

CHAMBER ACTION

1 The Health & Families Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to assisted care communities; creating ch.
7 429, F.S.; transferring pt. III of ch. 400, F.S., relating
8 to assisted living facilities, to pt. I of ch. 429, F.S.;
9 transferring pt. VII of ch. 400, F.S., relating to adult
10 family-care homes, to pt. II of ch. 429, F.S.;
11 transferring pt. V of ch. 400, F.S., relating to adult day
12 care centers, to pt. III of ch. 429, F.S.; amending ss.
13 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
14 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
15 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
16 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
17 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
18 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
19 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
20 400.424, 400.4255, 400.4256, 400.427, 400.428, 400.429,
21 400.4293, 400.431, 400.441, 400.442, 400.444, 400.447,
22 400.452, 400.462, 400.464, 400.497, 400.552, 400.555,
23 400.556, 400.557, 400.5572, 400.601, 400.618, 400.6194,

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24 400.621, 400.628, 400.93, 400.962, 400.980, 400.9905,
 25 401.23, 402.164, 408.032, 408.033, 408.034, 408.07,
 26 408.831, 409.212, 409.221, 409.905, 409.906, 409.907,
 27 409.912, 410.031, 410.034, 415.1111, 419.001, 430.601,
 28 430.703, 435.03, 435.04, 440.13, 465.0235, 468.1685,
 29 468.505, 477.025, 483.285, 509.032, 509.241, 627.6617,
 30 627.732, 651.011, 651.022, 651.023, 651.055, 651.095,
 31 651.118, 765.1103, 765.205, 768.735, 893.13, 943.0585, and
 32 943.059, F.S., to conform references to changes made by
 33 the act; renumbering and amending s. 400.426, F.S.;
 34 providing that physician assistants are subject to certain
 35 requirements in the same manner as physicians; requesting
 36 the Division of Statutory Revision to make necessary
 37 conforming changes to the Florida Statutes; providing an
 38 effective date.

39
 40 Be It Enacted by the Legislature of the State of Florida:

41
 42 Section 1. Chapter 429, Florida Statutes, is created, to
 43 be entitled "Assisted Care Communities."

44 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
 45 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
 46 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
 47 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
 48 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
 49 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
 50 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
 51 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and

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

52 400.454, Florida Statutes, are renumbered as sections 429.01,
 53 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
 54 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,
 55 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
 56 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
 57 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,
 58 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
 59 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
 60 Florida Statutes, respectively, designated as part I of chapter
 61 429, Florida Statutes, and entitled "ASSISTED LIVING
 62 FACILITIES."

63 Section 3. Sections 400.616, 400.617, 400.618, 400.619,
 64 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
 65 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
 66 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
 67 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
 68 Florida Statutes, respectively, designated as part II of chapter
 69 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."

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

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

81 101.655 Supervised voting by absent electors in certain
82 facilities.--

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

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

98 189.428 Special districts; oversight review process.--

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

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107 Section 7. Paragraph (b) of subsection (2) of section
108 196.1975, Florida Statutes, is amended to read:

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

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

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

121 Section 8. Paragraph (c) of subsection (4) of section
122 202.125, Florida Statutes, is amended to read:

123 202.125 Sales of communications services; specified
124 exemptions.--

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

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135 (c) "Home for the aged" includes any nonprofit
136 corporation:

137 1. In which at least 75 percent of the occupants are 62
138 years of age or older or totally and permanently disabled; which
139 qualifies for an ad valorem property tax exemption under s.
140 196.196, s. 196.197, or s. 196.1975; and which is exempt from
141 the sales tax imposed under chapter 212.

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

145 Section 9. Section 205.1965, Florida Statutes, is amended
146 to read:

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

157 Section 10. Paragraph (b) of subsection (1) of section
158 212.031, Florida Statutes, is amended to read:

159 212.031 Tax on rental or license fee for use of real
160 property.--

161 (1)

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

185 Section 11. Paragraph (i) of subsection (7) of section
186 212.08, Florida Statutes, is amended to read:

187 212.08 Sales, rental, use, consumption, distribution, and
188 storage tax; specified exemptions.--The sale at retail, the
189 rental, the use, the consumption, the distribution, and the

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190 storage to be used or consumed in this state of the following
191 are hereby specifically exempt from the tax imposed by this
192 chapter.

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

211 (i) Hospital meals and rooms.--Also exempt from payment of
212 the tax imposed by this chapter on rentals and meals are
213 patients and inmates of any hospital or other physical plant or
214 facility designed and operated primarily for the care of persons
215 who are ill, aged, infirm, mentally or physically incapacitated,
216 or otherwise dependent on special care or attention. Residents
217 of a home for the aged are exempt from payment of taxes on meals

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218 | provided through the facility. A home for the aged is defined as
 219 | a facility that is licensed or certified in part or in whole
 220 | under chapter 400, chapter 429, or chapter 651, or that is
 221 | financed by a mortgage loan made or insured by the United States
 222 | Department of Housing and Urban Development under s. 202, s. 202
 223 | with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
 224 | the National Housing Act, or other such similar facility
 225 | designed and operated primarily for the care of the aged.

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

228 | 296.02 Definitions.--For the purposes of this part, except
 229 | where the context clearly indicates otherwise:

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

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

234 | 381.0035 Educational course on HIV and AIDS; employees and
 235 | clients of certain health care facilities.--

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

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246 law and its impact on testing, confidentiality of test results,
247 and treatment of patients and any protocols and procedures
248 applicable to human immunodeficiency counseling and testing,
249 reporting, the offering of HIV testing to pregnant women, and
250 partner notification issues pursuant to ss. 381.004 and 384.25.

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

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

258 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
259 381.739-381.79, the term:

260 (9) "Transitional living facility" means a state-approved
261 facility, as defined and licensed under chapter 400 or chapter
262 429, or a facility approved by the brain and spinal cord injury
263 program in accordance with this chapter.

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

266 393.063 Definitions.--For the purposes of this chapter:

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

270 Section 16. Paragraph (b) of subsection (1) of section
271 393.506, Florida Statutes, is amended to read:

272 393.506 Administration of medication.--

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273 (1) Notwithstanding the provisions of part I of chapter
274 464, the Nurse Practice Act, unlicensed direct care services
275 staff providing services to persons with developmental
276 disabilities may administer oral, transdermal, inhaled, or
277 topical prescription medications as provided in this section.

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

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

285 394.455 Definitions.--As used in this part, unless the
286 context clearly requires otherwise, the term:

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

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

296 394.4574 Department responsibilities for a mental health
297 resident who resides in an assisted living facility that holds a
298 limited mental health license.--

299 (2) The department must ensure that:

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

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

322 (e) The mental health services provider assigns a case
 323 manager to each mental health resident who lives in an assisted
 324 living facility with a limited mental health license. The case
 325 manager is responsible for coordinating the development of and
 326 implementation of the community living support plan defined in

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327 | s. 429.02 ~~s. 400.402~~. The plan must be updated at least
328 | annually.

329 | Section 19. Paragraph (b) of subsection (2) of section
330 | 394.463, Florida Statutes, is amended to read:

331 | 394.463 Involuntary examination.--

332 | (2) INVOLUNTARY EXAMINATION.--

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

350 | Section 20. Paragraph (b) of subsection (3) of section
351 | 400.0063, Florida Statutes, is amended to read:

352 | 400.0063 Establishment of Office of State Long-Term Care
353 | Ombudsman; designation of ombudsman and legal advocate.--

354 | (3)

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

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

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

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

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

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

372 400.0069 Local long-term care ombudsman councils; duties;
373 membership.--

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

379 Section 22. Paragraphs (c) and (f) of subsection (5) and
380 subsection (6) of section 400.0073, Florida Statutes, are
381 amended to read:

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382 400.0073 State and local ombudsman council
383 investigations.--

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

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

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

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

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

402 400.0077 Confidentiality.--

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

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

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409 400.0239 Quality of Long-Term Care Facility Improvement
410 Trust Fund.--

411 (1) There is created within the Agency for Health Care
412 Administration a Quality of Long-Term Care Facility Improvement
413 Trust Fund to support activities and programs directly related
414 to improvement of the care of nursing home and assisted living
415 facility residents. The trust fund shall be funded through
416 proceeds generated pursuant to ss. 400.0238 and 429.298
417 ~~400.4298~~, through funds specifically appropriated by the
418 Legislature, through gifts, endowments, and other charitable
419 contributions allowed under federal and state law, and through
420 federal nursing home civil monetary penalties collected by the
421 Centers for Medicare and Medicaid Services and returned to the
422 state. These funds must be utilized in accordance with federal
423 requirements.

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

426 400.119 Confidentiality of records and meetings of risk
427 management and quality assurance committees.--

428 (1) Records of meetings of the risk management and quality
429 assurance committee of a long-term care facility licensed under
430 this part or part I III of ~~this~~ chapter 429, as well as incident
431 reports filed with the facility's risk manager and
432 administrator, notifications of the occurrence of an adverse
433 incident, and adverse incident reports from the facility are
434 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
435 of the State Constitution. However, if the Agency for Health
436 Care Administration has a reasonable belief that conduct by a

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437 staff member or employee of a facility is criminal activity or
 438 grounds for disciplinary action by a regulatory board, the
 439 agency may disclose such records to the appropriate law
 440 enforcement agency or regulatory board.

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

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

448 400.141 Administration and management of nursing home
 449 facilities.--Every licensed facility shall comply with all
 450 applicable standards and rules of the agency and shall:

451 (4) Provide for resident use of a community pharmacy as
 452 specified in s. 400.022(1)(q). Any other law to the contrary
 453 notwithstanding, a registered pharmacist licensed in Florida,
 454 that is under contract with a facility licensed under this
 455 chapter or chapter 429, shall repackage a nursing facility
 456 resident's bulk prescription medication which has been packaged
 457 by another pharmacist licensed in any state in the United States
 458 into a unit dose system compatible with the system used by the
 459 nursing facility, if the pharmacist is requested to offer such
 460 service. In order to be eligible for the repackaging, a resident
 461 or the resident's spouse must receive prescription medication
 462 benefits provided through a former employer as part of his or
 463 her retirement benefits, a qualified pension plan as specified
 464 in s. 4972 of the Internal Revenue Code, a federal retirement

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465 program as specified under 5 C.F.R. s. 831, or a long-term care
466 policy as defined in s. 627.9404(1). A pharmacist who correctly
467 repackages and relabels the medication and the nursing facility
468 which correctly administers such repackaged medication under the
469 provisions of this subsection shall not be held liable in any
470 civil or administrative action arising from the repackaging. In
471 order to be eligible for the repackaging, a nursing facility
472 resident for whom the medication is to be repackaged shall sign
473 an informed consent form provided by the facility which includes
474 an explanation of the repackaging process and which notifies the
475 resident of the immunities from liability provided herein. A
476 pharmacist who repackages and relabels prescription medications,
477 as authorized under this subsection, may charge a reasonable fee
478 for costs resulting from the implementation of this provision.

479 (7) If the facility has a standard license or is a Gold
480 Seal facility, exceeds the minimum required hours of licensed
481 nursing and certified nursing assistant direct care per resident
482 per day, and is part of a continuing care facility licensed
483 under chapter 651 or a retirement community that offers other
484 services pursuant to part III of this chapter or part I or part
485 III of chapter 429, part IV, or part V on a single campus, be
486 allowed to share programming and staff. At the time of
487 inspection and in the semiannual report required pursuant to
488 subsection (15), a continuing care facility or retirement
489 community that uses this option must demonstrate through
490 staffing records that minimum staffing requirements for the
491 facility were met. Licensed nurses and certified nursing
492 assistants who work in the nursing home facility may be used to

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493 provide services elsewhere on campus if the facility exceeds the
494 minimum number of direct care hours required per resident per
495 day and the total number of residents receiving direct care
496 services from a licensed nurse or a certified nursing assistant
497 does not cause the facility to violate the staffing ratios
498 required under s. 400.23(3)(a). Compliance with the minimum
499 staffing ratios shall be based on total number of residents
500 receiving direct care services, regardless of where they reside
501 on campus. If the facility receives a conditional license, it
502 may not share staff until the conditional license status ends.
503 This subsection does not restrict the agency's authority under
504 federal or state law to require additional staff if a facility
505 is cited for deficiencies in care which are caused by an
506 insufficient number of certified nursing assistants or licensed
507 nurses. The agency may adopt rules for the documentation
508 necessary to determine compliance with this provision.

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

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

517 400.142 Emergency medication kits; orders not to
518 resuscitate.--

519 (1) Other provisions of this chapter or of chapter 429,
520 chapter 465, chapter 499, or chapter 893 to the contrary

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521 | notwithstanding, each nursing home operating pursuant to a
 522 | license issued by the agency may maintain an emergency
 523 | medication kit for the purpose of storing medicinal drugs to be
 524 | administered under emergency conditions to residents residing in
 525 | such facility.

