider or staff of an adult family-care home may  
4228 not serve notice upon a resident to leave the premises or take  
4229 any other retaliatory action against any person who:

4230 (a) Exercises any right set forth in this section.

4231 (b) Appears as a witness in any hearing, in or out of the  
4232 adult family-care home.

4233 (c) Files a civil action alleging a violation of this part  
4234 or notifies a state attorney or the Attorney General of a  
4235 possible violation of this part.

4236 (5) Any adult family-care home that terminates the  
4237 residency of an individual who has participated in activities

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4238 specified in subsection (4) must show good cause for the  
4239 termination in a court of competent jurisdiction.

4240 (6) Any person who reports a complaint concerning a  
4241 suspected violation of this part or the services and conditions  
4242 in an adult family-care home, or who testifies in any  
4243 administrative or judicial proceeding arising from such a  
4244 complaint, is immune from any civil or criminal liability  
4245 therefor, unless the person acted in bad faith or with malicious  
4246 purpose or the court finds that there was a complete absence of  
4247 a justiciable issue of either law or fact raised by the losing  
4248 party.

4249 Section 74. Paragraphs (c), (d), (e), and (f) of  
4250 subsection (5) of section 400.93, Florida Statutes, are amended  
4251 to read:

4252 400.93 Licensure required; exemptions; unlawful acts;  
4253 penalties.--

4254 (5) The following are exempt from home medical equipment  
4255 provider licensure, unless they have a separate company,  
4256 corporation, or division that is in the business of providing  
4257 home medical equipment and services for sale or rent to  
4258 consumers at their regular or temporary place of residence  
4259 pursuant to the provisions of this part:

4260 (c) Assisted living facilities licensed under chapter 429  
4261 ~~part III~~, when serving their residents.

4262 (d) Home health agencies licensed under part III ~~IV~~.

4263 (e) Hospices licensed under part IV ~~V~~.

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4264 (f) Intermediate care facilities, homes for special  
4265 services, and transitional living facilities licensed under part  
4266 V VIII.

4267 Section 75. Paragraph (c) of subsection (10) of section  
4268 400.962, Florida Statutes, is amended to read:

4269 400.962 License required; license application.--

4270 (10)

4271 (c) Proof of compliance with the level 2 background  
4272 screening requirements of chapter 435 which has been submitted  
4273 within the previous 5 years in compliance with any other  
4274 licensure requirements under this chapter or chapter 429  
4275 satisfies the requirements of paragraph (a). Proof of compliance  
4276 with background screening which has been submitted within the  
4277 previous 5 years to fulfill the requirements of the Financial  
4278 Services Commission and the Office of Insurance Regulation under  
4279 chapter 651 as part of an application for a certificate of  
4280 authority to operate a continuing care retirement community  
4281 satisfies the requirements for the Department of Law Enforcement  
4282 and Federal Bureau of Investigation background checks.

4283 Section 76. Paragraph (b) of subsection (1) of section  
4284 400.980, Florida Statutes, is amended to read:

4285 400.980 Health care services pools.--

4286 (1) As used in this section, the term:

4287 (b) "Health care services pool" means any person, firm,  
4288 corporation, partnership, or association engaged for hire in the  
4289 business of providing temporary employment in health care  
4290 facilities, residential facilities, and agencies for licensed,  
4291 certified, or trained health care personnel including, without

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4292 limitation, nursing assistants, nurses' aides, and orderlies.  
 4293 However, the term does not include nursing registries, a  
 4294 facility licensed under this chapter or chapter 429 400, a  
 4295 health care services pool established within a health care  
 4296 facility to provide services only within the confines of such  
 4297 facility, or any individual contractor directly providing  
 4298 temporary services to a health care facility without use or  
 4299 benefit of a contracting agent.

4300 Section 77. Paragraphs (a), (b), (c), and (d) of  
 4301 subsection (4) of section 400.9905, Florida Statutes, are  
 4302 amended to read:

4303 400.9905 Definitions.--

4304 (4) "Clinic" means an entity at which health care services  
 4305 are provided to individuals and which tenders charges for  
 4306 reimbursement for such services, including a mobile clinic and a  
 4307 portable equipment provider. For purposes of this part, the term  
 4308 does not include and the licensure requirements of this part do  
 4309 not apply to:

4310 (a) Entities licensed or registered by the state under  
 4311 chapter 395; or entities licensed or registered by the state and  
 4312 providing only health care services within the scope of services  
 4313 authorized under their respective licenses granted under ss.  
 4314 383.30-383.335, chapter 390, chapter 394, chapter 397, this  
 4315 chapter except part ~~X XIII~~, chapter 429, chapter 463, chapter  
 4316 465, chapter 466, chapter 478, part I of chapter 483, chapter  
 4317 484, or chapter 651; end-stage renal disease providers  
 4318 authorized under 42 C.F.R. part 405, subpart U; or providers  
 4319 certified under 42 C.F.R. part 485, subpart B or subpart H; or

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4320 any entity that provides neonatal or pediatric hospital-based  
4321 health care services by licensed practitioners solely within a  
4322 hospital licensed under chapter 395.

4323 (b) Entities that own, directly or indirectly, entities  
4324 licensed or registered by the state pursuant to chapter 395; or  
4325 entities that own, directly or indirectly, entities licensed or  
4326 registered by the state and providing only health care services  
4327 within the scope of services authorized pursuant to their  
4328 respective licenses granted under ss. 383.30-383.335, chapter  
4329 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,  
4330 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
4331 part I of chapter 483, chapter 484, chapter 651; end-stage renal  
4332 disease providers authorized under 42 C.F.R. part 405, subpart  
4333 U; or providers certified under 42 C.F.R. part 485, subpart B or  
4334 subpart H; or any entity that provides neonatal or pediatric  
4335 hospital-based health care services by licensed practitioners  
4336 solely within a hospital licensed under chapter 395.

4337 (c) Entities that are owned, directly or indirectly, by an  
4338 entity licensed or registered by the state pursuant to chapter  
4339 395; or entities that are owned, directly or indirectly, by an  
4340 entity licensed or registered by the state and providing only  
4341 health care services within the scope of services authorized  
4342 pursuant to their respective licenses granted under ss. 383.30-  
4343 383.335, chapter 390, chapter 394, chapter 397, this chapter  
4344 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,  
4345 chapter 466, chapter 478, part I of chapter 483, chapter 484, or  
4346 chapter 651; end-stage renal disease providers authorized under  
4347 42 C.F.R. part 405, subpart U; or providers certified under 42

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4348 C.F.R. part 485, subpart B or subpart H; or any entity that  
 4349 provides neonatal or pediatric hospital-based health care  
 4350 services by licensed practitioners solely within a hospital  
 4351 under chapter 395.

4352 (d) Entities that are under common ownership, directly or  
 4353 indirectly, with an entity licensed or registered by the state  
 4354 pursuant to chapter 395; or entities that are under common  
 4355 ownership, directly or indirectly, with an entity licensed or  
 4356 registered by the state and providing only health care services  
 4357 within the scope of services authorized pursuant to their  
 4358 respective licenses granted under ss. 383.30-383.335, chapter  
 4359 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,  
 4360 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,  
 4361 part I of chapter 483, chapter 484, or chapter 651; end-stage  
 4362 renal disease providers authorized under 42 C.F.R. part 405,  
 4363 subpart U; or providers certified under 42 C.F.R. part 485,  
 4364 subpart B or subpart H; or any entity that provides neonatal or  
 4365 pediatric hospital-based health care services by licensed  
 4366 practitioners solely within a hospital licensed under chapter  
 4367 395.

4368 Section 78. Subsection (12) of section 401.23, Florida  
 4369 Statutes, is amended to read:

4370 401.23 Definitions.--As used in this part, the term:

4371 (12) "Interfacility transfer" means the transportation by  
 4372 ambulance of a patient between two facilities licensed under  
 4373 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,  
 4374 pursuant to this part.

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4375 Section 79. Paragraph (b) of subsection (2) of section  
4376 402.164, Florida Statutes, is amended to read:

4377 402.164 Legislative intent; definitions.--

4378 (2) As used in ss. 402.164-402.167, the term:

4379 (b) "Client" means a client as defined in s. 393.063, s.  
4380 394.67, s. 397.311, or s. 400.960, a forensic client or client  
4381 as defined in s. 916.106, a child or youth as defined in s.  
4382 39.01, a child as defined in s. 827.01, a family as defined in  
4383 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,  
4384 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid  
4385 recipient or recipient as defined in s. 409.901, a child  
4386 receiving child care as defined in s. 402.302, a disabled adult  
4387 as defined in s. 410.032 or s. 410.603, or a victim as defined  
4388 in s. 39.01 or s. 415.102 as each definition applies within its  
4389 respective chapter.