526 | Section 28. Paragraph (a) of subsection (2) of section
 527 | 400.191, Florida Statutes, is amended to read:

528 | 400.191 Availability, distribution, and posting of reports
 529 | and records.--

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

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

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

540 | 2. Whether such nursing home facilities are proprietary or
 541 | nonproprietary.

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

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

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

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549 | 6. The number of private and semiprivate rooms in each
550 | facility.

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

552 | 8. The languages spoken by the administrator and staff of
553 | each facility.

554 | 9. Whether or not each facility accepts Medicare or
555 | Medicaid recipients or insurance, health maintenance
556 | organization, Veterans Administration, CHAMPUS program, or
557 | workers' compensation coverage.

558 | 10. Recreational and other programs available at each
559 | facility.

560 | 11. Special care units or programs offered at each
561 | facility.

562 | 12. Whether the facility is a part of a retirement
563 | community that offers other services pursuant to part III of
564 | this chapter or part I or part III of chapter 429, ~~part IV, or~~
565 | part V.

566 | 13. Survey and deficiency information contained on the
567 | Online Survey Certification and Reporting (OSCAR) system of the
568 | federal Health Care Financing Administration, including annual
569 | survey, revisit, and complaint survey information, for each
570 | facility for the past 45 months. For noncertified nursing homes,
571 | state survey and deficiency information, including annual
572 | survey, revisit, and complaint survey information for the past
573 | 45 months shall be provided.

574 | 14. A summary of the Online Survey Certification and
575 | Reporting (OSCAR) data for each facility over the past 45
576 | months. Such summary may include a score, rating, or comparison

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577 ranking with respect to other facilities based on the number of
578 citations received by the facility of annual, revisit, and
579 complaint surveys; the severity and scope of the citations; and
580 the number of annual recertification surveys the facility has
581 had during the past 45 months. The score, rating, or comparison
582 ranking may be presented in either numeric or symbolic form for
583 the intended consumer audience.

584 Section 29. Paragraph (b) of subsection (2) of section
585 400.215, Florida Statutes, is amended to read:

586 400.215 Personnel screening requirement.--

587 (2) Employers and employees shall comply with the
588 requirements of s. 435.05.

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

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605 request to the Department of Law Enforcement, which is
606 authorized to submit the fingerprints to the Federal Bureau of
607 Investigation for a national criminal history records check. The
608 results of the national criminal history records check shall be
609 returned to the agency, which shall maintain the results in the
610 database provided for in paragraph (c). The agency shall notify
611 the administrator of the requesting nursing facility or the
612 administrator of any other facility licensed under chapter 393,
613 chapter 394, chapter 395, chapter 397, chapter 429, or this
614 chapter, as requested by such facility, as to whether or not the
615 employee has qualified under level 1 or level 2 screening. An
616 employee or prospective employee who has qualified under level 2
617 screening and has maintained such continuous residency within
618 the state shall not be required to complete a subsequent level 2
619 screening as a condition of employment at another facility.

620 Section 30. Section 400.402, Florida Statutes, is
621 renumbered as section 429.02, Florida Statutes, and amended to
622 read:

623 429.02 ~~400.402~~ Definitions.--When used in this part, the
624 term:

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

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

631 (3) "Agency" means the Agency for Health Care
632 Administration.

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

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

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

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

656 (8) "Community living support plan" means a written
657 document prepared by a mental health resident and the resident's
658 mental health case manager in consultation with the
659 administrator of an assisted living facility with a limited
660 mental health license or the administrator's designee. A copy

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661 must be provided to the administrator. The plan must include
662 information about the supports, services, and special needs of
663 the resident which enable the resident to live in the assisted
664 living facility and a method by which facility staff can
665 recognize and respond to the signs and symptoms particular to
666 that resident which indicate the need for professional services.

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

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

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

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

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

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

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

713 (16) "Mental health resident" means an individual who
714 receives social security disability income due to a mental
715 disorder as determined by the Social Security Administration or
716 receives supplemental security income due to a mental disorder

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717 as determined by the Social Security Administration and receives
718 optional state supplementation.

719 (17) "Personal services" means direct physical assistance
720 with or supervision of the activities of daily living and the
721 self-administration of medication and other similar services
722 which the department may define by rule. "Personal services"
723 shall not be construed to mean the provision of medical,
724 nursing, dental, or mental health services.

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

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

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

744 (21) "Resident's representative or designee" means a
 745 person other than the owner, or an agent or employee of the
 746 facility, designated in writing by the resident, if legally
 747 competent, to receive notice of changes in the contract executed
 748 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
 749 participate in meetings between the resident and the facility
 750 owner, administrator, or staff concerning the rights of the
 751 resident; to assist the resident in contacting the ombudsman
 752 council if the resident has a complaint against the facility; or
 753 to bring legal action on behalf of the resident pursuant to s.
 754 429.29 ~~s. 400.429~~.

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

766 (23) "Shared responsibility" means exploring the options
 767 available to a resident within a facility and the risks involved
 768 with each option when making decisions pertaining to the
 769 resident's abilities, preferences, and service needs, thereby
 770 enabling the resident and, if applicable, the resident's
 771 representative or designee, or the resident's surrogate,

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

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

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

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

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

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799 Section 31. Section 400.404, Florida Statutes, is
800 renumbered as section 429.04, Florida Statutes, and amended to
801 read:

802 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--

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

806 (2) The following are exempt from licensure under this
807 part:

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

810 (b) Any facility or part of a facility licensed under
811 chapter 393 or chapter 394.

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

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

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

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

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

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

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855 Facilities covered by this exemption may establish policies that
856 give residents the option of contracting for services and care
857 beyond that which is provided by the facility to enable them to
858 age in place. For purposes of this section, a retirement
859 community consists of a facility licensed under this part or
860 under part II of chapter 400, and apartments designed for
861 independent living located on the same campus.

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

868 Section 32. Section 400.407, Florida Statutes, is
869 renumbered as section 429.07, Florida Statutes, and amended to
870 read:

871 429.07 ~~400.407~~ License required; fee, display.--

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

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

878 (3) Any license granted by the agency must state the
879 maximum resident capacity of the facility, the type of care for
880 which the license is granted, the date the license is issued,
881 the expiration date of the license, and any other information
882 deemed necessary by the agency. Licenses shall be issued for one

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883 or more of the following categories of care: standard, extended
884 congregate care, limited nursing services, or limited mental
885 health.

886 (a) A standard license shall be issued to facilities
887 providing one or more of the personal services identified in s.
888 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
889 with a person licensed under part I of chapter 464 to administer
890 medications and perform other tasks as specified in s. 429.255
891 ~~s. 400.4255~~.

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

899 1. In order for extended congregate care services to be
900 provided in a facility licensed under this part, the agency must
901 first determine that all requirements established in law and
902 rule are met and must specifically designate, on the facility's
903 license, that such services may be provided and whether the
904 designation applies to all or part of a facility. Such
905 designation may be made at the time of initial licensure or
906 relicensure, or upon request in writing by a licensee under this
907 part. Notification of approval or denial of such request shall
908 be made within 90 days after receipt of such request and all
909 necessary documentation. Existing facilities qualifying to
910 provide extended congregate care services must have maintained a

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911 standard license and may not have been subject to administrative
 912 sanctions during the previous 2 years, or since initial
 913 licensure if the facility has been licensed for less than 2
 914 years, for any of the following reasons:

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

932 2. Facilities that are licensed to provide extended
 933 congregate care services shall maintain a written progress
 934 report on each person who receives such services, which report
 935 describes the type, amount, duration, scope, and outcome of
 936 services that are rendered and the general status of the
 937 resident's health. A registered nurse, or appropriate designee,
 938 representing the agency shall visit such facilities at least

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

959 3. Facilities that are licensed to provide extended
960 congregate care services shall:

961 a. Demonstrate the capability to meet unanticipated
962 resident service needs.

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

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

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

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

981 f. Implement the concept of managed risk.

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

984 h. In addition to the training mandated in s. 429.52 ~~s.~~
985 ~~400.452~~, provide specialized training as defined by rule for
986 facility staff.

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

990 Facilities so licensed shall adopt their own requirements within
991 guidelines for continued residency set forth by the department
992 in rule. However, such facilities may not serve residents who
993 require 24-hour nursing supervision. Facilities licensed to
994 provide extended congregate care services shall provide each

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995 resident with a written copy of facility policies governing
996 admission and retention.

997 5. The primary purpose of extended congregate care
998 services is to allow residents, as they become more impaired,
999 the option of remaining in a familiar setting from which they
1000 would otherwise be disqualified for continued residency. A
1001 facility licensed to provide extended congregate care services
1002 may also admit an individual who exceeds the admission criteria
1003 for a facility with a standard license, if the individual is
1004 determined appropriate for admission to the extended congregate
1005 care facility.

1006 6. Before admission of an individual to a facility
1007 licensed to provide extended congregate care services, the
1008 individual must undergo a medical examination as provided in s.
1009 429.26(4) ~~s. 400.426(4)~~ and the facility must develop a
1010 preliminary service plan for the individual.

1011 7. When a facility can no longer provide or arrange for
1012 services in accordance with the resident's service plan and
1013 needs and the facility's policy, the facility shall make
1014 arrangements for relocating the person in accordance with s.
1015 429.28(1)(k) ~~s. 400.428(1)(k)~~.

1016 8. Failure to provide extended congregate care services
1017 may result in denial of extended congregate care license
1018 renewal.

1019 9. No later than January 1 of each year, the department,
1020 in consultation with the agency, shall prepare and submit to the
1021 Governor, the President of the Senate, the Speaker of the House
1022 of Representatives, and the chairs of appropriate legislative

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1023 | committees, a report on the status of, and recommendations
 1024 | related to, extended congregate care services. The status report
 1025 | must include, but need not be limited to, the following
 1026 | information:

1027 | a. A description of the facilities licensed to provide
 1028 | such services, including total number of beds licensed under
 1029 | this part.

1030 | b. The number and characteristics of residents receiving
 1031 | such services.

1032 | c. The types of services rendered that could not be
 1033 | provided through a standard license.

1034 | d. An analysis of deficiencies cited during licensure
 1035 | inspections.

1036 | e. The number of residents who required extended
 1037 | congregate care services at admission and the source of
 1038 | admission.

1039 | f. Recommendations for statutory or regulatory changes.

1040 | g. The availability of extended congregate care to state
 1041 | clients residing in facilities licensed under this part and in
 1042 | need of additional services, and recommendations for
 1043 | appropriations to subsidize extended congregate care services
 1044 | for such persons.

1045 | h. Such other information as the department considers
 1046 | appropriate.

1047 | (c) A limited nursing services license shall be issued to
 1048 | a facility that provides services beyond those authorized in
 1049 | paragraph (a) and as specified in this paragraph.

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1050 1. In order for limited nursing services to be provided in
 1051 a facility licensed under this part, the agency must first
 1052 determine that all requirements established in law and rule are
 1053 met and must specifically designate, on the facility's license,
 1054 that such services may be provided. Such designation may be made
 1055 at the time of initial licensure or relicensure, or upon request
 1056 in writing by a licensee under this part. Notification of
 1057 approval or denial of such request shall be made within 90 days
 1058 after receipt of such request and all necessary documentation.
 1059 Existing facilities qualifying to provide limited nursing
 1060 services shall have maintained a standard license and may not
 1061 have been subject to administrative sanctions that affect the
 1062 health, safety, and welfare of residents for the previous 2
 1063 years or since initial licensure if the facility has been
 1064 licensed for less than 2 years.

1065 2. Facilities that are licensed to provide limited nursing
 1066 services shall maintain a written progress report on each person
 1067 who receives such nursing services, which report describes the
 1068 type, amount, duration, scope, and outcome of services that are
 1069 rendered and the general status of the resident's health. A
 1070 registered nurse representing the agency shall visit such
 1071 facilities at least twice a year to monitor residents who are
 1072 receiving limited nursing services and to determine if the
 1073 facility is in compliance with applicable provisions of this
 1074 part and with related rules. The monitoring visits may be
 1075 provided through contractual arrangements with appropriate
 1076 community agencies. A registered nurse shall also serve as part
 1077 of the team that inspects such facility.

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1078 3. A person who receives limited nursing services under
1079 this part must meet the admission criteria established by the
1080 agency for assisted living facilities. When a resident no longer
1081 meets the admission criteria for a facility licensed under this
1082 part, arrangements for relocating the person shall be made in
1083 accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless the
1084 facility is licensed to provide extended congregate care
1085 services.

1086 (4) (a) The biennial license fee required of a facility is
1087 \$300 per license, with an additional fee of \$50 per resident
1088 based on the total licensed resident capacity of the facility,
1089 except that no additional fee will be assessed for beds
1090 designated for recipients of optional state supplementation
1091 payments provided for in s. 409.212. The total fee may not
1092 exceed \$10,000, no part of which shall be returned to the
1093 facility. The agency shall adjust the per bed license fee and
1094 the total licensure fee annually by not more than the change in
1095 the consumer price index based on the 12 months immediately
1096 preceding the increase.

1097 (b) In addition to the total fee assessed under paragraph
1098 (a), the agency shall require facilities that are licensed to
1099 provide extended congregate care services under this part to pay
1100 an additional fee per licensed facility. The amount of the
1101 biennial fee shall be \$400 per license, with an additional fee
1102 of \$10 per resident based on the total licensed resident
1103 capacity of the facility. No part of this fee shall be returned
1104 to the facility. The agency may adjust the per bed license fee
1105 and the annual license fee once each year by not more than the

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1106 average rate of inflation for the 12 months immediately
1107 preceding the increase.

1108 (c) In addition to the total fee assessed under paragraph
1109 (a), the agency shall require facilities that are licensed to
1110 provide limited nursing services under this part to pay an
1111 additional fee per licensed facility. The amount of the biennial
1112 fee shall be \$250 per license, with an additional fee of \$10 per
1113 resident based on the total licensed resident capacity of the
1114 facility. No part of this fee shall be returned to the facility.
1115 The agency may adjust the per bed license fee and the biennial
1116 license fee once each year by not more than the average rate of
1117 inflation for the 12 months immediately preceding the increase.

1118 (5) Counties or municipalities applying for licenses under
1119 this part are exempt from the payment of license fees.

1120 (6) The license shall be displayed in a conspicuous place
1121 inside the facility.

1122 (7) A license shall be valid only in the possession of the
1123 individual, firm, partnership, association, or corporation to
1124 which it is issued and shall not be subject to sale, assignment,
1125 or other transfer, voluntary or involuntary; nor shall a license
1126 be valid for any premises other than that for which originally
1127 issued.

1128 (8) A fee may be charged to a facility requesting a
1129 duplicate license. The fee shall not exceed the actual cost of
1130 duplication and postage.

1131 Section 33. Section 400.4071, Florida Statutes, is
1132 renumbered as section 429.071, Florida Statutes, and amended to
1133 read:

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1134 429.071 ~~400.4071~~ Intergenerational respite care assisted
1135 living facility pilot program.--

1136 (1) It is the intent of the Legislature to establish a
1137 pilot program to:

1138 (a) Facilitate the receipt of in-home, family-based care
1139 by minors and adults with disabilities and elderly persons with
1140 special needs through respite care for up to 14 days.

1141 (b) Prevent caregiver "burnout," in which the caregiver's
1142 health declines and he or she is unable to continue to provide
1143 care so that the only option for the person with disabilities or
1144 special needs is to receive institutional care.

1145 (c) Foster the development of intergenerational respite
1146 care assisted living facilities to temporarily care for minors
1147 and adults with disabilities and elderly persons with special
1148 needs in the same facility and to give caregivers the time they
1149 need for rejuvenation and healing.

1150 (2) The Agency for Health Care Administration shall
1151 establish a 5-year pilot program, which shall license an
1152 intergenerational respite care assisted living facility that
1153 will provide temporary personal, respite, and custodial care to
1154 minors and adults with disabilities and elderly persons with
1155 special needs who do not require 24-hour nursing services. The
1156 intergenerational respite care assisted living facility must:

1157 (a) Meet all applicable requirements and standards
1158 contained in this part ~~III of this chapter~~, except that, for
1159 purposes of this section, the term "resident" means a person of
1160 any age temporarily residing in and receiving care from the
1161 facility.

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1162 (b) Provide respite care services for minors and adults
1163 with disabilities and elderly persons with special needs for a
1164 period of at least 24 hours but not for more than 14 consecutive
1165 days.

1166 (c) Provide a facility or facilities in which minors and
1167 adults reside in distinct and separate living units.

1168 (d) Provide a facility that has a maximum of 48 beds, is
1169 located in Miami-Dade County, and is operated by a not-for-
1170 profit entity.

1171 (3) The agency may establish policies necessary to achieve
1172 the objectives specific to the pilot program and may adopt rules
1173 necessary to implement the program.

1174 (4) After 4 years, the agency shall present its report on
1175 the effectiveness of the pilot program to the President of the
1176 Senate and the Speaker of the House of Representatives and its
1177 recommendation as to whether the Legislature should make the
1178 program permanent.

1179 Section 34. Section 400.408, Florida Statutes, is
1180 renumbered as section 429.08, Florida Statutes, and amended to
1181 read:

1182 429.08 ~~400.408~~ Unlicensed facilities; referral of person
1183 for residency to unlicensed facility; penalties; verification of
1184 licensure status.--

1185 (1)(a) It is unlawful to own, operate, or maintain an
1186 assisted living facility without obtaining a license under this
1187 part.

1188 (b) Except as provided under paragraph (d), any person who
1189 owns, operates, or maintains an unlicensed assisted living

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1190 facility commits a felony of the third degree, punishable as
1191 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1192 continued operation is a separate offense.

1193 (c) Any person found guilty of violating paragraph (a) a
1194 second or subsequent time commits a felony of the second degree,
1195 punishable as provided under s. 775.082, s. 775.083, or s.
1196 775.084. Each day of continued operation is a separate offense.

1197 (d) Any person who owns, operates, or maintains an
1198 unlicensed assisted living facility due to a change in this part
1199 or a modification in department rule within 6 months after the
1200 effective date of such change and who, within 10 working days
1201 after receiving notification from the agency, fails to cease
1202 operation or apply for a license under this part commits a
1203 felony of the third degree, punishable as provided in s.
1204 775.082, s. 775.083, or s. 775.084. Each day of continued
1205 operation is a separate offense.

1206 (e) Any facility that fails to cease operation after
1207 agency notification may be fined for each day of noncompliance
1208 pursuant to s. 429.19 ~~s. 400.419~~.

1209 (f) When a licensee has an interest in more than one
1210 assisted living facility, and fails to license any one of these
1211 facilities, the agency may revoke the license, impose a
1212 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
1213 on any or all of the licensed facilities until such time as the
1214 unlicensed facility is licensed or ceases operation.

1215 (g) If the agency determines that an owner is operating or
1216 maintaining an assisted living facility without obtaining a
1217 license and determines that a condition exists in the facility

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1218 | that poses a threat to the health, safety, or welfare of a
 1219 | resident of the facility, the owner is subject to the same
 1220 | actions and fines imposed against a licensed facility as
 1221 | specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

1222 | (h) Any person aware of the operation of an unlicensed
 1223 | assisted living facility must report that facility to the
 1224 | agency. The agency shall provide to the department's elder
 1225 | information and referral providers a list, by county, of
 1226 | licensed assisted living facilities, to assist persons who are
 1227 | considering an assisted living facility placement in locating a
 1228 | licensed facility.

1229 | (i) Each field office of the Agency for Health Care
 1230 | Administration shall establish a local coordinating workgroup
 1231 | which includes representatives of local law enforcement
 1232 | agencies, state attorneys, the Medicaid Fraud Control Unit of
 1233 | the Department of Legal Affairs, local fire authorities, the
 1234 | Department of Children and Family Services, the district long-
 1235 | term care ombudsman council, and the district human rights
 1236 | advocacy committee to assist in identifying the operation of
 1237 | unlicensed facilities and to develop and implement a plan to
 1238 | ensure effective enforcement of state laws relating to such
 1239 | facilities. The workgroup shall report its findings, actions,
 1240 | and recommendations semiannually to the Director of Health
 1241 | Facility Regulation of the agency.

1242 | (2) It is unlawful to knowingly refer a person for
 1243 | residency to an unlicensed assisted living facility; to an
 1244 | assisted living facility the license of which is under denial or
 1245 | has been suspended or revoked; or to an assisted living facility

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1246 that has a moratorium on admissions. Any person who violates
1247 this subsection commits a noncriminal violation, punishable by a
1248 fine not exceeding \$500 as provided in s. 775.083.

1249 (a) Any health care practitioner, as defined in s.
1250 456.001, who is aware of the operation of an unlicensed facility
1251 shall report that facility to the agency. Failure to report a
1252 facility that the practitioner knows or has reasonable cause to
1253 suspect is unlicensed shall be reported to the practitioner's
1254 licensing board.

1255 (b) Any hospital or community mental health center
1256 licensed under chapter 395 or chapter 394 which knowingly
1257 discharges a patient or client to an unlicensed facility is
1258 subject to sanction by the agency.

1259 (c) Any employee of the agency or department, or the
1260 Department of Children and Family Services, who knowingly refers
1261 a person for residency to an unlicensed facility; to a facility
1262 the license of which is under denial or has been suspended or
1263 revoked; or to a facility that has a moratorium on admissions is
1264 subject to disciplinary action by the agency or department, or
1265 the Department of Children and Family Services.

1266 (d) The employer of any person who is under contract with
1267 the agency or department, or the Department of Children and
1268 Family Services, and who knowingly refers a person for residency
1269 to an unlicensed facility; to a facility the license of which is
1270 under denial or has been suspended or revoked; or to a facility
1271 that has a moratorium on admissions shall be fined and required
1272 to prepare a corrective action plan designed to prevent such
1273 referrals.

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1274 (e) The agency shall provide the department and the
 1275 Department of Children and Family Services with a list of
 1276 licensed facilities within each county and shall update the list
 1277 at least quarterly.

1278 (f) At least annually, the agency shall notify, in
 1279 appropriate trade publications, physicians licensed under
 1280 chapter 458 or chapter 459, hospitals licensed under chapter
 1281 395, nursing home facilities licensed under part II of ~~this~~
 1282 chapter 400, and employees of the agency or the department, or
 1283 the Department of Children and Family Services, who are
 1284 responsible for referring persons for residency, that it is
 1285 unlawful to knowingly refer a person for residency to an
 1286 unlicensed assisted living facility and shall notify them of the
 1287 penalty for violating such prohibition. The department and the
 1288 Department of Children and Family Services shall, in turn,
 1289 notify service providers under contract to the respective
 1290 departments who have responsibility for resident referrals to
 1291 facilities. Further, the notice must direct each noticed
 1292 facility and individual to contact the appropriate agency office
 1293 in order to verify the licensure status of any facility prior to
 1294 referring any person for residency. Each notice must include the
 1295 name, telephone number, and mailing address of the appropriate
 1296 office to contact.

1297 Section 35. Section 400.411, Florida Statutes, is
 1298 renumbered as section 429.11, Florida Statutes, and amended to
 1299 read:

1300 429.11 ~~400.411~~ Initial application for license;
 1301 provisional license.--

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1302 (1) Application for a license shall be made to the agency
1303 on forms furnished by it and shall be accompanied by the
1304 appropriate license fee.

1305 (2) The applicant may be an individual owner, a
1306 corporation, a partnership, a firm, an association, or a
1307 governmental entity.

1308 (3) The application must be signed by the applicant under
1309 oath and must contain the following:

1310 (a) The name, address, date of birth, and social security
1311 number of the applicant and the name by which the facility is to
1312 be known. If the applicant is a firm, partnership, or
1313 association, the application shall contain the name, address,
1314 date of birth, and social security number of every member
1315 thereof. If the applicant is a corporation, the application
1316 shall contain the corporation's name and address; the name,
1317 address, date of birth, and social security number of each of
1318 its directors and officers; and the name and address of each
1319 person having at least a 5-percent ownership interest in the
1320 corporation.

1321 (b) The name and address of any professional service,
1322 firm, association, partnership, or corporation that is to
1323 provide goods, leases, or services to the facility if a 5-
1324 percent or greater ownership interest in the service, firm,
1325 association, partnership, or corporation is owned by a person
1326 whose name must be listed on the application under paragraph
1327 (a).

1328 (c) The name and address of any long-term care facility
1329 with which the applicant, administrator, or financial officer

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1330 | has been affiliated through ownership or employment within 5
 1331 | years of the date of this license application; and a signed
 1332 | affidavit disclosing any financial or ownership interest that
 1333 | the applicant, or any person listed in paragraph (a), holds or
 1334 | has held within the last 5 years in any facility licensed under
 1335 | this part, or in any other entity licensed by this state or
 1336 | another state to provide health or residential care, which
 1337 | facility or entity closed or ceased to operate as a result of
 1338 | financial problems, or has had a receiver appointed or a license
 1339 | denied, suspended or revoked, or was subject to a moratorium on
 1340 | admissions, or has had an injunctive proceeding initiated
 1341 | against it.

1342 | (d) A description and explanation of any exclusions,
 1343 | permanent suspensions, or terminations of the applicant from the
 1344 | Medicare or Medicaid programs. Proof of compliance with
 1345 | disclosure of ownership and control interest requirements of the
 1346 | Medicaid or Medicare programs shall be accepted in lieu of this
 1347 | submission.