4390 Section 80. Subsection (10) of section 408.032, Florida  
4391 Statutes, is amended to read:

4392 408.032 Definitions relating to Health Facility and  
4393 Services Development Act.--As used in ss. 408.031-408.045, the  
4394 term:

4395 (10) "Hospice" or "hospice program" means a hospice as  
4396 defined in part IV ~~VI~~ of chapter 400.

4397 Section 81. Paragraph (b) of subsection (2) of section  
4398 408.033, Florida Statutes, is amended to read:

4399 408.033 Local and state health planning.--

4400 (2) FUNDING.--

4401 (b)1. A hospital licensed under chapter 395, a nursing  
4402 home licensed under chapter 400, and an assisted living facility

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4403 licensed under chapter 429 ~~400~~ shall be assessed an annual fee  
4404 based on number of beds.

4405 2. All other facilities and organizations listed in  
4406 paragraph (a) shall each be assessed an annual fee of \$150.

4407 3. Facilities operated by the Department of Children and  
4408 Family Services, the Department of Health, or the Department of  
4409 Corrections and any hospital which meets the definition of rural  
4410 hospital pursuant to s. 395.602 are exempt from the assessment  
4411 required in this subsection.

4412 Section 82. Subsection (2) of section 408.034, Florida  
4413 Statutes, is amended to read:

4414 408.034 Duties and responsibilities of agency; rules.--

4415 (2) In the exercise of its authority to issue licenses to  
4416 health care facilities and health service providers, as provided  
4417 under chapters 393 and~~7~~ 395~~7~~ and parts II and IV ~~VI~~ of chapter  
4418 400, the agency may not issue a license to any health care  
4419 facility or health service provider that fails to receive a  
4420 certificate of need or an exemption for the licensed facility or  
4421 service.

4422 Section 83. Subsections (28) and (29) of section 408.07,  
4423 Florida Statutes, are amended to read:

4424 408.07 Definitions.--As used in this chapter, with the  
4425 exception of ss. 408.031-408.045, the term:

4426 (28) "Home health agency" means an organization licensed  
4427 under part III ~~IV~~ of chapter 400.

4428 (29) "Hospice" means an organization licensed under part  
4429 IV ~~VI~~ of chapter 400.



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4430 Section 84. Subsection (3) of section 408.831, Florida  
4431 Statutes, is amended to read:

4432 408.831 Denial, suspension, or revocation of a license,  
4433 registration, certificate, or application.--

4434 (3) This section provides standards of enforcement  
4435 applicable to all entities licensed or regulated by the Agency  
4436 for Health Care Administration. This section controls over any  
4437 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,  
4438 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted  
4439 pursuant to those chapters.

4440 Section 85. Subsection (2) of section 409.212, Florida  
4441 Statutes, is amended to read:

4442 409.212 Optional supplementation.--

4443 (2) The base rate of payment for optional state  
4444 supplementation shall be established by the department within  
4445 funds appropriated. Additional amounts may be provided for  
4446 mental health residents in facilities designed to provide  
4447 limited mental health services as provided for in s. 429.075 ~~s.~~  
4448 ~~400.4075~~. The base rate of payment does not include the personal  
4449 needs allowance.

4450 Section 86. Paragraph (e) of subsection (4) of section  
4451 409.221, Florida Statutes, is amended to read:

4452 409.221 Consumer-directed care program.--

4453 (4) CONSUMER-DIRECTED CARE.--

4454 (e) Services.--Consumers shall use the budget allowance  
4455 only to pay for home and community-based services that meet the  
4456 consumer's long-term care needs and are a cost-efficient use of

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4457 funds. Such services may include, but are not limited to, the  
4458 following:

- 4459 1. Personal care.
- 4460 2. Homemaking and chores, including housework, meals,  
4461 shopping, and transportation.
- 4462 3. Home modifications and assistive devices which may  
4463 increase the consumer's independence or make it possible to  
4464 avoid institutional placement.
- 4465 4. Assistance in taking self-administered medication.
- 4466 5. Day care and respite care services, including those  
4467 provided by nursing home facilities pursuant to s. 400.141(6) or  
4468 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~  
4469 ~~400.554~~.
- 4470 6. Personal care and support services provided in an  
4471 assisted living facility.

4472 Section 87. Subsection (4) of section 409.905, Florida  
4473 Statutes, is amended to read:

4474 409.905 Mandatory Medicaid services.--The agency may make  
4475 payments for the following services, which are required of the  
4476 state by Title XIX of the Social Security Act, furnished by  
4477 Medicaid providers to recipients who are determined to be  
4478 eligible on the dates on which the services were provided. Any  
4479 service under this section shall be provided only when medically  
4480 necessary and in accordance with state and federal law.

4481 Mandatory services rendered by providers in mobile units to  
4482 Medicaid recipients may be restricted by the agency. Nothing in  
4483 this section shall be construed to prevent or limit the agency  
4484 from adjusting fees, reimbursement rates, lengths of stay,

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4485 number of visits, number of services, or any other adjustments  
 4486 necessary to comply with the availability of moneys and any  
 4487 limitations or directions provided for in the General  
 4488 Appropriations Act or chapter 216.

4489 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for  
 4490 nursing and home health aide services, supplies, appliances, and  
 4491 durable medical equipment, necessary to assist a recipient  
 4492 living at home. An entity that provides services pursuant to  
 4493 this subsection shall be licensed under part III ~~IV~~ of chapter  
 4494 400. These services, equipment, and supplies, or reimbursement  
 4495 therefor, may be limited as provided in the General  
 4496 Appropriations Act and do not include services, equipment, or  
 4497 supplies provided to a person residing in a hospital or nursing  
 4498 facility.

4499 (a) In providing home health care services, the agency may  
 4500 require prior authorization of care based on diagnosis.

4501 (b) The agency shall implement a comprehensive utilization  
 4502 management program that requires prior authorization of all  
 4503 private duty nursing services, an individualized treatment plan  
 4504 that includes information about medication and treatment orders,  
 4505 treatment goals, methods of care to be used, and plans for care  
 4506 coordination by nurses and other health professionals. The  
 4507 utilization management program shall also include a process for  
 4508 periodically reviewing the ongoing use of private duty nursing  
 4509 services. The assessment of need shall be based on a child's  
 4510 condition, family support and care supplements, a family's  
 4511 ability to provide care, and a family's and child's schedule  
 4512 regarding work, school, sleep, and care for other family

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4513 dependents. When implemented, the private duty nursing  
4514 utilization management program shall replace the current  
4515 authorization program used by the Agency for Health Care  
4516 Administration and the Children's Medical Services program of  
4517 the Department of Health. The agency may competitively bid on a  
4518 contract to select a qualified organization to provide  
4519 utilization management of private duty nursing services. The  
4520 agency is authorized to seek federal waivers to implement this  
4521 initiative.

4522 Section 88. Subsection (14) of section 409.906, Florida  
4523 Statutes, is amended to read:

4524 409.906 Optional Medicaid services.--Subject to specific  
4525 appropriations, the agency may make payments for services which  
4526 are optional to the state under Title XIX of the Social Security  
4527 Act and are furnished by Medicaid providers to recipients who  
4528 are determined to be eligible on the dates on which the services  
4529 were provided. Any optional service that is provided shall be  
4530 provided only when medically necessary and in accordance with  
4531 state and federal law. Optional services rendered by providers  
4532 in mobile units to Medicaid recipients may be restricted or  
4533 prohibited by the agency. Nothing in this section shall be  
4534 construed to prevent or limit the agency from adjusting fees,  
4535 reimbursement rates, lengths of stay, number of visits, or  
4536 number of services, or making any other adjustments necessary to  
4537 comply with the availability of moneys and any limitations or  
4538 directions provided for in the General Appropriations Act or  
4539 chapter 216. If necessary to safeguard the state's systems of  
4540 providing services to elderly and disabled persons and subject

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4541 to the notice and review provisions of s. 216.177, the Governor  
4542 may direct the Agency for Health Care Administration to amend  
4543 the Medicaid state plan to delete the optional Medicaid service  
4544 known as "Intermediate Care Facilities for the Developmentally  
4545 Disabled." Optional services may include:

4546 (14) HOSPICE CARE SERVICES.--The agency may pay for all  
4547 reasonable and necessary services for the palliation or  
4548 management of a recipient's terminal illness, if the services  
4549 are provided by a hospice that is licensed under part IV ~~VI~~ of  
4550 chapter 400 and meets Medicare certification requirements.