1348 | (e) The names and addresses of persons of whom the agency
 1349 | may inquire as to the character, reputation, and financial
 1350 | responsibility of the owner and, if different from the
 1351 | applicant, the administrator and financial officer.

1352 | (f) Identification of all other homes or facilities,
 1353 | including the addresses and the license or licenses under which
 1354 | they operate, if applicable, which are currently operated by the
 1355 | applicant or administrator and which provide housing, meals, and
 1356 | personal services to residents.

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1357 (g) The location of the facility for which a license is
 1358 sought and documentation, signed by the appropriate local
 1359 government official, which states that the applicant has met
 1360 local zoning requirements.

1361 (h) The name, address, date of birth, social security
 1362 number, education, and experience of the administrator, if
 1363 different from the applicant.

1364 (4) The applicant shall furnish satisfactory proof of
 1365 financial ability to operate and conduct the facility in
 1366 accordance with the requirements of this part. A certificate of
 1367 authority, pursuant to chapter 651, may be provided as proof of
 1368 financial ability.

1369 (5) If the applicant is a continuing care facility
 1370 certified under chapter 651, a copy of the facility's
 1371 certificate of authority must be provided.

1372 (6) The applicant shall provide proof of liability
 1373 insurance as defined in s. 624.605.

1374 (7) If the applicant is a community residential home, the
 1375 applicant must provide proof that it has met the requirements
 1376 specified in chapter 419.

1377 (8) The applicant must provide the agency with proof of
 1378 legal right to occupy the property.

1379 (9) The applicant must furnish proof that the facility has
 1380 received a satisfactory firesafety inspection. The local
 1381 authority having jurisdiction or the State Fire Marshal must
 1382 conduct the inspection within 30 days after written request by
 1383 the applicant.

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1384 (10) The applicant must furnish documentation of a
1385 satisfactory sanitation inspection of the facility by the county
1386 health department.

1387 (11) The applicant must furnish proof of compliance with
1388 level 2 background screening as required under s. 429.174 ~~s.~~
1389 ~~400.4174~~.

1390 (12) A provisional license may be issued to an applicant
1391 making initial application for licensure or making application
1392 for a change of ownership. A provisional license shall be
1393 limited in duration to a specific period of time not to exceed 6
1394 months, as determined by the agency.

1395 (13) A county or municipality may not issue an
1396 occupational license that is being obtained for the purpose of
1397 operating a facility regulated under this part without first
1398 ascertaining that the applicant has been licensed to operate
1399 such facility at the specified location or locations by the
1400 agency. The agency shall furnish to local agencies responsible
1401 for issuing occupational licenses sufficient instruction for
1402 making such determinations.

1403 Section 36. Section 400.412, Florida Statutes, is
1404 renumbered as section 429.12, Florida Statutes, and amended to
1405 read:

1406 429.12 ~~400.412~~ Sale or transfer of ownership of a
1407 facility.--It is the intent of the Legislature to protect the
1408 rights of the residents of an assisted living facility when the
1409 facility is sold or the ownership thereof is transferred.
1410 Therefore, whenever a facility is sold or the ownership thereof
1411 is transferred, including leasing:

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1412 (1) The transferee shall make application to the agency
 1413 for a new license at least 60 days before the date of transfer
 1414 of ownership. The application must comply with the provisions of
 1415 s. 429.11 ~~s. 400.411~~.

1416 (2) (a) The transferor shall notify the agency in writing
 1417 at least 60 days before the date of transfer of ownership.

1418 (b) The new owner shall notify the residents, in writing,
 1419 of the transfer of ownership within 7 days of his or her receipt
 1420 of the license.

1421 (3) The transferor shall be responsible and liable for:

1422 (a) The lawful operation of the facility and the welfare
 1423 of the residents domiciled in the facility until the date the
 1424 transferee is licensed by the agency.

1425 (b) Any and all penalties imposed against the facility for
 1426 violations occurring before the date of transfer of ownership
 1427 unless the penalty imposed is a moratorium on admissions or
 1428 denial of licensure. The moratorium on admissions or denial of
 1429 licensure remains in effect after the transfer of ownership,
 1430 unless the agency has approved the transferee's corrective
 1431 action plan or the conditions which created the moratorium or
 1432 denial have been corrected, and may be grounds for denial of
 1433 license to the transferee in accordance with chapter 120.

1434 (c) Any outstanding liability to the state, unless the
 1435 transferee has agreed, as a condition of sale or transfer, to
 1436 accept the outstanding liabilities and to guarantee payment
 1437 therefor; except that, if the transferee fails to meet these
 1438 obligations, the transferor shall remain liable for the
 1439 outstanding liability.

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1440 (4) The transferor of a facility the license of which is
 1441 denied pending an administrative hearing shall, as a part of the
 1442 written transfer-of-ownership contract, advise the transferee
 1443 that a plan of correction must be submitted by the transferee
 1444 and approved by the agency at least 7 days before the transfer
 1445 of ownership and that failure to correct the condition which
 1446 resulted in the moratorium on admissions or denial of licensure
 1447 is grounds for denial of the transferee's license.

1448 (5) The transferee must provide the agency with proof of
 1449 legal right to occupy the property before a license may be
 1450 issued. Proof may include, but is not limited to, copies of
 1451 warranty deeds, or copies of lease or rental agreements,
 1452 contracts for deeds, quitclaim deeds, or other such
 1453 documentation.

1454 Section 37. Section 400.414, Florida Statutes, is
 1455 renumbered as section 429.14, Florida Statutes, and amended to
 1456 read:

1457 429.14 ~~400.414~~ Denial, revocation, or suspension of
 1458 license; imposition of administrative fine; grounds.--

1459 (1) The agency may deny, revoke, or suspend any license
 1460 issued under this part, or impose an administrative fine in the
 1461 manner provided in chapter 120, for any of the following actions
 1462 by an assisted living facility, for the actions of any person
 1463 subject to level 2 background screening under s. 429.174 ~~s.~~
 1464 ~~400.4174~~, or for the actions of any facility employee:

1465 (a) An intentional or negligent act seriously affecting
 1466 the health, safety, or welfare of a resident of the facility.

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1467 (b) The determination by the agency that the owner lacks
1468 the financial ability to provide continuing adequate care to
1469 residents.

1470 (c) Misappropriation or conversion of the property of a
1471 resident of the facility.

1472 (d) Failure to follow the criteria and procedures provided
1473 under part I of chapter 394 relating to the transportation,
1474 voluntary admission, and involuntary examination of a facility
1475 resident.

1476 (e) A citation of any of the following deficiencies as
1477 defined in s. 429.19 ~~s. 400.419~~:

- 1478 1. One or more cited class I deficiencies.
- 1479 2. Three or more cited class II deficiencies.
- 1480 3. Five or more cited class III deficiencies that have
1481 been cited on a single survey and have not been corrected within
1482 the times specified.

1483 (f) A determination that a person subject to level 2
1484 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
1485 meet the screening standards of s. 435.04 or that the facility
1486 is retaining an employee subject to level 1 background screening
1487 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
1488 the screening standards of s. 435.03 and for whom exemptions
1489 from disqualification have not been provided by the agency.

1490 (g) A determination that an employee, volunteer,
1491 administrator, or owner, or person who otherwise has access to
1492 the residents of a facility does not meet the criteria specified
1493 in s. 435.03(2), and the owner or administrator has not taken
1494 action to remove the person. Exemptions from disqualification

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1495 | may be granted as set forth in s. 435.07. No administrative
1496 | action may be taken against the facility if the person is
1497 | granted an exemption.

1498 | (h) Violation of a moratorium.

1499 | (i) Failure of the license applicant, the licensee during
1500 | relicensure, or a licensee that holds a provisional license to
1501 | meet the minimum license requirements of this part, or related
1502 | rules, at the time of license application or renewal.

1503 | (j) A fraudulent statement or omission of any material
1504 | fact on an application for a license or any other document
1505 | required by the agency, including the submission of a license
1506 | application that conceals the fact that any board member,
1507 | officer, or person owning 5 percent or more of the facility may
1508 | not meet the background screening requirements of s. 429.174 ~~s.~~
1509 | ~~400.4174~~, or that the applicant has been excluded, permanently
1510 | suspended, or terminated from the Medicaid or Medicare programs.

1511 | (k) An intentional or negligent life-threatening act in
1512 | violation of the uniform firesafety standards for assisted
1513 | living facilities or other firesafety standards that threatens
1514 | the health, safety, or welfare of a resident of a facility, as
1515 | communicated to the agency by the local authority having
1516 | jurisdiction or the State Fire Marshal.

1517 | (l) Exclusion, permanent suspension, or termination from
1518 | the Medicare or Medicaid programs.

1519 | (m) Knowingly operating any unlicensed facility or
1520 | providing without a license any service that must be licensed
1521 | under this chapter or chapter 400.

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1522 (n) Any act constituting a ground upon which application
1523 for a license may be denied.

1524
1525 Administrative proceedings challenging agency action under this
1526 subsection shall be reviewed on the basis of the facts and
1527 conditions that resulted in the agency action.

1528 (2) Upon notification by the local authority having
1529 jurisdiction or by the State Fire Marshal, the agency may deny
1530 or revoke the license of an assisted living facility that fails
1531 to correct cited fire code violations that affect or threaten
1532 the health, safety, or welfare of a resident of a facility.

1533 (3) The agency may deny a license to any applicant or to
1534 any officer or board member of an applicant who is a firm,
1535 corporation, partnership, or association or who owns 5 percent
1536 or more of the facility, if the applicant, officer, or board
1537 member has or had a 25-percent or greater financial or ownership
1538 interest in any other facility licensed under this part, or in
1539 any entity licensed by this state or another state to provide
1540 health or residential care, which facility or entity during the
1541 5 years prior to the application for a license closed due to
1542 financial inability to operate; had a receiver appointed or a
1543 license denied, suspended, or revoked; was subject to a
1544 moratorium on admissions; had an injunctive proceeding initiated
1545 against it; or has an outstanding fine assessed under this
1546 chapter or chapter 400.

1547 (4) The agency shall deny or revoke the license of an
1548 assisted living facility that has two or more class I violations
1549 that are similar or identical to violations identified by the

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1550 | agency during a survey, inspection, monitoring visit, or
1551 | complaint investigation occurring within the previous 2 years.

1552 | (5) An action taken by the agency to suspend, deny, or
1553 | revoke a facility's license under this part, in which the agency
1554 | claims that the facility owner or an employee of the facility
1555 | has threatened the health, safety, or welfare of a resident of
1556 | the facility be heard by the Division of Administrative Hearings
1557 | of the Department of Management Services within 120 days after
1558 | receipt of the facility's request for a hearing, unless that
1559 | time limitation is waived by both parties. The administrative
1560 | law judge must render a decision within 30 days after receipt of
1561 | a proposed recommended order.

1562 | (6) The agency shall provide to the Division of Hotels and
1563 | Restaurants of the Department of Business and Professional
1564 | Regulation, on a monthly basis, a list of those assisted living
1565 | facilities that have had their licenses denied, suspended, or
1566 | revoked or that are involved in an appellate proceeding pursuant
1567 | to s. 120.60 related to the denial, suspension, or revocation of
1568 | a license.

1569 | (7) Agency notification of a license suspension or
1570 | revocation, or denial of a license renewal, shall be posted and
1571 | visible to the public at the facility.

1572 | (8) The agency may issue a temporary license pending final
1573 | disposition of a proceeding involving the suspension or
1574 | revocation of an assisted living facility license.

1575 | Section 38. Section 400.415, Florida Statutes, is
1576 | renumbered as section 429.15, Florida Statutes, and amended to
1577 | read:

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1578 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
 1579 agency may impose an immediate moratorium on admissions to any
 1580 assisted living facility if the agency determines that any
 1581 condition in the facility presents a threat to the health,
 1582 safety, or welfare of the residents in the facility.

1583 (1) A facility the license of which is denied, revoked, or
 1584 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
 1585 immediate imposition of a moratorium on admissions to run
 1586 concurrently with licensure denial, revocation, or suspension.

1587 (2) When a moratorium is placed on a facility, notice of
 1588 the moratorium shall be posted and visible to the public at the
 1589 facility until the moratorium is lifted.

1590 (3) The department may by rule establish conditions that
 1591 constitute grounds for imposing a moratorium on a facility and
 1592 procedures for imposing and lifting a moratorium, as necessary
 1593 to administer this section.

1594 Section 39. Section 400.417, Florida Statutes, is
 1595 renumbered as section 429.17, Florida Statutes, and amended to
 1596 read:

1597 429.17 ~~400.417~~ Expiration of license; renewal; conditional
 1598 license.--

1599 (1) Biennial licenses, unless sooner suspended or revoked,
 1600 shall expire 2 years from the date of issuance. Limited nursing,
 1601 extended congregate care, and limited mental health licenses
 1602 shall expire at the same time as the facility's standard
 1603 license, regardless of when issued. The agency shall notify the
 1604 facility at least 120 days prior to expiration that a renewal
 1605 license is necessary to continue operation. The notification

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1606 | must be provided electronically or by mail delivery. Ninety days
 1607 | prior to the expiration date, an application for renewal shall
 1608 | be submitted to the agency. Fees must be prorated. The failure
 1609 | to file a timely renewal application shall result in a late fee
 1610 | charged to the facility in an amount equal to 50 percent of the
 1611 | current fee.

1612 | (2) A license shall be renewed within 90 days upon the
 1613 | timely filing of an application on forms furnished by the agency
 1614 | and the provision of satisfactory proof of ability to operate
 1615 | and conduct the facility in accordance with the requirements of
 1616 | this part and adopted rules, including proof that the facility
 1617 | has received a satisfactory firesafety inspection, conducted by
 1618 | the local authority having jurisdiction or the State Fire
 1619 | Marshal, within the preceding 12 months and an affidavit of
 1620 | compliance with the background screening requirements of s.
 1621 | 429.174 ~~s. 400.4174~~.

1622 | (3) An applicant for renewal of a license who has complied
 1623 | with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
 1624 | proof of financial ability to operate shall not be required to
 1625 | provide further proof unless the facility or any other facility
 1626 | owned or operated in whole or in part by the same person has
 1627 | demonstrated financial instability as provided under s.
 1628 | 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
 1629 | facility is not financially stable as a result of the annual
 1630 | survey or complaints from the public or a report from the State
 1631 | Long-Term Care Ombudsman Council. Each facility must report to
 1632 | the agency any adverse court action concerning the facility's
 1633 | financial viability, within 7 days after its occurrence. The

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1634 | agency shall have access to books, records, and any other
 1635 | financial documents maintained by the facility to the extent
 1636 | necessary to determine the facility's financial stability. A
 1637 | license for the operation of a facility shall not be renewed if
 1638 | the licensee has any outstanding fines assessed pursuant to this
 1639 | part which are in final order status.

1640 | (4) A licensee against whom a revocation or suspension
 1641 | proceeding is pending at the time of license renewal may be
 1642 | issued a conditional license effective until final disposition
 1643 | by the agency. If judicial relief is sought from the final
 1644 | disposition, the court having jurisdiction may issue a
 1645 | conditional license for the duration of the judicial proceeding.

1646 | (5) A conditional license may be issued to an applicant
 1647 | for license renewal if the applicant fails to meet all standards
 1648 | and requirements for licensure. A conditional license issued
 1649 | under this subsection shall be limited in duration to a specific
 1650 | period of time not to exceed 6 months, as determined by the
 1651 | agency, and shall be accompanied by an agency-approved plan of
 1652 | correction.

1653 | (6) When an extended care or limited nursing license is
 1654 | requested during a facility's biennial license period, the fee
 1655 | shall be prorated in order to permit the additional license to
 1656 | expire at the end of the biennial license period. The fee shall
 1657 | be calculated as of the date the additional license application
 1658 | is received by the agency.

1659 | (7) The department may by rule establish renewal
 1660 | procedures, identify forms, and specify documentation necessary
 1661 | to administer this section.

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1662 Section 40. Section 400.4174, Florida Statutes, is
 1663 renumbered as section 429.174, Florida Statutes, and amended to
 1664 read:

1665 429.174 ~~400.4174~~ Background screening; exemptions.--

1666 (1) (a) Level 2 background screening must be conducted on
 1667 each of the following persons, who shall be considered employees
 1668 for the purposes of conducting screening under chapter 435:

1669 1. The facility owner if an individual, the administrator,
 1670 and the financial officer.

1671 2. An officer or board member if the facility owner is a
 1672 firm, corporation, partnership, or association, or any person
 1673 owning 5 percent or more of the facility if the agency has
 1674 probable cause to believe that such person has been convicted of
 1675 any offense prohibited by s. 435.04. For each officer, board
 1676 member, or person owning 5 percent or more who has been
 1677 convicted of any such offense, the facility shall submit to the
 1678 agency a description and explanation of the conviction at the
 1679 time of license application. This subparagraph does not apply to
 1680 a board member of a not-for-profit corporation or organization
 1681 if the board member serves solely in a voluntary capacity, does
 1682 not regularly take part in the day-to-day operational decisions
 1683 of the corporation or organization, receives no remuneration for
 1684 his or her services, and has no financial interest and has no
 1685 family members with a financial interest in the corporation or
 1686 organization, provided that the board member and facility submit
 1687 a statement affirming that the board member's relationship to
 1688 the facility satisfies the requirements of this subparagraph.

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1689 (b) Proof of compliance with level 2 screening standards
 1690 which has been submitted within the previous 5 years to meet any
 1691 facility or professional licensure requirements of the agency or
 1692 the Department of Health satisfies the requirements of this
 1693 subsection, provided that such proof is accompanied, under
 1694 penalty of perjury, by an affidavit of compliance with the
 1695 provisions of chapter 435. Proof of compliance with the
 1696 background screening requirements of the Financial Services
 1697 Commission and the Office of Insurance Regulation for applicants
 1698 for a certificate of authority to operate a continuing care
 1699 retirement community under chapter 651, submitted within the
 1700 last 5 years, satisfies the Department of Law Enforcement and
 1701 Federal Bureau of Investigation portions of a level 2 background
 1702 check.

1703 (c) The agency may grant a provisional license to a
 1704 facility applying for an initial license when each individual
 1705 required by this subsection to undergo screening has completed
 1706 the Department of Law Enforcement background checks, but has not
 1707 yet received results from the Federal Bureau of Investigation,
 1708 or when a request for an exemption from disqualification has
 1709 been submitted to the agency pursuant to s. 435.07, but a
 1710 response has not been issued.

1711 (2) The owner or administrator of an assisted living
 1712 facility must conduct level 1 background screening, as set forth
 1713 in chapter 435, on all employees hired on or after October 1,
 1714 1998, who perform personal services as defined in s. 429.02(17)
 1715 ~~s. 400.402(17)~~. The agency may exempt an individual from

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1716 employment disqualification as set forth in chapter 435. Such
1717 persons shall be considered as having met this requirement if:

1718 (a) Proof of compliance with level 1 screening
1719 requirements obtained to meet any professional license
1720 requirements in this state is provided and accompanied, under
1721 penalty of perjury, by a copy of the person's current
1722 professional license and an affidavit of current compliance with
1723 the background screening requirements.

1724 (b) The person required to be screened has been
1725 continuously employed in the same type of occupation for which
1726 the person is seeking employment without a breach in service
1727 which exceeds 180 days, and proof of compliance with the level 1
1728 screening requirement which is no more than 2 years old is
1729 provided. Proof of compliance shall be provided directly from
1730 one employer or contractor to another, and not from the person
1731 screened. Upon request, a copy of screening results shall be
1732 provided by the employer retaining documentation of the
1733 screening to the person screened.

1734 (c) The person required to be screened is employed by a
1735 corporation or business entity or related corporation or
1736 business entity that owns, operates, or manages more than one
1737 facility or agency licensed under this chapter, and for whom a
1738 level 1 screening was conducted by the corporation or business
1739 entity as a condition of initial or continued employment.

1740 Section 41. Section 400.4176, Florida Statutes, is
1741 renumbered as section 429.176, Florida Statutes, and amended to
1742 read:

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1743 429.176 ~~400.4176~~ Notice of change of administrator.--If,
 1744 during the period for which a license is issued, the owner
 1745 changes administrators, the owner must notify the agency of the
 1746 change within 10 days and provide documentation within 90 days
 1747 that the new administrator has completed the applicable core
 1748 educational requirements under s. 429.52 ~~s. 400.452~~. Background
 1749 screening shall be completed on any new administrator as
 1750 specified in s. 429.174 ~~s. 400.4174~~.

1751 Section 42. Section 400.4178, Florida Statutes, is
 1752 renumbered as section 429.178, Florida Statutes, and amended to
 1753 read:

1754 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
 1755 disease or other related disorders.--

1756 (1) A facility which advertises that it provides special
 1757 care for persons with Alzheimer's disease or other related
 1758 disorders must meet the following standards of operation:

1759 (a)1. If the facility has 17 or more residents, have an
 1760 awake staff member on duty at all hours of the day and night; or

1761 2. If the facility has fewer than 17 residents, have an
 1762 awake staff member on duty at all hours of the day and night or
 1763 have mechanisms in place to monitor and ensure the safety of the
 1764 facility's residents.

1765 (b) Offer activities specifically designed for persons who
 1766 are cognitively impaired.

1767 (c) Have a physical environment that provides for the
 1768 safety and welfare of the facility's residents.

1769 (d) Employ staff who have completed the training and
 1770 continuing education required in subsection (2).

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1771 (2) (a) An individual who is employed by a facility that
1772 provides special care for residents with Alzheimer's disease or
1773 other related disorders, and who has regular contact with such
1774 residents, must complete up to 4 hours of initial dementia-
1775 specific training developed or approved by the department. The
1776 training shall be completed within 3 months after beginning
1777 employment and shall satisfy the core training requirements of
1778 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1779 (b) A direct caregiver who is employed by a facility that
1780 provides special care for residents with Alzheimer's disease or
1781 other related disorders, and who provides direct care to such
1782 residents, must complete the required initial training and 4
1783 additional hours of training developed or approved by the
1784 department. The training shall be completed within 9 months
1785 after beginning employment and shall satisfy the core training
1786 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

1787 (c) An individual who is employed by a facility that
1788 provides special care for residents with Alzheimer's disease or
1789 other related disorders, but who only has incidental contact
1790 with such residents, must be given, at a minimum, general
1791 information on interacting with individuals with Alzheimer's
1792 disease or other related disorders, within 3 months after
1793 beginning employment.

1794 (3) In addition to the training required under subsection
1795 (2), a direct caregiver must participate in a minimum of 4
1796 contact hours of continuing education each calendar year. The
1797 continuing education must include one or more topics included in
1798 the dementia-specific training developed or approved by the

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1799 | department, in which the caregiver has not received previous
1800 | training.

1801 | (4) Upon completing any training listed in subsection (2),
1802 | the employee or direct caregiver shall be issued a certificate
1803 | that includes the name of the training provider, the topic
1804 | covered, and the date and signature of the training provider.
1805 | The certificate is evidence of completion of training in the
1806 | identified topic, and the employee or direct caregiver is not
1807 | required to repeat training in that topic if the employee or
1808 | direct caregiver changes employment to a different facility. The
1809 | employee or direct caregiver must comply with other applicable
1810 | continuing education requirements.

1811 | (5) The department, or its designee, shall approve the
1812 | initial and continuing education courses and providers.

1813 | (6) The department shall keep a current list of providers
1814 | who are approved to provide initial and continuing education for
1815 | staff of facilities that provide special care for persons with
1816 | Alzheimer's disease or other related disorders.

1817 | (7) Any facility more than 90 percent of whose residents
1818 | receive monthly optional supplementation payments is not
1819 | required to pay for the training and education programs required
1820 | under this section. A facility that has one or more such
1821 | residents shall pay a reduced fee that is proportional to the
1822 | percentage of such residents in the facility. A facility that
1823 | does not have any residents who receive monthly optional
1824 | supplementation payments must pay a reasonable fee, as
1825 | established by the department, for such training and education
1826 | programs.

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1827 (8) The department shall adopt rules to establish
1828 standards for trainers and training and to implement this
1829 section.

1830 Section 43. Section 400.418, Florida Statutes, is
1831 renumbered as section 429.18, Florida Statutes, and amended to
1832 read:

1833 429.18 ~~400.418~~ Disposition of fees and administrative
1834 fines.--

1835 (1) Income from license fees, inspection fees, late fees,
1836 and administrative fines generated pursuant to ss. 429.07,
1837 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
1838 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
1839 Care Trust Fund administered by the agency. Such funds shall be
1840 directed to and used by the agency for the following purposes:

1841 (a) Up to 50 percent of the trust funds accrued each
1842 fiscal year under this part may be used to offset the expenses
1843 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
1844 determines that the income and assets of the facility are
1845 insufficient to provide for adequate management and operation.

1846 (b) An amount of \$5,000 of the trust funds accrued each
1847 year under this part shall be allocated to pay for inspection-
1848 related physical and mental health examinations requested by the
1849 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
1850 either recipients of supplemental security income or have
1851 monthly incomes not in excess of the maximum combined federal
1852 and state cash subsidies available to supplemental security
1853 income recipients, as provided for in s. 409.212. Such funds

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1854 shall only be used where the resident is ineligible for
1855 Medicaid.

1856 (c) Any trust funds accrued each year under this part and
1857 not used for the purposes specified in paragraphs (a) and (b)
1858 shall be used to offset the costs of the licensure program,
1859 including the costs of conducting background investigations,
1860 verifying information submitted, defraying the costs of
1861 processing the names of applicants, and conducting inspections
1862 and monitoring visits pursuant to this part.