4551 Section 89. Subsection (7) and paragraph (a) of subsection  
4552 (8) of section 409.907, Florida Statutes, are amended to read:

4553 409.907 Medicaid provider agreements.--The agency may make  
4554 payments for medical assistance and related services rendered to  
4555 Medicaid recipients only to an individual or entity who has a  
4556 provider agreement in effect with the agency, who is performing  
4557 services or supplying goods in accordance with federal, state,  
4558 and local law, and who agrees that no person shall, on the  
4559 grounds of handicap, race, color, or national origin, or for any  
4560 other reason, be subjected to discrimination under any program  
4561 or activity for which the provider receives payment from the  
4562 agency.

4563 (7) The agency may require, as a condition of  
4564 participating in the Medicaid program and before entering into  
4565 the provider agreement, that the provider submit information, in  
4566 an initial and any required renewal applications, concerning the  
4567 professional, business, and personal background of the provider  
4568 and permit an onsite inspection of the provider's service

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4569 location by agency staff or other personnel designated by the  
4570 agency to perform this function. The agency shall perform a  
4571 random onsite inspection, within 60 days after receipt of a  
4572 fully complete new provider's application, of the provider's  
4573 service location prior to making its first payment to the  
4574 provider for Medicaid services to determine the applicant's  
4575 ability to provide the services that the applicant is proposing  
4576 to provide for Medicaid reimbursement. The agency is not  
4577 required to perform an onsite inspection of a provider or  
4578 program that is licensed by the agency, that provides services  
4579 under waiver programs for home and community-based services, or  
4580 that is licensed as a medical foster home by the Department of  
4581 Children and Family Services. As a continuing condition of  
4582 participation in the Medicaid program, a provider shall  
4583 immediately notify the agency of any current or pending  
4584 bankruptcy filing. Before entering into the provider agreement,  
4585 or as a condition of continuing participation in the Medicaid  
4586 program, the agency may also require that Medicaid providers  
4587 reimbursed on a fee-for-services basis or fee schedule basis  
4588 which is not cost-based, post a surety bond not to exceed  
4589 \$50,000 or the total amount billed by the provider to the  
4590 program during the current or most recent calendar year,  
4591 whichever is greater. For new providers, the amount of the  
4592 surety bond shall be determined by the agency based on the  
4593 provider's estimate of its first year's billing. If the  
4594 provider's billing during the first year exceeds the bond  
4595 amount, the agency may require the provider to acquire an  
4596 additional bond equal to the actual billing level of the

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4597 provider. A provider's bond shall not exceed \$50,000 if a  
 4598 physician or group of physicians licensed under chapter 458,  
 4599 chapter 459, or chapter 460 has a 50 percent or greater  
 4600 ownership interest in the provider or if the provider is an  
 4601 assisted living facility licensed under ~~part III of~~ chapter 429  
 4602 ~~400~~. The bonds permitted by this section are in addition to the  
 4603 bonds referenced in s. 400.179(5)(d). If the provider is a  
 4604 corporation, partnership, association, or other entity, the  
 4605 agency may require the provider to submit information concerning  
 4606 the background of that entity and of any principal of the  
 4607 entity, including any partner or shareholder having an ownership  
 4608 interest in the entity equal to 5 percent or greater, and any  
 4609 treating provider who participates in or intends to participate  
 4610 in Medicaid through the entity. The information must include:

4611 (a) Proof of holding a valid license or operating  
 4612 certificate, as applicable, if required by the state or local  
 4613 jurisdiction in which the provider is located or if required by  
 4614 the Federal Government.

4615 (b) Information concerning any prior violation, fine,  
 4616 suspension, termination, or other administrative action taken  
 4617 under the Medicaid laws, rules, or regulations of this state or  
 4618 of any other state or the Federal Government; any prior  
 4619 violation of the laws, rules, or regulations relating to the  
 4620 Medicare program; any prior violation of the rules or  
 4621 regulations of any other public or private insurer; and any  
 4622 prior violation of the laws, rules, or regulations of any  
 4623 regulatory body of this or any other state.

4624 (c) Full and accurate disclosure of any financial or  
 4625 ownership interest that the provider, or any principal, partner,  
 4626 or major shareholder thereof, may hold in any other Medicaid  
 4627 provider or health care related entity or any other entity that  
 4628 is licensed by the state to provide health or residential care  
 4629 and treatment to persons.

4630 (d) If a group provider, identification of all members of  
 4631 the group and attestation that all members of the group are  
 4632 enrolled in or have applied to enroll in the Medicaid program.

4633 (8) (a) Each provider, or each principal of the provider if  
 4634 the provider is a corporation, partnership, association, or  
 4635 other entity, seeking to participate in the Medicaid program  
 4636 must submit a complete set of his or her fingerprints to the  
 4637 agency for the purpose of conducting a criminal history record  
 4638 check. Principals of the provider include any officer,  
 4639 director, billing agent, managing employee, or affiliated  
 4640 person, or any partner or shareholder who has an ownership  
 4641 interest equal to 5 percent or more in the provider. However, a  
 4642 director of a not-for-profit corporation or organization is not  
 4643 a principal for purposes of a background investigation as  
 4644 required by this section if the director: serves solely in a  
 4645 voluntary capacity for the corporation or organization, does not  
 4646 regularly take part in the day-to-day operational decisions of  
 4647 the corporation or organization, receives no remuneration from  
 4648 the not-for-profit corporation or organization for his or her  
 4649 service on the board of directors, has no financial interest in  
 4650 the not-for-profit corporation or organization, and has no  
 4651 family members with a financial interest in the not-for-profit



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4652 corporation or organization; and if the director submits an  
 4653 affidavit, under penalty of perjury, to this effect to the  
 4654 agency and the not-for-profit corporation or organization  
 4655 submits an affidavit, under penalty of perjury, to this effect  
 4656 to the agency as part of the corporation's or organization's  
 4657 Medicaid provider agreement application. Notwithstanding the  
 4658 above, the agency may require a background check for any person  
 4659 reasonably suspected by the agency to have been convicted of a  
 4660 crime. This subsection shall not apply to:

- 4661 1. A hospital licensed under chapter 395;
- 4662 2. A nursing home licensed under chapter 400;
- 4663 3. A hospice licensed under chapter 400;
- 4664 4. An assisted living facility licensed under chapter 429;

4665 ~~400.~~

4666 5. A unit of local government, except that requirements of  
 4667 this subsection apply to nongovernmental providers and entities  
 4668 when contracting with the local government to provide Medicaid  
 4669 services. The actual cost of the state and national criminal  
 4670 history record checks must be borne by the nongovernmental  
 4671 provider or entity; or

4672 6. Any business that derives more than 50 percent of its  
 4673 revenue from the sale of goods to the final consumer, and the  
 4674 business or its controlling parent either is required to file a  
 4675 form 10-K or other similar statement with the Securities and  
 4676 Exchange Commission or has a net worth of \$50 million or more.

4677 Section 90. Paragraph (c) of subsection (5) of section  
 4678 409.912, Florida Statutes, is amended to read:

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4679           409.912 Cost-effective purchasing of health care.--The  
 4680 agency shall purchase goods and services for Medicaid recipients  
 4681 in the most cost-effective manner consistent with the delivery  
 4682 of quality medical care. To ensure that medical services are  
 4683 effectively utilized, the agency may, in any case, require a  
 4684 confirmation or second physician's opinion of the correct  
 4685 diagnosis for purposes of authorizing future services under the  
 4686 Medicaid program. This section does not restrict access to  
 4687 emergency services or poststabilization care services as defined  
 4688 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
 4689 shall be rendered in a manner approved by the agency. The agency  
 4690 shall maximize the use of prepaid per capita and prepaid  
 4691 aggregate fixed-sum basis services when appropriate and other  
 4692 alternative service delivery and reimbursement methodologies,  
 4693 including competitive bidding pursuant to s. 287.057, designed  
 4694 to facilitate the cost-effective purchase of a case-managed  
 4695 continuum of care. The agency shall also require providers to  
 4696 minimize the exposure of recipients to the need for acute  
 4697 inpatient, custodial, and other institutional care and the  
 4698 inappropriate or unnecessary use of high-cost services. The  
 4699 agency shall contract with a vendor to monitor and evaluate the  
 4700 clinical practice patterns of providers in order to identify  
 4701 trends that are outside the normal practice patterns of a  
 4702 provider's professional peers or the national guidelines of a  
 4703 provider's professional association. The vendor must be able to  
 4704 provide information and counseling to a provider whose practice  
 4705 patterns are outside the norms, in consultation with the agency,  
 4706 to improve patient care and reduce inappropriate utilization.