1863 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
1864 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
1865 used to offset the costs of printing and postage.

1866 Section 44. Section 400.419, Florida Statutes, is
1867 renumbered as section 429.19, Florida Statutes, and amended to
1868 read:

1869 429.19 ~~400.419~~ Violations; imposition of administrative
1870 fines; grounds.--

1871 (1) The agency shall impose an administrative fine in the
1872 manner provided in chapter 120 for any of the actions or
1873 violations as set forth within this section by an assisted
1874 living facility, for the actions of any person subject to level
1875 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
1876 actions of any facility employee, or for an intentional or
1877 negligent act seriously affecting the health, safety, or welfare
1878 of a resident of the facility.

1879 (2) Each violation of this part and adopted rules shall be
1880 classified according to the nature of the violation and the
1881 gravity of its probable effect on facility residents. The agency

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1882 shall indicate the classification on the written notice of the
1883 violation as follows:

1884 (a) Class "I" violations are those conditions or
1885 occurrences related to the operation and maintenance of a
1886 facility or to the personal care of residents which the agency
1887 determines present an imminent danger to the residents or guests
1888 of the facility or a substantial probability that death or
1889 serious physical or emotional harm would result therefrom. The
1890 condition or practice constituting a class I violation shall be
1891 abated or eliminated within 24 hours, unless a fixed period, as
1892 determined by the agency, is required for correction. The agency
1893 shall impose an administrative fine for a cited class I
1894 violation in an amount not less than \$5,000 and not exceeding
1895 \$10,000 for each violation. A fine may be levied notwithstanding
1896 the correction of the violation.

1897 (b) Class "II" violations are those conditions or
1898 occurrences related to the operation and maintenance of a
1899 facility or to the personal care of residents which the agency
1900 determines directly threaten the physical or emotional health,
1901 safety, or security of the facility residents, other than class
1902 I violations. The agency shall impose an administrative fine for
1903 a cited class II violation in an amount not less than \$1,000 and
1904 not exceeding \$5,000 for each violation. A fine shall be levied
1905 notwithstanding the correction of the violation.

1906 (c) Class "III" violations are those conditions or
1907 occurrences related to the operation and maintenance of a
1908 facility or to the personal care of residents which the agency
1909 determines indirectly or potentially threaten the physical or

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1910 | emotional health, safety, or security of facility residents,
 1911 | other than class I or class II violations. The agency shall
 1912 | impose an administrative fine for a cited class III violation in
 1913 | an amount not less than \$500 and not exceeding \$1,000 for each
 1914 | violation. A citation for a class III violation must specify the
 1915 | time within which the violation is required to be corrected. If
 1916 | a class III violation is corrected within the time specified, no
 1917 | fine may be imposed, unless it is a repeated offense.

1918 | (d) Class "IV" violations are those conditions or
 1919 | occurrences related to the operation and maintenance of a
 1920 | building or to required reports, forms, or documents that do not
 1921 | have the potential of negatively affecting residents. These
 1922 | violations are of a type that the agency determines do not
 1923 | threaten the health, safety, or security of residents of the
 1924 | facility. The agency shall impose an administrative fine for a
 1925 | cited class IV violation in an amount not less than \$100 and not
 1926 | exceeding \$200 for each violation. A citation for a class IV
 1927 | violation must specify the time within which the violation is
 1928 | required to be corrected. If a class IV violation is corrected
 1929 | within the time specified, no fine shall be imposed. Any class
 1930 | IV violation that is corrected during the time an agency survey
 1931 | is being conducted will be identified as an agency finding and
 1932 | not as a violation.

1933 | (3) In determining if a penalty is to be imposed and in
 1934 | fixing the amount of the fine, the agency shall consider the
 1935 | following factors:

1936 | (a) The gravity of the violation, including the
 1937 | probability that death or serious physical or emotional harm to

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1938 | a resident will result or has resulted, the severity of the
 1939 | action or potential harm, and the extent to which the provisions
 1940 | of the applicable laws or rules were violated.

1941 | (b) Actions taken by the owner or administrator to correct
 1942 | violations.

1943 | (c) Any previous violations.

1944 | (d) The financial benefit to the facility of committing or
 1945 | continuing the violation.

1946 | (e) The licensed capacity of the facility.

1947 | (4) Each day of continuing violation after the date fixed
 1948 | for termination of the violation, as ordered by the agency,
 1949 | constitutes an additional, separate, and distinct violation.

1950 | (5) Any action taken to correct a violation shall be
 1951 | documented in writing by the owner or administrator of the
 1952 | facility and verified through followup visits by agency
 1953 | personnel. The agency may impose a fine and, in the case of an
 1954 | owner-operated facility, revoke or deny a facility's license
 1955 | when a facility administrator fraudulently misrepresents action
 1956 | taken to correct a violation.

1957 | (6) For fines that are upheld following administrative or
 1958 | judicial review, the violator shall pay the fine, plus interest
 1959 | at the rate as specified in s. 55.03, for each day beyond the
 1960 | date set by the agency for payment of the fine.

1961 | (7) Any unlicensed facility that continues to operate
 1962 | after agency notification is subject to a \$1,000 fine per day.

1963 | (8) Any licensed facility whose owner or administrator
 1964 | concurrently operates an unlicensed facility shall be subject to
 1965 | an administrative fine of \$5,000 per day.

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1966 (9) Any facility whose owner fails to apply for a change-
 1967 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
 1968 operates the facility under the new ownership is subject to a
 1969 fine of \$5,000.

1970 (10) In addition to any administrative fines imposed, the
 1971 agency may assess a survey fee, equal to the lesser of one half
 1972 of the facility's biennial license and bed fee or \$500, to cover
 1973 the cost of conducting initial complaint investigations that
 1974 result in the finding of a violation that was the subject of the
 1975 complaint or monitoring visits conducted under s. 429.28(3)(c)
 1976 ~~s. 400.428(3)(c)~~ to verify the correction of the violations.

1977 (11) The agency, as an alternative to or in conjunction
 1978 with an administrative action against a facility for violations
 1979 of this part and adopted rules, shall make a reasonable attempt
 1980 to discuss each violation and recommended corrective action with
 1981 the owner or administrator of the facility, prior to written
 1982 notification. The agency, instead of fixing a period within
 1983 which the facility shall enter into compliance with standards,
 1984 may request a plan of corrective action from the facility which
 1985 demonstrates a good faith effort to remedy each violation by a
 1986 specific date, subject to the approval of the agency.

1987 (12) Administrative fines paid by any facility under this
 1988 section shall be deposited into the Health Care Trust Fund and
 1989 expended as provided in s. 429.18 ~~s. 400.418~~.

1990 (13) The agency shall develop and disseminate an annual
 1991 list of all facilities sanctioned or fined \$5,000 or more for
 1992 violations of state standards, the number and class of
 1993 violations involved, the penalties imposed, and the current

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1994 status of cases. The list shall be disseminated, at no charge,
 1995 to the Department of Elderly Affairs, the Department of Health,
 1996 the Department of Children and Family Services, the area
 1997 agencies on aging, the Florida Statewide Advocacy Council, and
 1998 the state and local ombudsman councils. The Department of
 1999 Children and Family Services shall disseminate the list to
 2000 service providers under contract to the department who are
 2001 responsible for referring persons to a facility for residency.
 2002 The agency may charge a fee commensurate with the cost of
 2003 printing and postage to other interested parties requesting a
 2004 copy of this list.

2005 Section 45. Section 400.42, Florida Statutes, is
 2006 renumbered as section 429.20, Florida Statutes, and amended to
 2007 read:

2008 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
 2009 supplementation.--

2010 (1) A person may not, in connection with the solicitation
 2011 of contributions by or on behalf of an assisted living facility
 2012 or facilities, misrepresent or mislead any person, by any
 2013 manner, means, practice, or device whatsoever, to believe that
 2014 the receipts of such solicitation will be used for charitable
 2015 purposes, if that is not the fact.

2016 (2) Solicitation of contributions of any kind in a
 2017 threatening, coercive, or unduly forceful manner by or on behalf
 2018 of an assisted living facility or facilities by any agent,
 2019 employee, owner, or representative of any assisted living
 2020 facility or facilities is grounds for denial, suspension, or
 2021 revocation of the license of the assisted living facility or

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2022 facilities by or on behalf of which such contributions were
2023 solicited.

2024 (3) The admission or maintenance of assisted living
2025 facility residents whose care is supported, in whole or in part,
2026 by state funds may not be conditioned upon the receipt of any
2027 manner of contribution or donation from any person. The
2028 solicitation or receipt of contributions in violation of this
2029 subsection is grounds for denial, suspension, or revocation of
2030 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
2031 living facility by or on behalf of which such contributions were
2032 solicited.

2033 (4) An assisted living facility may accept additional
2034 supplementation from third parties on behalf of residents
2035 receiving optional state supplementation in accordance with s.
2036 409.212.

2037 Section 46. Section 400.422, Florida Statutes, is
2038 renumbered as section 429.22, Florida Statutes, and amended to
2039 read:

2040 429.22 ~~400.422~~ Receivership proceedings.--

2041 (1) As an alternative to or in conjunction with an
2042 injunctive proceeding, the agency may petition a court of
2043 competent jurisdiction for the appointment of a receiver, if
2044 suitable alternate placements are not available, when any of the
2045 following conditions exist:

2046 (a) The facility is operating without a license and
2047 refuses to make application for a license as required by ss.
2048 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

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2049 (b) The facility is closing or has informed the agency
 2050 that it intends to close and adequate arrangements have not been
 2051 made for relocation of the residents within 7 days, exclusive of
 2052 weekends and holidays, of the closing of the facility.

2053 (c) The agency determines there exist in the facility
 2054 conditions which present an imminent danger to the health,
 2055 safety, or welfare of the residents of the facility or a
 2056 substantial probability that death or serious physical harm
 2057 would result therefrom.

2058 (d) The facility cannot meet its financial obligation for
 2059 providing food, shelter, care, and utilities.

2060 (2) Petitions for receivership shall take precedence over
 2061 other court business unless the court determines that some other
 2062 pending proceeding, having similar statutory precedence, shall
 2063 have priority. A hearing shall be conducted within 5 days of the
 2064 filing of the petition, at which time all interested parties
 2065 shall have the opportunity to present evidence pertaining to the
 2066 petition. The agency shall notify, by certified mail, the owner
 2067 or administrator of the facility named in the petition and the
 2068 facility resident or, if applicable, the resident's
 2069 representative or designee, or the resident's surrogate,
 2070 guardian, or attorney in fact, of its filing, the substance of
 2071 the violation, and the date and place set for the hearing. The
 2072 court shall grant the petition only upon finding that the
 2073 health, safety, or welfare of facility residents would be
 2074 threatened if a condition existing at the time the petition was
 2075 filed is permitted to continue. A receiver shall not be
 2076 appointed ex parte unless the court determines that one or more

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2077 of the conditions in subsection (1) exist; that the facility
2078 owner or administrator cannot be found; that all reasonable
2079 means of locating the owner or administrator and notifying him
2080 or her of the petition and hearing have been exhausted; or that
2081 the owner or administrator after notification of the hearing
2082 chooses not to attend. After such findings, the court may
2083 appoint any qualified person as a receiver, except it may not
2084 appoint any owner or affiliate of the facility which is in
2085 receivership. The receiver may be selected from a list of
2086 persons qualified to act as receivers developed by the agency
2087 and presented to the court with each petition for receivership.
2088 Under no circumstances may the agency or designated agency
2089 employee be appointed as a receiver for more than 60 days;
2090 however, the receiver may petition the court, one time only, for
2091 a 30-day extension. The court shall grant the extension upon a
2092 showing of good cause.

2093 (3) The receiver must make provisions for the continued
2094 health, safety, and welfare of all residents of the facility
2095 and:

2096 (a) Shall exercise those powers and perform those duties
2097 set out by the court.

2098 (b) Shall operate the facility in such a manner as to
2099 assure safety and adequate health care for the residents.

2100 (c) Shall take such action as is reasonably necessary to
2101 protect or conserve the assets or property of the facility for
2102 which the receiver is appointed, or the proceeds from any
2103 transfer thereof, and may use them only in the performance of

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2104 | the powers and duties set forth in this section and by order of
2105 | the court.

2106 | (d) May use the building, fixtures, furnishings, and any
2107 | accompanying consumable goods in the provision of care and
2108 | services to residents and to any other persons receiving
2109 | services from the facility at the time the petition for
2110 | receivership was filed. The receiver shall collect payments for
2111 | all goods and services provided to residents or others during
2112 | the period of the receivership at the same rate of payment
2113 | charged by the owners at the time the petition for receivership
2114 | was filed, or at a fair and reasonable rate otherwise approved
2115 | by the court.

2116 | (e) May correct or eliminate any deficiency in the
2117 | structure or furnishings of the facility which endangers the
2118 | safety or health of residents while they remain in the facility,
2119 | if the total cost of correction does not exceed \$10,000. The
2120 | court may order expenditures for this purpose in excess of
2121 | \$10,000 on application from the receiver after notice to the
2122 | owner and a hearing.

2123 | (f) May let contracts and hire agents and employees to
2124 | carry out the powers and duties of the receiver.

2125 | (g) Shall honor all leases, mortgages, and secured
2126 | transactions governing the building in which the facility is
2127 | located and all goods and fixtures in the building of which the
2128 | receiver has taken possession, but only to the extent of
2129 | payments which, in the case of a rental agreement, are for the
2130 | use of the property during the period of the receivership, or

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2131 | which, in the case of a purchase agreement, become due during
2132 | the period of the receivership.

2133 | (h) Shall have full power to direct and manage and to
2134 | discharge employees of the facility, subject to any contract
2135 | rights they may have. The receiver shall pay employees at the
2136 | rate of compensation, including benefits, approved by the court.
2137 | A receivership does not relieve the owner of any obligation to
2138 | employees made prior to the appointment of a receiver and not
2139 | carried out by the receiver.

2140 | (i) Shall be entitled to and take possession of all
2141 | property or assets of residents which are in the possession of a
2142 | facility or its owner. The receiver shall preserve all property,
2143 | assets, and records of residents of which the receiver takes
2144 | possession and shall provide for the prompt transfer of the
2145 | property, assets, and records to the new placement of any
2146 | transferred resident. An inventory list certified by the owner
2147 | and receiver shall be made immediately at the time the receiver
2148 | takes possession of the facility.

2149 | (4) (a) A person who is served with notice of an order of
2150 | the court appointing a receiver and of the receiver's name and
2151 | address shall be liable to pay the receiver for any goods or
2152 | services provided by the receiver after the date of the order if
2153 | the person would have been liable for the goods or services as
2154 | supplied by the owner. The receiver shall give a receipt for
2155 | each payment and shall keep a copy of each receipt on file. The
2156 | receiver shall deposit accounts received in a separate account
2157 | and shall use this account for all disbursements.

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2158 (b) The receiver may bring an action to enforce the
2159 liability created by paragraph (a).

2160 (c) A payment to the receiver of any sum owing to the
2161 facility or its owner shall discharge any obligation to the
2162 facility to the extent of the payment.

2163 (5)(a) A receiver may petition the court that he or she
2164 not be required to honor any lease, mortgage, secured
2165 transaction, or other wholly or partially executory contract
2166 entered into by the owner of the facility if the rent, price, or
2167 rate of interest required to be paid under the agreement was
2168 substantially in excess of a reasonable rent, price, or rate of
2169 interest at the time the contract was entered into, or if any
2170 material provision of the agreement was unreasonable, when
2171 compared to contracts negotiated under similar conditions. Any
2172 relief in this form provided by the court shall be limited to
2173 the life of the receivership, unless otherwise determined by the
2174 court.

2175 (b) If the receiver is in possession of real estate or
2176 goods subject to a lease, mortgage, or security interest which
2177 the receiver has obtained a court order to avoid under paragraph
2178 (a), and if the real estate or goods are necessary for the
2179 continued operation of the facility under this section, the
2180 receiver may apply to the court to set a reasonable rental,
2181 price, or rate of interest to be paid by the receiver during the
2182 duration of the receivership. The court shall hold a hearing on
2183 the application within 15 days. The receiver shall send notice
2184 of the application to any known persons who own the property
2185 involved at least 10 days prior to the hearing. Payment by the

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2186 receiver of the amount determined by the court to be reasonable
 2187 is a defense to any action against the receiver for payment or
 2188 for possession of the goods or real estate subject to the lease,
 2189 security interest, or mortgage involved by any person who
 2190 received such notice, but the payment does not relieve the owner
 2191 of the facility of any liability for the difference between the
 2192 amount paid by the receiver and the amount due under the
 2193 original lease, security interest, or mortgage involved.

2194 (6) The court shall set the compensation of the receiver,
 2195 which will be considered a necessary expense of a receivership.

2196 (7) A receiver may be held liable in a personal capacity
 2197 only for the receiver's own gross negligence, intentional acts,
 2198 or breach of fiduciary duty.

2199 (8) The court may require a receiver to post a bond.

2200 (9) The court may direct the agency to allocate funds from
 2201 the Health Care Trust Fund to the receiver, subject to the
 2202 provisions of s. 429.18(1) ~~s. 400.418(1)~~.

2203 (10) The court may terminate a receivership when:

2204 (a) The court determines that the receivership is no
 2205 longer necessary because the conditions which gave rise to the
 2206 receivership no longer exist or the agency grants the facility a
 2207 new license; or

2208 (b) All of the residents in the facility have been
 2209 transferred or discharged.

2210 (11) Within 30 days after termination, the receiver shall
 2211 give the court a complete accounting of all property of which
 2212 the receiver has taken possession, of all funds collected, and
 2213 of the expenses of the receivership.

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2214 (12) Nothing in this section shall be deemed to relieve
 2215 any owner, administrator, or employee of a facility placed in
 2216 receivership of any civil or criminal liability incurred, or any
 2217 duty imposed by law, by reason of acts or omissions of the
 2218 owner, administrator, or employee prior to the appointment of a
 2219 receiver; nor shall anything contained in this section be
 2220 construed to suspend during the receivership any obligation of
 2221 the owner, administrator, or employee for payment of taxes or
 2222 other operating and maintenance expenses of the facility or of
 2223 the owner, administrator, employee, or any other person for the
 2224 payment of mortgages or liens. The owner shall retain the right
 2225 to sell or mortgage any facility under receivership, subject to
 2226 approval of the court which ordered the receivership.

2227 Section 47. Section 400.424, Florida Statutes, is
 2228 renumbered as section 429.24, Florida Statutes, and amended to
 2229 read:

2230 429.24 ~~400.424~~ Contracts.--

2231 (1) The presence of each resident in a facility shall be
 2232 covered by a contract, executed at the time of admission or
 2233 prior thereto, between the licensee and the resident or his or
 2234 her designee or legal representative. Each party to the contract
 2235 shall be provided with a duplicate original thereof, and the
 2236 licensee shall keep on file in the facility all such contracts.
 2237 The licensee may not destroy or otherwise dispose of any such
 2238 contract until 5 years after its expiration.

2239 (2) Each contract must contain express provisions
 2240 specifically setting forth the services and accommodations to be
 2241 provided by the facility; the rates or charges; provision for at

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2242 | least 30 days' written notice of a rate increase; the rights,
 2243 | duties, and obligations of the residents, other than those
 2244 | specified in s. 429.28 ~~s. 400.428~~; and other matters that the
 2245 | parties deem appropriate. Whenever money is deposited or
 2246 | advanced by a resident in a contract as security for performance
 2247 | of the contract agreement or as advance rent for other than the
 2248 | next immediate rental period:

2249 | (a) Such funds shall be deposited in a banking institution
 2250 | in this state that is located, if possible, in the same
 2251 | community in which the facility is located; shall be kept
 2252 | separate from the funds and property of the facility; may not be
 2253 | represented as part of the assets of the facility on financial
 2254 | statements; and shall be used, or otherwise expended, only for
 2255 | the account of the resident.

2256 | (b) The licensee shall, within 30 days of receipt of
 2257 | advance rent or a security deposit, notify the resident or
 2258 | residents in writing of the manner in which the licensee is
 2259 | holding the advance rent or security deposit and state the name
 2260 | and address of the depository where the moneys are being held.
 2261 | The licensee shall notify residents of the facility's policy on
 2262 | advance deposits.

2263 | (3) (a) The contract shall include a refund policy to be
 2264 | implemented at the time of a resident's transfer, discharge, or
 2265 | death. The refund policy shall provide that the resident or
 2266 | responsible party is entitled to a prorated refund based on the
 2267 | daily rate for any unused portion of payment beyond the
 2268 | termination date after all charges, including the cost of
 2269 | damages to the residential unit resulting from circumstances

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2270 other than normal use, have been paid to the licensee. For the
 2271 purpose of this paragraph, the termination date shall be the
 2272 date the unit is vacated by the resident and cleared of all
 2273 personal belongings. If the amount of belongings does not
 2274 preclude renting the unit, the facility may clear the unit and
 2275 charge the resident or his or her estate for moving and storing
 2276 the items at a rate equal to the actual cost to the facility,
 2277 not to exceed 20 percent of the regular rate for the unit,
 2278 provided that 14 days' advance written notification is given. If
 2279 the resident's possessions are not claimed within 45 days after
 2280 notification, the facility may dispose of them. The contract
 2281 shall also specify any other conditions under which claims will
 2282 be made against the refund due the resident. Except in the case
 2283 of death or a discharge due to medical reasons, the refunds
 2284 shall be computed in accordance with the notice of relocation
 2285 requirements specified in the contract. However, a resident may
 2286 not be required to provide the licensee with more than 30 days'
 2287 notice of termination. If after a contract is terminated, the
 2288 facility intends to make a claim against a refund due the
 2289 resident, the facility shall notify the resident or responsible
 2290 party in writing of the claim and shall provide said party with
 2291 a reasonable time period of no less than 14 calendar days to
 2292 respond. The facility shall provide a refund to the resident or
 2293 responsible party within 45 days after the transfer, discharge,
 2294 or death of the resident. The agency shall impose a fine upon a
 2295 facility that fails to comply with the refund provisions of the
 2296 paragraph, which fine shall be equal to three times the amount
 2297 due to the resident. One-half of the fine shall be remitted to

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2298 | the resident or his or her estate, and the other half to the
 2299 | Health Care Trust Fund to be used for the purpose specified in
 2300 | s. 429.18 ~~s. 400.418~~.

2301 | (b) If a licensee agrees to reserve a bed for a resident
 2302 | who is admitted to a medical facility, including, but not
 2303 | limited to, a nursing home, health care facility, or psychiatric
 2304 | facility, the resident or his or her responsible party shall
 2305 | notify the licensee of any change in status that would prevent
 2306 | the resident from returning to the facility. Until such notice
 2307 | is received, the agreed-upon daily rate may be charged by the
 2308 | licensee.

2309 | (c) The purpose of any advance payment and a refund policy
 2310 | for such payment, including any advance payment for housing,
 2311 | meals, or personal services, shall be covered in the contract.

2312 | (4) The contract shall state whether or not the facility
 2313 | is affiliated with any religious organization and, if so, which
 2314 | organization and its general responsibility to the facility.

2315 | (5) Neither the contract nor any provision thereof
 2316 | relieves any licensee of any requirement or obligation imposed
 2317 | upon it by this part or rules adopted under this part.

2318 | (6) In lieu of the provisions of this section, facilities
 2319 | certified under chapter 651 shall comply with the requirements
 2320 | of s. 651.055.

2321 | (7) Notwithstanding the provisions of this section,
 2322 | facilities which consist of 60 or more apartments may require
 2323 | refund policies and termination notices in accordance with the
 2324 | provisions of part II of chapter 83, provided that the lease is
 2325 | terminated automatically without financial penalty in the event

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2326 | of a resident's death or relocation due to psychiatric
 2327 | hospitalization or to medical reasons which necessitate services
 2328 | or care beyond which the facility is licensed to provide. The
 2329 | date of termination in such instances shall be the date the unit
 2330 | is fully vacated. A lease may be substituted for the contract if
 2331 | it meets the disclosure requirements of this section. For the
 2332 | purpose of this section, the term "apartment" means a room or
 2333 | set of rooms with a kitchen or kitchenette and lavatory located
 2334 | within one or more buildings containing other similar or like
 2335 | residential units.

2336 | (8) The department may by rule clarify terms, establish
 2337 | procedures, clarify refund policies and contract provisions, and
 2338 | specify documentation as necessary to administer this section.

2339 | Section 48. Section 400.4255, Florida Statutes, is
 2340 | renumbered as section 429.255, Florida Statutes, and amended to
 2341 | read:

2342 | 429.255 ~~400.4255~~ Use of personnel; emergency care.--

2343 | (1) (a) Persons under contract to the facility, facility
 2344 | staff, or volunteers, who are licensed according to part I of
 2345 | chapter 464, or those persons exempt under s. 464.022(1), and
 2346 | others as defined by rule, may administer medications to
 2347 | residents, take residents' vital signs, manage individual weekly
 2348 | pill organizers for residents who self-administer medication,
 2349 | give prepackaged enemas ordered by a physician, observe
 2350 | residents, document observations on the appropriate resident's
 2351 | record, report observations to the resident's physician, and
 2352 | contract or allow residents or a resident's representative,
 2353 | designee, surrogate, guardian, or attorney in fact to contract

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2354 with a third party, provided residents meet the criteria for
2355 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.
2356 Nursing assistants certified pursuant to part II of chapter 464
2357 may take residents' vital signs as directed by a licensed nurse
2358 or physician.