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4707 The agency may mandate prior authorization, drug therapy  
4708 management, or disease management participation for certain  
4709 populations of Medicaid beneficiaries, certain drug classes, or  
4710 particular drugs to prevent fraud, abuse, overuse, and possible  
4711 dangerous drug interactions. The Pharmaceutical and Therapeutics  
4712 Committee shall make recommendations to the agency on drugs for  
4713 which prior authorization is required. The agency shall inform  
4714 the Pharmaceutical and Therapeutics Committee of its decisions  
4715 regarding drugs subject to prior authorization. The agency is  
4716 authorized to limit the entities it contracts with or enrolls as  
4717 Medicaid providers by developing a provider network through  
4718 provider credentialing. The agency may competitively bid single-  
4719 source-provider contracts if procurement of goods or services  
4720 results in demonstrated cost savings to the state without  
4721 limiting access to care. The agency may limit its network based  
4722 on the assessment of beneficiary access to care, provider  
4723 availability, provider quality standards, time and distance  
4724 standards for access to care, the cultural competence of the  
4725 provider network, demographic characteristics of Medicaid  
4726 beneficiaries, practice and provider-to-beneficiary standards,  
4727 appointment wait times, beneficiary use of services, provider  
4728 turnover, provider profiling, provider licensure history,  
4729 previous program integrity investigations and findings, peer  
4730 review, provider Medicaid policy and billing compliance records,  
4731 clinical and medical record audits, and other factors. Providers  
4732 shall not be entitled to enrollment in the Medicaid provider  
4733 network. The agency shall determine instances in which allowing  
4734 Medicaid beneficiaries to purchase durable medical equipment and

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4735 other goods is less expensive to the Medicaid program than long-  
4736 term rental of the equipment or goods. The agency may establish  
4737 rules to facilitate purchases in lieu of long-term rentals in  
4738 order to protect against fraud and abuse in the Medicaid program  
4739 as defined in s. 409.913. The agency may seek federal waivers  
4740 necessary to administer these policies.

4741 (5) By December 1, 2005, the Agency for Health Care  
4742 Administration, in partnership with the Department of Elderly  
4743 Affairs, shall create an integrated, fixed-payment delivery  
4744 system for Medicaid recipients who are 60 years of age or older.  
4745 The Agency for Health Care Administration shall implement the  
4746 integrated system initially on a pilot basis in two areas of the  
4747 state. In one of the areas enrollment shall be on a voluntary  
4748 basis. The program must transfer all Medicaid services for  
4749 eligible elderly individuals who choose to participate into an  
4750 integrated-care management model designed to serve Medicaid  
4751 recipients in the community. The program must combine all  
4752 funding for Medicaid services provided to individuals 60 years  
4753 of age or older into the integrated system, including funds for  
4754 Medicaid home and community-based waiver services; all Medicaid  
4755 services authorized in ss. 409.905 and 409.906, excluding funds  
4756 for Medicaid nursing home services unless the agency is able to  
4757 demonstrate how the integration of the funds will improve  
4758 coordinated care for these services in a less costly manner; and  
4759 Medicare coinsurance and deductibles for persons dually eligible  
4760 for Medicaid and Medicare as prescribed in s. 409.908(13).

4761 (c) The agency must ensure that the capitation-rate-  
4762 setting methodology for the integrated system is actuarially

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4763 sound and reflects the intent to provide quality care in the  
 4764 least restrictive setting. The agency must also require  
 4765 integrated-system providers to develop a credentialing system  
 4766 for service providers and to contract with all Gold Seal nursing  
 4767 homes, where feasible, and exclude, where feasible, chronically  
 4768 poor-performing facilities and providers as defined by the  
 4769 agency. The integrated system must provide that if the recipient  
 4770 resides in a noncontracted residential facility licensed under  
 4771 chapter 400 or chapter 429 at the time the integrated system is  
 4772 initiated, the recipient must be permitted to continue to reside  
 4773 in the noncontracted facility as long as the recipient desires.  
 4774 The integrated system must also provide that, in the absence of  
 4775 a contract between the integrated-system provider and the  
 4776 residential facility licensed under chapter 400 or chapter 429,  
 4777 current Medicaid rates must prevail. The agency and the  
 4778 Department of Elderly Affairs must jointly develop procedures to  
 4779 manage the services provided through the integrated system in  
 4780 order to ensure quality and recipient choice.

4781 Section 91. Section 410.031, Florida Statutes, is amended  
 4782 to read:

4783 410.031 Legislative intent.--It is the intent of the  
 4784 Legislature to encourage the provision of care for disabled  
 4785 adults in family-type living arrangements in private homes as an  
 4786 alternative to institutional or nursing home care for such  
 4787 persons. The provisions of ss. 410.031-410.036 are intended to  
 4788 be supplemental to the provisions of chapters ~~chapter~~ 400 and  
 4789 429, relating to the licensing and regulation of nursing homes  
 4790 and assisted living facilities, and do not exempt any person who

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4791 is otherwise subject to regulation under chapter 400 or chapter  
4792 429.

4793 Section 92. Section 410.034, Florida Statutes, is amended  
4794 to read:

4795 410.034 Department determination of fitness to provide  
4796 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person  
4797 caring for an adult who is related to such person by blood or  
4798 marriage is not subject to the Assisted Living Facilities Act.  
4799 If, however, the person who plans to provide home care under  
4800 this act is found by the department to be unable to provide this  
4801 care, the department shall notify the person wishing to provide  
4802 home care of this determination, and the person shall not be  
4803 eligible for subsidy payments under ss. 410.031-410.036.

4804 Section 93. Section 415.1111, Florida Statutes, is amended  
4805 to read:

4806 415.1111 Civil actions.--A vulnerable adult who has been  
4807 abused, neglected, or exploited as specified in this chapter has  
4808 a cause of action against any perpetrator and may recover actual  
4809 and punitive damages for such abuse, neglect, or exploitation.  
4810 The action may be brought by the vulnerable adult, or that  
4811 person's guardian, by a person or organization acting on behalf  
4812 of the vulnerable adult with the consent of that person or that  
4813 person's guardian, or by the personal representative of the  
4814 estate of a deceased victim without regard to whether the cause  
4815 of death resulted from the abuse, neglect, or exploitation. The  
4816 action may be brought in any court of competent jurisdiction to  
4817 enforce such action and to recover actual and punitive damages  
4818 for any deprivation of or infringement on the rights of a

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4819 | vulnerable adult. A party who prevails in any such action may be  
 4820 | entitled to recover reasonable attorney's fees, costs of the  
 4821 | action, and damages. The remedies provided in this section are  
 4822 | in addition to and cumulative with other legal and  
 4823 | administrative remedies available to a vulnerable adult.  
 4824 | Notwithstanding the foregoing, any civil action for damages  
 4825 | against any licensee or entity who establishes, controls,  
 4826 | conducts, manages, or operates a facility licensed under part II  
 4827 | of chapter 400 relating to its operation of the licensed  
 4828 | facility shall be brought pursuant to s. 400.023, or against any  
 4829 | licensee or entity who establishes, controls, conducts, manages,  
 4830 | or operates a facility licensed under part I ~~II~~ of chapter 429  
 4831 | ~~400~~ relating to its operation of the licensed facility shall be  
 4832 | brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or  
 4833 | entity shall not be vicariously liable for the acts or omissions  
 4834 | of its employees or agents or any other third party in an action  
 4835 | brought under this section.

4836 |         Section 94. Paragraph (d) of subsection (1) of section  
 4837 | 419.001, Florida Statutes, is amended to read:

4838 |         419.001 Site selection of community residential homes.--

4839 |         (1) For the purposes of this section, the following  
 4840 | definitions shall apply:

4841 |         (d) "Resident" means any of the following: a frail elder  
 4842 | as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or  
 4843 | handicapped person as defined in s. 760.22(7)(a); a  
 4844 | developmentally disabled person as defined in s. 393.063; a  
 4845 | nondangerous mentally ill person as defined in s. 394.455(18);

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4846 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or  
4847 s. 985.03(8).

4848 Section 95. Section 430.601, Florida Statutes, is amended  
4849 to read:

4850 430.601 Home care for the elderly; legislative intent.--It  
4851 is the intent of the Legislature to encourage the provision of  
4852 care for the elderly in family-type living arrangements in  
4853 private homes as an alternative to institutional or nursing home  
4854 care for such persons. The provisions of ss. 430.601-430.606 are  
4855 intended to be supplemental to the provisions of chapters  
4856 ~~chapter~~ 400 and 429, relating to the licensing and regulation of  
4857 nursing homes and assisted living facilities, and do not exempt  
4858 any person who is otherwise subject to regulation under those  
4859 chapters ~~the provisions of that chapter~~.

4860 Section 96. Subsection (7) of section 430.703, Florida  
4861 Statutes, is amended to read:

4862 430.703 Definitions.--As used in this act, the term:

4863 (7) "Other qualified provider" means an entity licensed  
4864 under chapter 400 or chapter 429 that demonstrates a long-term  
4865 care continuum and meets all requirements pursuant to an  
4866 interagency agreement between the agency and the department.

4867 Section 97. Paragraph (a) of subsection (3) of section  
4868 435.03, Florida Statutes, is amended to read:

4869 435.03 Level 1 screening standards.--

4870 (3) Standards must also ensure that the person:

4871 (a) For employees and employers licensed or registered  
4872 pursuant to chapter 400 or chapter 429, and for employees and  
4873 employers of developmental services institutions as defined in



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4874 s. 393.063, intermediate care facilities for the developmentally  
4875 disabled as defined in s. 393.063, and mental health treatment  
4876 facilities as defined in s. 394.455, meets the requirements of  
4877 this chapter.

4878 Section 98. Paragraph (a) of subsection (4) of section  
4879 435.04, Florida Statutes, is amended to read:

4880 435.04 Level 2 screening standards.--

4881 (4) Standards must also ensure that the person:

4882 (a) For employees or employers licensed or registered  
4883 pursuant to chapter 400 or chapter 429, does not have a  
4884 confirmed report of abuse, neglect, or exploitation as defined  
4885 in s. 415.102(6), which has been uncontested or upheld under s.  
4886 415.103.

4887 Section 99. Paragraph (g) of subsection (1) of section  
4888 440.13, Florida Statutes, is amended to read:

4889 440.13 Medical services and supplies; penalty for  
4890 violations; limitations.--

4891 (1) DEFINITIONS.--As used in this section, the term:

4892 (g) "Health care facility" means any hospital licensed  
4893 under chapter 395 and any health care institution licensed under  
4894 chapter 400 or chapter 429.

4895 Section 100. Subsection (1) of section 465.0235, Florida  
4896 Statutes, is amended to read:

4897 465.0235 Automated pharmacy systems used by long-term care  
4898 facilities, hospices, or state correctional institutions.--

4899 (1) A pharmacy may provide pharmacy services to a long-  
4900 term care facility or hospice licensed under chapter 400 or  
4901 chapter 429 or a state correctional institution operated under

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4902 chapter 944 through the use of an automated pharmacy system that  
4903 need not be located at the same location as the pharmacy.

4904 Section 101. Subsection (8) of section 468.1685, Florida  
4905 Statutes, is amended to read:

4906 468.1685 Powers and duties of board and department.--It is  
4907 the function and duty of the board, together with the  
4908 department, to:

4909 (8) Set up procedures by rule for advising and acting  
4910 together with the Department of Health and other boards of other  
4911 health professions in matters affecting procedures and methods  
4912 for effectively enforcing the purpose of this part and the  
4913 administration of chapters ~~chapter~~ 400 and 429.

4914 Section 102. Paragraph (k) of subsection (1) of section  
4915 468.505, Florida Statutes, is amended to read:

4916 468.505 Exemptions; exceptions.--

4917 (1) Nothing in this part may be construed as prohibiting  
4918 or restricting the practice, services, or activities of:

4919 (k) A person employed by a hospital licensed under chapter  
4920 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed  
4921 under part II ~~or part III~~ of chapter 400, by an assisted living  
4922 facility licensed under chapter 429, or by a continuing care  
4923 facility certified under chapter 651, if the person is employed  
4924 in compliance with the laws and rules adopted thereunder  
4925 regarding the operation of its dietetic department.

4926 Section 103. Subsection (11) of section 477.025, Florida  
4927 Statutes, is amended to read:

4928 477.025 Cosmetology salons; specialty salons; requisites;  
4929 licensure; inspection; mobile cosmetology salons.--

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4930 (11) Facilities licensed under part II ~~or part III~~ of  
 4931 chapter 400 or part I of chapter 429 are ~~shall be~~ exempt from  
 4932 ~~the provisions of~~ this section, and a cosmetologist licensed  
 4933 pursuant to s. 477.019 may provide salon services exclusively  
 4934 for facility residents.

4935 Section 104. Subsection (5) of section 483.285, Florida  
 4936 Statutes, is amended to read:

4937 483.285 Application of part; exemptions.--This part  
 4938 applies to all multiphasic health testing centers within the  
 4939 state, but does not apply to:

4940 (5) A home health agency licensed under part III ~~IV~~ of  
 4941 chapter 400.

4942 Section 105. Paragraph (a) of subsection (2) of section  
 4943 509.032, Florida Statutes, is amended to read:

4944 509.032 Duties.--

4945 (2) INSPECTION OF PREMISES.--

4946 (a) The division has responsibility and jurisdiction for  
 4947 all inspections required by this chapter. The division has  
 4948 responsibility for quality assurance. Each licensed  
 4949 establishment shall be inspected at least biannually, except for  
 4950 transient and nontransient apartments, which shall be inspected  
 4951 at least annually, and shall be inspected at such other times as  
 4952 the division determines is necessary to ensure the public's  
 4953 health, safety, and welfare. The division shall establish a  
 4954 system to determine inspection frequency. Public lodging units  
 4955 classified as resort condominiums or resort dwellings are not  
 4956 subject to this requirement, but shall be made available to the  
 4957 division upon request. If, during the inspection of a public

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4958 lodging establishment classified for renting to transient or  
 4959 nontransient tenants, an inspector identifies vulnerable adults  
 4960 who appear to be victims of neglect, as defined in s. 415.102,  
 4961 or, in the case of a building that is not equipped with  
 4962 automatic sprinkler systems, tenants or clients who may be  
 4963 unable to self-preserve in an emergency, the division shall  
 4964 convene meetings with the following agencies as appropriate to  
 4965 the individual situation: the Department of Health, the  
 4966 Department of Elderly Affairs, the area agency on aging, the  
 4967 local fire marshal, the landlord and affected tenants and  
 4968 clients, and other relevant organizations, to develop a plan  
 4969 which improves the prospects for safety of affected residents  
 4970 and, if necessary, identifies alternative living arrangements  
 4971 such as facilities licensed under part II ~~or part III~~ of chapter  
 4972 400 or under chapter 429.

4973 Section 106. Subsection (1) of section 509.241, Florida  
 4974 Statutes, is amended to read:

4975 509.241 Licenses required; exceptions.--

4976 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging  
 4977 establishment and public food service establishment shall obtain  
 4978 a license from the division. Such license may not be transferred  
 4979 from one place or individual to another. It shall be a  
 4980 misdemeanor of the second degree, punishable as provided in s.  
 4981 775.082 or s. 775.083, for such an establishment to operate  
 4982 without a license. Local law enforcement shall provide immediate  
 4983 assistance in pursuing an illegally operating establishment. The  
 4984 division may refuse a license, or a renewal thereof, to any  
 4985 establishment that is not constructed and maintained in

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4986 accordance with law and with the rules of the division. The  
 4987 division may refuse to issue a license, or a renewal thereof, to  
 4988 any establishment an operator of which, within the preceding 5  
 4989 years, has been adjudicated guilty of, or has forfeited a bond  
 4990 when charged with, any crime reflecting on professional  
 4991 character, including soliciting for prostitution, pandering,  
 4992 letting premises for prostitution, keeping a disorderly place,  
 4993 or illegally dealing in controlled substances as defined in  
 4994 chapter 893, whether in this state or in any other jurisdiction  
 4995 within the United States, or has had a license denied, revoked,  
 4996 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be  
 4997 renewed annually, and the division shall adopt a rule  
 4998 establishing a staggered schedule for license renewals. If any  
 4999 license expires while administrative charges are pending against  
 5000 the license, the proceedings against the license shall continue  
 5001 to conclusion as if the license were still in effect.

5002 Section 107. Subsection (1) of section 627.6617, Florida  
 5003 Statutes, is amended to read:

5004 627.6617 Coverage for home health care services.--

5005 (1) Any group health insurance policy providing coverage  
 5006 on an expense-incurred basis shall provide coverage for home  
 5007 health care by a home health care agency licensed pursuant to  
 5008 part III ~~IV~~ of chapter 400. Such coverage may be limited to home  
 5009 health care under a plan of treatment prescribed by a licensed  
 5010 physician. Services may be performed by a registered graduate  
 5011 nurse, a licensed practical nurse, a physical therapist, a  
 5012 speech therapist, an occupational therapist, or a home health  
 5013 aide. Provisions for utilization review may be imposed, provided

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5014 that similar provisions apply to all other types of health care  
5015 services.

5016 Section 108. Subsection (1) of section 627.732, Florida  
5017 Statutes, is amended to read:

5018 627.732 Definitions.--As used in ss. 627.730-627.7405, the  
5019 term:

5020 (1) "Broker" means any person not possessing a license  
5021 under chapter 395, chapter 400, chapter 429, chapter 458,  
5022 chapter 459, chapter 460, chapter 461, or chapter 641 who  
5023 charges or receives compensation for any use of medical  
5024 equipment and is not the 100-percent owner or the 100-percent  
5025 lessee of such equipment. For purposes of this section, such  
5026 owner or lessee may be an individual, a corporation, a  
5027 partnership, or any other entity and any of its 100-percent-  
5028 owned affiliates and subsidiaries. For purposes of this  
5029 subsection, the term "lessee" means a long-term lessee under a  
5030 capital or operating lease, but does not include a part-time  
5031 lessee. The term "broker" does not include a hospital or  
5032 physician management company whose medical equipment is  
5033 ancillary to the practices managed, a debt collection agency, or  
5034 an entity that has contracted with the insurer to obtain a  
5035 discounted rate for such services; nor does the term include a  
5036 management company that has contracted to provide general  
5037 management services for a licensed physician or health care  
5038 facility and whose compensation is not materially affected by  
5039 the usage or frequency of usage of medical equipment or an  
5040 entity that is 100-percent owned by one or more hospitals or

5041 physicians. The term "broker" does not include a person or  
 5042 entity that certifies, upon request of an insurer, that:

- 5043 (a) It is a clinic licensed under ss. 400.990-400.995;
- 5044 (b) It is a 100-percent owner of medical equipment; and
- 5045 (c) The owner's only part-time lease of medical equipment

5046 for personal injury protection patients is on a temporary basis  
 5047 not to exceed 30 days in a 12-month period, and such lease is  
 5048 solely for the purposes of necessary repair or maintenance of  
 5049 the 100-percent-owned medical equipment or pending the arrival  
 5050 and installation of the newly purchased or a replacement for the  
 5051 100-percent-owned medical equipment, or for patients for whom,  
 5052 because of physical size or claustrophobia, it is determined by  
 5053 the medical director or clinical director to be medically  
 5054 necessary that the test be performed in medical equipment that  
 5055 is open-style. The leased medical equipment cannot be used by  
 5056 patients who are not patients of the registered clinic for  
 5057 medical treatment of services. Any person or entity making a  
 5058 false certification under this subsection commits insurance  
 5059 fraud as defined in s. 817.234. However, the 30-day period  
 5060 provided in this paragraph may be extended for an additional 60  
 5061 days as applicable to magnetic resonance imaging equipment if  
 5062 the owner certifies that the extension otherwise complies with  
 5063 this paragraph.

5064 Section 109. Subsection (2) of section 651.011, Florida  
 5065 Statutes, is amended to read:

5066 651.011 Definitions.--For the purposes of this chapter,  
 5067 the term:

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5068           (2) "Continuing care" or "care" means furnishing pursuant  
5069 to a contract shelter and either nursing care or personal  
5070 services as defined in s. 429.02 ~~s. 400.402~~, whether such  
5071 nursing care or personal services are provided in the facility  
5072 or in another setting designated by the contract for continuing  
5073 care, to an individual not related by consanguinity or affinity  
5074 to the provider furnishing such care, upon payment of an  
5075 entrance fee. Other personal services provided shall be  
5076 designated in the continuing care contract. Contracts to provide  
5077 continuing care include agreements to provide care for any  
5078 duration, including contracts that are terminable by either  
5079 party.

5080           Section 110. Paragraph (c) of subsection (2) of section  
5081 651.022, Florida Statutes, is amended to read:

5082           651.022 Provisional certificate of authority;  
5083 application.--

5084           (2) The application for a provisional certificate of  
5085 authority shall be on a form prescribed by the commission and  
5086 shall contain the following information:

5087           (c)1. Evidence that the applicant is reputable and of  
5088 responsible character. If the applicant is a firm, association,  
5089 organization, partnership, business trust, corporation, or  
5090 company, the form shall require evidence that the members or  
5091 shareholders are reputable and of responsible character, and the  
5092 person in charge of providing care under a certificate of  
5093 authority shall likewise be required to produce evidence of  
5094 being reputable and of responsible character.



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5095           2. Evidence satisfactory to the office of the ability of  
5096 the applicant to comply with the provisions of this chapter and  
5097 with rules adopted by the commission pursuant to this chapter.

5098           3. A statement of whether a person identified in the  
5099 application for a provisional certificate of authority or the  
5100 administrator or manager of the facility, if such person has  
5101 been designated, or any such person living in the same location:

5102           a. Has been convicted of a felony or has pleaded nolo  
5103 contendere to a felony charge, or has been held liable or has  
5104 been enjoined in a civil action by final judgment, if the felony  
5105 or civil action involved fraud, embezzlement, fraudulent  
5106 conversion, or misappropriation of property.

5107           b. Is subject to a currently effective injunctive or  
5108 restrictive order or federal or state administrative order  
5109 relating to business activity or health care as a result of an  
5110 action brought by a public agency or department, including,  
5111 without limitation, an action affecting a license under chapter  
5112 400 or chapter 429.

5113  
5114 The statement shall set forth the court or agency, the date of  
5115 conviction or judgment, and the penalty imposed or damages  
5116 assessed, or the date, nature, and issuer of the order. Before  
5117 determining whether a provisional certificate of authority is to  
5118 be issued, the office may make an inquiry to determine the  
5119 accuracy of the information submitted pursuant to subparagraphs  
5120 1. and 2.

5121           Section 111. Subsection (6) of section 651.023, Florida  
5122 Statutes, is amended to read:

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5123           651.023 Certificate of authority; application.--  
 5124           (6) The timeframes provided under s. 651.022(5) and (6)  
 5125 apply to applications submitted under s. 651.021(2). The office  
 5126 may not issue a certificate of authority under this chapter to  
 5127 any facility which does not have a component which is to be  
 5128 licensed pursuant to part II ~~or part III~~ of chapter 400 or part  
 5129 I of chapter 429 or which will not offer personal services or  
 5130 nursing services through written contractual agreement. Any  
 5131 written contractual agreement must be disclosed in the  
 5132 continuing care contract and is subject to the provisions of s.  
 5133 651.1151, relating to administrative, vendor, and management  
 5134 contracts.

5135           Section 112. Subsection (8) of section 651.055, Florida  
 5136 Statutes, is amended to read:

5137           651.055 Contracts; right to rescind.--

5138           (8) The provisions of this section shall control over any  
 5139 conflicting provisions contained in part II ~~or part III~~ of  
 5140 chapter 400 or in part I of chapter 429.

5141           Section 113. Subsection (5) of section 651.095, Florida  
 5142 Statutes, is amended to read:

5143           651.095 Advertisements; requirements; penalties.--

5144           (5) The provisions of this section shall control over any  
 5145 conflicting provisions contained in part II ~~or part III~~ of  
 5146 chapter 400 or in part I of chapter 429.

5147           Section 114. Subsections (1), (4), (6), (7), and (8) of  
 5148 section 651.118, Florida Statutes, are amended to read:

5149           651.118 Agency for Health Care Administration;  
 5150 certificates of need; sheltered beds; community beds.--

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5151 (1) The provisions of this section shall control in the  
5152 case of conflict with the provisions of the Health Facility and  
5153 Services Development Act, ss. 408.031-408.045; the provisions of  
5154 chapter 395; ~~or~~ the provisions of part II ~~parts II and III~~ of  
5155 chapter 400; or the provisions of part I of chapter 429.

5156 (4) The Agency for Health Care Administration shall  
5157 approve one sheltered nursing home bed for every four proposed  
5158 residential units, including those that are licensed under part  
5159 I of chapter 429 ~~part III of chapter 400~~, in the continuing care  
5160 facility unless the provider demonstrates the need for a lesser  
5161 number of sheltered nursing home beds based on proposed  
5162 utilization by prospective residents or demonstrates the need  
5163 for additional sheltered nursing home beds based on actual  
5164 utilization and demand by current residents.

5165 (6) Unless the provider already has a component that is to  
5166 be a part of the continuing care facility and that is licensed  
5167 under chapter 395, ~~or~~ part II ~~or part III~~ of chapter 400, or  
5168 part I of chapter 429 at the time of construction of the  
5169 continuing care facility, the provider must construct the  
5170 nonnursing home portion of the facility and the nursing home  
5171 portion of the facility at the same time. If a provider  
5172 constructs less than the number of residential units approved in  
5173 the certificate of authority, the number of licensed sheltered  
5174 nursing home beds shall be reduced by a proportionate share.

5175 (7) Notwithstanding the provisions of subsection (2), at  
5176 the discretion of the continuing care provider, sheltered  
5177 nursing home beds may be used for persons who are not residents  
5178 of the continuing care facility and who are not parties to a

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5179 continuing care contract for a period of up to 5 years after the  
 5180 date of issuance of the initial nursing home license. A provider  
 5181 whose 5-year period has expired or is expiring may request the  
 5182 Agency for Health Care Administration for an extension, not to  
 5183 exceed 30 percent of the total sheltered nursing home beds, if  
 5184 the utilization by residents of the nursing home facility in the  
 5185 sheltered beds will not generate sufficient income to cover  
 5186 nursing home facility expenses, as evidenced by one of the  
 5187 following:

5188 (a) The nursing home facility has a net loss for the most  
 5189 recent fiscal year as determined under generally accepted  
 5190 accounting principles, excluding the effects of extraordinary or  
 5191 unusual items, as demonstrated in the most recently audited  
 5192 financial statement; or

5193 (b) The nursing home facility would have had a pro forma  
 5194 loss for the most recent fiscal year, excluding the effects of  
 5195 extraordinary or unusual items, if revenues were reduced by the  
 5196 amount of revenues from persons in sheltered beds who were not  
 5197 residents, as reported on by a certified public accountant.

5198  
 5199 The agency shall be authorized to grant an extension to the  
 5200 provider based on the evidence required in this subsection. The  
 5201 agency may request a continuing care facility to use up to 25  
 5202 percent of the patient days generated by new admissions of  
 5203 nonresidents during the extension period to serve Medicaid  
 5204 recipients for those beds authorized for extended use if there  
 5205 is a demonstrated need in the respective service area and if  
 5206 funds are available. A provider who obtains an extension is

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5207 prohibited from applying for additional sheltered beds under the  
 5208 provision of subsection (2), unless additional residential units  
 5209 are built or the provider can demonstrate need by continuing  
 5210 care facility residents to the Agency for Health Care  
 5211 Administration. The 5-year limit does not apply to up to five  
 5212 sheltered beds designated for inpatient hospice care as part of  
 5213 a contractual arrangement with a hospice licensed under part IV  
 5214 ~~VI~~ of chapter 400. A continuing care facility that uses such  
 5215 beds after the 5-year period shall report such use to the Agency  
 5216 for Health Care Administration. For purposes of this subsection,  
 5217 "resident" means a person who, upon admission to the continuing  
 5218 care facility, initially resides in a part of the continuing  
 5219 care facility not licensed under part II of chapter 400.

5220 (8) A provider may petition the Agency for Health Care  
 5221 Administration to use a designated number of sheltered nursing  
 5222 home beds to provide extended congregate care as defined in s.  
 5223 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the  
 5224 nursing home which can be adapted to meet the requirements for  
 5225 extended congregate care. The provider may subsequently use such  
 5226 beds as sheltered beds after notifying the agency of the  
 5227 intended change. Any sheltered beds used to provide extended  
 5228 congregate care pursuant to this subsection may not qualify for  
 5229 funding under the Medicaid waiver. Any sheltered beds used to  
 5230 provide extended congregate care pursuant to this subsection may  
 5231 share common areas, services, and staff with beds designated for  
 5232 nursing home care, provided that all of the beds are under  
 5233 common ownership. For the purposes of this subsection, fire and

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5234 life safety codes applicable to nursing home facilities shall  
5235 apply.

5236 Section 115. Subsection (2) of section 765.1103, Florida  
5237 Statutes, is amended to read:

5238 765.1103 Pain management and palliative care.--

5239 (2) Health care providers and practitioners regulated  
5240 under chapter 458, chapter 459, or chapter 464 must, as  
5241 appropriate, comply with a request for pain management or  
5242 palliative care from a patient under their care or, for an  
5243 incapacitated patient under their care, from a surrogate, proxy,  
5244 guardian, or other representative permitted to make health care  
5245 decisions for the incapacitated patient. Facilities regulated  
5246 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply  
5247 with the pain management or palliative care measures ordered by  
5248 the patient's physician.

5249 Section 116. Subsection (2) of section 765.205, Florida  
5250 Statutes, is amended to read:

5251 765.205 Responsibility of the surrogate.--

5252 (2) The surrogate may authorize the release of information  
5253 and medical records to appropriate persons to ensure the  
5254 continuity of the principal's health care and may authorize the  
5255 admission, discharge, or transfer of the principal to or from a  
5256 health care facility or other facility or program licensed under  
5257 chapter 400 or chapter 429.

5258 Section 117. Subsection (1) of section 768.735, Florida  
5259 Statutes, is amended to read:

5260 768.735 Punitive damages; exceptions; limitation.--

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5261 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not  
 5262 apply to any civil action based upon child abuse, abuse of the  
 5263 elderly under chapter 415, or abuse of the developmentally  
 5264 disabled. Such actions are governed by applicable statutes and  
 5265 controlling judicial precedent. This section does not apply to  
 5266 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.

5267 Section 118. Paragraph (h) of subsection (1) of section  
 5268 893.13, Florida Statutes, is amended to read:

5269 893.13 Prohibited acts; penalties.--

5270 (1)

5271 (h) Except as authorized by this chapter, it is unlawful  
 5272 for any person to sell, manufacture, or deliver, or possess with  
 5273 intent to sell, manufacture, or deliver, a controlled substance  
 5274 in, on, or within 1,000 feet of the real property comprising an  
 5275 assisted living facility, as that term is used in chapter 429  
 5276 ~~400~~. Any person who violates this paragraph with respect to:

5277 1. A controlled substance named or described in s.  
 5278 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 5279 commits a felony of the first degree, punishable as provided in  
 5280 s. 775.082, s. 775.083, or s. 775.084.

5281 2. A controlled substance named or described in s.  
 5282 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 5283 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 5284 the second degree, punishable as provided in s. 775.082, s.  
 5285 775.083, or s. 775.084.

5286 Section 119. Paragraph (a) of subsection (4) of section  
 5287 943.0585, Florida Statutes, is amended to read:

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5288           943.0585 Court-ordered expunction of criminal history  
5289 records.--The courts of this state have jurisdiction over their  
5290 own procedures, including the maintenance, expunction, and  
5291 correction of judicial records containing criminal history  
5292 information to the extent such procedures are not inconsistent  
5293 with the conditions, responsibilities, and duties established by  
5294 this section. Any court of competent jurisdiction may order a  
5295 criminal justice agency to expunge the criminal history record  
5296 of a minor or an adult who complies with the requirements of  
5297 this section. The court shall not order a criminal justice  
5298 agency to expunge a criminal history record until the person  
5299 seeking to expunge a criminal history record has applied for and  
5300 received a certificate of eligibility for expunction pursuant to  
5301 subsection (2). A criminal history record that relates to a  
5302 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
5303 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,  
5304 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
5305 s. 916.1075, or a violation enumerated in s. 907.041 may not be  
5306 expunged, without regard to whether adjudication was withheld,  
5307 if the defendant was found guilty of or pled guilty or nolo  
5308 contendere to the offense, or if the defendant, as a minor, was  
5309 found to have committed, or pled guilty or nolo contendere to  
5310 committing, the offense as a delinquent act. The court may only  
5311 order expunction of a criminal history record pertaining to one  
5312 arrest or one incident of alleged criminal activity, except as  
5313 provided in this section. The court may, at its sole discretion,  
5314 order the expunction of a criminal history record pertaining to  
5315 more than one arrest if the additional arrests directly relate



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5316 to the original arrest. If the court intends to order the  
 5317 expunction of records pertaining to such additional arrests,  
 5318 such intent must be specified in the order. A criminal justice  
 5319 agency may not expunge any record pertaining to such additional  
 5320 arrests if the order to expunge does not articulate the  
 5321 intention of the court to expunge a record pertaining to more  
 5322 than one arrest. This section does not prevent the court from  
 5323 ordering the expunction of only a portion of a criminal history  
 5324 record pertaining to one arrest or one incident of alleged  
 5325 criminal activity. Notwithstanding any law to the contrary, a  
 5326 criminal justice agency may comply with laws, court orders, and  
 5327 official requests of other jurisdictions relating to expunction,  
 5328 correction, or confidential handling of criminal history records  
 5329 or information derived therefrom. This section does not confer  
 5330 any right to the expunction of any criminal history record, and  
 5331 any request for expunction of a criminal history record may be  
 5332 denied at the sole discretion of the court.

5333 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
 5334 criminal history record of a minor or an adult which is ordered  
 5335 expunged by a court of competent jurisdiction pursuant to this  
 5336 section must be physically destroyed or obliterated by any  
 5337 criminal justice agency having custody of such record; except  
 5338 that any criminal history record in the custody of the  
 5339 department must be retained in all cases. A criminal history  
 5340 record ordered expunged that is retained by the department is  
 5341 confidential and exempt from the provisions of s. 119.07(1) and  
 5342 s. 24(a), Art. I of the State Constitution and not available to  
 5343 any person or entity except upon order of a court of competent

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5344 jurisdiction. A criminal justice agency may retain a notation  
5345 indicating compliance with an order to expunge.

5346 (a) The person who is the subject of a criminal history  
5347 record that is expunged under this section or under other  
5348 provisions of law, including former s. 893.14, former s. 901.33,  
5349 and former s. 943.058, may lawfully deny or fail to acknowledge  
5350 the arrests covered by the expunged record, except when the  
5351 subject of the record:

5352 1. Is a candidate for employment with a criminal justice  
5353 agency;

5354 2. Is a defendant in a criminal prosecution;

5355 3. Concurrently or subsequently petitions for relief under  
5356 this section or s. 943.059;

5357 4. Is a candidate for admission to The Florida Bar;

5358 5. Is seeking to be employed or licensed by or to contract  
5359 with the Department of Children and Family Services or the  
5360 Department of Juvenile Justice or to be employed or used by such  
5361 contractor or licensee in a sensitive position having direct  
5362 contact with children, the developmentally disabled, the aged,  
5363 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
5364 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
5365 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.  
5366 985.407, ~~or~~ chapter 400, or chapter 429; or

5367 6. Is seeking to be employed or licensed by the Department  
5368 of Education, any district school board, any university  
5369 laboratory school, any charter school, any private or parochial  
5370 school, or any local governmental entity that licenses child  
5371 care facilities.

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5372           Section 120. Paragraph (a) of subsection (4) of section  
 5373 943.059, Florida Statutes, is amended to read:  
 5374           943.059 Court-ordered sealing of criminal history  
 5375 records.--The courts of this state shall continue to have  
 5376 jurisdiction over their own procedures, including the  
 5377 maintenance, sealing, and correction of judicial records  
 5378 containing criminal history information to the extent such  
 5379 procedures are not inconsistent with the conditions,  
 5380 responsibilities, and duties established by this section. Any  
 5381 court of competent jurisdiction may order a criminal justice  
 5382 agency to seal the criminal history record of a minor or an  
 5383 adult who complies with the requirements of this section. The  
 5384 court shall not order a criminal justice agency to seal a  
 5385 criminal history record until the person seeking to seal a  
 5386 criminal history record has applied for and received a  
 5387 certificate of eligibility for sealing pursuant to subsection  
 5388 (2). A criminal history record that relates to a violation of s.  
 5389 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 5390 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
 5391 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or  
 5392 a violation enumerated in s. 907.041 may not be sealed, without  
 5393 regard to whether adjudication was withheld, if the defendant  
 5394 was found guilty of or pled guilty or nolo contendere to the  
 5395 offense, or if the defendant, as a minor, was found to have  
 5396 committed or pled guilty or nolo contendere to committing the  
 5397 offense as a delinquent act. The court may only order sealing of  
 5398 a criminal history record pertaining to one arrest or one  
 5399 incident of alleged criminal activity, except as provided in

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5400 this section. The court may, at its sole discretion, order the  
 5401 sealing of a criminal history record pertaining to more than one  
 5402 arrest if the additional arrests directly relate to the original  
 5403 arrest. If the court intends to order the sealing of records  
 5404 pertaining to such additional arrests, such intent must be  
 5405 specified in the order. A criminal justice agency may not seal  
 5406 any record pertaining to such additional arrests if the order to  
 5407 seal does not articulate the intention of the court to seal  
 5408 records pertaining to more than one arrest. This section does  
 5409 not prevent the court from ordering the sealing of only a  
 5410 portion of a criminal history record pertaining to one arrest or  
 5411 one incident of alleged criminal activity. Notwithstanding any  
 5412 law to the contrary, a criminal justice agency may comply with  
 5413 laws, court orders, and official requests of other jurisdictions  
 5414 relating to sealing, correction, or confidential handling of  
 5415 criminal history records or information derived therefrom. This  
 5416 section does not confer any right to the sealing of any criminal  
 5417 history record, and any request for sealing a criminal history  
 5418 record may be denied at the sole discretion of the court.

5419 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
 5420 history record of a minor or an adult which is ordered sealed by  
 5421 a court of competent jurisdiction pursuant to this section is  
 5422 confidential and exempt from the provisions of s. 119.07(1) and  
 5423 s. 24(a), Art. I of the State Constitution and is available only  
 5424 to the person who is the subject of the record, to the subject's  
 5425 attorney, to criminal justice agencies for their respective  
 5426 criminal justice purposes, or to those entities set forth in

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5427 subparagraphs (a)1., 4., 5., and 6. for their respective  
5428 licensing and employment purposes.

5429 (a) The subject of a criminal history record sealed under  
5430 this section or under other provisions of law, including former  
5431 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
5432 deny or fail to acknowledge the arrests covered by the sealed  
5433 record, except when the subject of the record:

5434 1. Is a candidate for employment with a criminal justice  
5435 agency;

5436 2. Is a defendant in a criminal prosecution;

5437 3. Concurrently or subsequently petitions for relief under  
5438 this section or s. 943.0585;

5439 4. Is a candidate for admission to The Florida Bar;

5440 5. Is seeking to be employed or licensed by or to contract  
5441 with the Department of Children and Family Services or the  
5442 Department of Juvenile Justice or to be employed or used by such  
5443 contractor or licensee in a sensitive position having direct  
5444 contact with children, the developmentally disabled, the aged,  
5445 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
5446 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
5447 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and  
5448 (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or

5449 6. Is seeking to be employed or licensed by the Department  
5450 of Education, any district school board, any university  
5451 laboratory school, any charter school, any private or parochial  
5452 school, or any local governmental entity that licenses child  
5453 care facilities.

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5454           Section 121. The Division of Statutory Revision of the  
5455 Office of Legislative Services is requested to prepare a  
5456 reviser's bill for introduction at a subsequent session of the  
5457 Legislature to conform the Florida Statutes to changes made by  
5458 this act.

5459           Section 122. This act shall take effect July 1, 2006.