2359 (b) All staff in facilities licensed under this part shall
2360 exercise their professional responsibility to observe residents,
2361 to document observations on the appropriate resident's record,
2362 and to report the observations to the resident's physician.
2363 However, the owner or administrator of the facility shall be
2364 responsible for determining that the resident receiving services
2365 is appropriate for residence in the facility.

2366 (c) In an emergency situation, licensed personnel may
2367 carry out their professional duties pursuant to part I of
2368 chapter 464 until emergency medical personnel assume
2369 responsibility for care.

2370 (2) In facilities licensed to provide extended congregate
2371 care, persons under contract to the facility, facility staff, or
2372 volunteers, who are licensed according to part I of chapter 464,
2373 or those persons exempt under s. 464.022(1), or those persons
2374 certified as nursing assistants pursuant to part II of chapter
2375 464, may also perform all duties within the scope of their
2376 license or certification, as approved by the facility
2377 administrator and pursuant to this part.

2378 (3) Facility staff may withhold or withdraw
2379 cardiopulmonary resuscitation if presented with an order not to
2380 resuscitate executed pursuant to s. 401.45. The department shall
2381 adopt rules providing for the implementation of such orders.

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2382 Facility staff and facilities shall not be subject to criminal
 2383 prosecution or civil liability, nor be considered to have
 2384 engaged in negligent or unprofessional conduct, for withholding
 2385 or withdrawing cardiopulmonary resuscitation pursuant to such an
 2386 order and rules adopted by the department. The absence of an
 2387 order to resuscitate executed pursuant to s. 401.45 does not
 2388 preclude a physician from withholding or withdrawing
 2389 cardiopulmonary resuscitation as otherwise permitted by law.

2390 Section 49. Section 400.4256, Florida Statutes, is
 2391 renumbered as section 429.256, Florida Statutes, and amended to
 2392 read:

2393 429.256 ~~400.4256~~ Assistance with self-administration of
 2394 medication.--

2395 (1) For the purposes of this section, the term:

2396 (a) "Informed consent" means advising the resident, or the
 2397 resident's surrogate, guardian, or attorney in fact, that an
 2398 assisted living facility is not required to have a licensed
 2399 nurse on staff, that the resident may be receiving assistance
 2400 with self-administration of medication from an unlicensed
 2401 person, and that such assistance, if provided by an unlicensed
 2402 person, will or will not be overseen by a licensed nurse.

2403 (b) "Unlicensed person" means an individual not currently
 2404 licensed to practice nursing or medicine who is employed by or
 2405 under contract to an assisted living facility and who has
 2406 received training with respect to assisting with the self-
 2407 administration of medication in an assisted living facility as
 2408 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
 2409 assistance as described in this section.

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2410 (2) Residents who are capable of self-administering their
2411 own medications without assistance shall be encouraged and
2412 allowed to do so. However, an unlicensed person may, consistent
2413 with a dispensed prescription's label or the package directions
2414 of an over-the-counter medication, assist a resident whose
2415 condition is medically stable with the self-administration of
2416 routine, regularly scheduled medications that are intended to be
2417 self-administered. Assistance with self-medication by an
2418 unlicensed person may occur only upon a documented request by,
2419 and the written informed consent of, a resident or the
2420 resident's surrogate, guardian, or attorney in fact. For the
2421 purposes of this section, self-administered medications include
2422 both legend and over-the-counter oral dosage forms, topical
2423 dosage forms and topical ophthalmic, otic, and nasal dosage
2424 forms including solutions, suspensions, sprays, and inhalers.

2425 (3) Assistance with self-administration of medication
2426 includes:

2427 (a) Taking the medication, in its previously dispensed,
2428 properly labeled container, from where it is stored, and
2429 bringing it to the resident.

2430 (b) In the presence of the resident, reading the label,
2431 opening the container, removing a prescribed amount of
2432 medication from the container, and closing the container.

2433 (c) Placing an oral dosage in the resident's hand or
2434 placing the dosage in another container and helping the resident
2435 by lifting the container to his or her mouth.

2436 (d) Applying topical medications.

2437 (e) Returning the medication container to proper storage.

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- 2438 (f) Keeping a record of when a resident receives
 2439 assistance with self-administration under this section.
- 2440 (4) Assistance with self-administration does not include:
- 2441 (a) Mixing, compounding, converting, or calculating
 2442 medication doses, except for measuring a prescribed amount of
 2443 liquid medication or breaking a scored tablet or crushing a
 2444 tablet as prescribed.
- 2445 (b) The preparation of syringes for injection or the
 2446 administration of medications by any injectable route.
- 2447 (c) Administration of medications through intermittent
 2448 positive pressure breathing machines or a nebulizer.
- 2449 (d) Administration of medications by way of a tube
 2450 inserted in a cavity of the body.
- 2451 (e) Administration of parenteral preparations.
- 2452 (f) Irrigations or debriding agents used in the treatment
 2453 of a skin condition.
- 2454 (g) Rectal, urethral, or vaginal preparations.
- 2455 (h) Medications ordered by the physician or health care
 2456 professional with prescriptive authority to be given "as
 2457 needed," unless the order is written with specific parameters
 2458 that preclude independent judgment on the part of the unlicensed
 2459 person, and at the request of a competent resident.
- 2460 (i) Medications for which the time of administration, the
 2461 amount, the strength of dosage, the method of administration, or
 2462 the reason for administration requires judgment or discretion on
 2463 the part of the unlicensed person.

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2464 (5) Assistance with the self-administration of medication
2465 by an unlicensed person as described in this section shall not
2466 be considered administration as defined in s. 465.003.

2467 (6) The department may by rule establish facility
2468 procedures and interpret terms as necessary to implement this
2469 section.

2470 Section 50. Section 400.426, Florida Statutes, is
2471 renumbered as section 429.26, Florida Statutes, and amended to
2472 read:

2473 429.26 ~~400.426~~ Appropriateness of placements; examinations
2474 of residents.--

2475 (1) The owner or administrator of a facility is
2476 responsible for determining the appropriateness of admission of
2477 an individual to the facility and for determining the continued
2478 appropriateness of residence of an individual in the facility. A
2479 determination shall be based upon an assessment of the
2480 strengths, needs, and preferences of the resident, the care and
2481 services offered or arranged for by the facility in accordance
2482 with facility policy, and any limitations in law or rule related
2483 to admission criteria or continued residency for the type of
2484 license held by the facility under this part. A resident may not
2485 be moved from one facility to another without consultation with
2486 and agreement from the resident or, if applicable, the
2487 resident's representative or designee or the resident's family,
2488 guardian, surrogate, or attorney in fact. In the case of a
2489 resident who has been placed by the department or the Department
2490 of Children and Family Services, the administrator must notify
2491 the appropriate contact person in the applicable department.

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2492 (2) A physician, licensed physician assistant, or nurse
2493 practitioner who is employed by an assisted living facility to
2494 provide an initial examination for admission purposes may not
2495 have financial interest in the facility.

2496 (3) Persons licensed under part I of chapter 464 who are
2497 employed by or under contract with a facility shall, on a
2498 routine basis or at least monthly, perform a nursing assessment
2499 of the residents for whom they are providing nursing services
2500 ordered by a physician, except administration of medication, and
2501 shall document such assessment, including any substantial
2502 changes in a resident's status which may necessitate relocation
2503 to a nursing home, hospital, or specialized health care
2504 facility. Such records shall be maintained in the facility for
2505 inspection by the agency and shall be forwarded to the
2506 resident's case manager, if applicable.

2507 (4) If possible, each resident shall have been examined by
2508 a licensed physician, a licensed physician assistant, or a
2509 licensed nurse practitioner within 60 days before admission to
2510 the facility. The signed and completed medical examination
2511 report shall be submitted to the owner or administrator of the
2512 facility who shall use the information contained therein to
2513 assist in the determination of the appropriateness of the
2514 resident's admission and continued stay in the facility. The
2515 medical examination report shall become a permanent part of the
2516 record of the resident at the facility and shall be made
2517 available to the agency during inspection or upon request. An
2518 assessment that has been completed through the Comprehensive
2519 Assessment and Review for Long-Term Care Services (CARES)

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2520 Program fulfills the requirements for a medical examination
2521 under this subsection and s. 429.07(3)(b)6. ~~s. 400.407(3)(b)6.~~

2522 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
2523 medical examination has not been completed within 60 days before
2524 the admission of the resident to the facility, a licensed
2525 physician or licensed nurse practitioner shall examine the
2526 resident and complete a medical examination form provided by the
2527 agency within 30 days following the admission to the facility to
2528 enable the facility owner or administrator to determine the
2529 appropriateness of the admission. The medical examination form
2530 shall become a permanent part of the record of the resident at
2531 the facility and shall be made available to the agency during
2532 inspection by the agency or upon request.

2533 (6) Any resident accepted in a facility and placed by the
2534 department or the Department of Children and Family Services
2535 shall have been examined by medical personnel within 30 days
2536 before placement in the facility. The examination shall include
2537 an assessment of the appropriateness of placement in a facility.
2538 The findings of this examination shall be recorded on the
2539 examination form provided by the agency. The completed form
2540 shall accompany the resident and shall be submitted to the
2541 facility owner or administrator. Additionally, in the case of a
2542 mental health resident, the Department of Children and Family
2543 Services must provide documentation that the individual has been
2544 assessed by a psychiatrist, clinical psychologist, clinical
2545 social worker, or psychiatric nurse, or an individual who is
2546 supervised by one of these professionals, and determined to be
2547 appropriate to reside in an assisted living facility. The

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2548 | documentation must be in the facility within 30 days after the
2549 | mental health resident has been admitted to the facility. An
2550 | evaluation completed upon discharge from a state mental hospital
2551 | meets the requirements of this subsection related to
2552 | appropriateness for placement as a mental health resident
2553 | providing it was completed within 90 days prior to admission to
2554 | the facility. The applicable department shall provide to the
2555 | facility administrator any information about the resident that
2556 | would help the administrator meet his or her responsibilities
2557 | under subsection (1). Further, department personnel shall
2558 | explain to the facility operator any special needs of the
2559 | resident and advise the operator whom to call should problems
2560 | arise. The applicable department shall advise and assist the
2561 | facility administrator where the special needs of residents who
2562 | are recipients of optional state supplementation require such
2563 | assistance.

2564 | (7) The facility must notify a licensed physician when a
2565 | resident exhibits signs of dementia or cognitive impairment or
2566 | has a change of condition in order to rule out the presence of
2567 | an underlying physiological condition that may be contributing
2568 | to such dementia or impairment. The notification must occur
2569 | within 30 days after the acknowledgment of such signs by
2570 | facility staff. If an underlying condition is determined to
2571 | exist, the facility shall arrange, with the appropriate health
2572 | care provider, the necessary care and services to treat the
2573 | condition.

2574 | (8) The Department of Children and Family Services may
2575 | require an examination for supplemental security income and

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2576 optional state supplementation recipients residing in facilities
2577 at any time and shall provide the examination whenever a
2578 resident's condition requires it. Any facility administrator;
2579 personnel of the agency, the department, or the Department of
2580 Children and Family Services; or long-term care ombudsman
2581 council member who believes a resident needs to be evaluated
2582 shall notify the resident's case manager, who shall take
2583 appropriate action. A report of the examination findings shall
2584 be provided to the resident's case manager and the facility
2585 administrator to help the administrator meet his or her
2586 responsibilities under subsection (1).

2587 (9) If, at any time after admission to a facility, a
2588 resident appears to need care beyond that which the facility is
2589 licensed to provide, the agency shall require the resident to be
2590 physically examined by a licensed physician, physician
2591 assistant, or licensed nurse practitioner. This examination
2592 shall, to the extent possible, be performed by the resident's
2593 preferred physician or nurse practitioner and shall be paid for
2594 by the resident with personal funds, except as provided in s.
2595 429.18(1)(b) ~~s. 400.418(1)(b)~~. Following this examination, the
2596 examining physician, physician assistant, or licensed nurse
2597 practitioner shall complete and sign a medical form provided by
2598 the agency. The completed medical form shall be submitted to the
2599 agency within 30 days after the date the facility owner or
2600 administrator is notified by the agency that the physical
2601 examination is required. After consultation with the physician,
2602 physician assistant, or licensed nurse practitioner who
2603 performed the examination, a medical review team designated by

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2604 | the agency shall then determine whether the resident is
2605 | appropriately residing in the facility. The medical review team
2606 | shall base its decision on a comprehensive review of the
2607 | resident's physical and functional status, including the
2608 | resident's preferences, and not on an isolated health-related
2609 | problem. In the case of a mental health resident, if the
2610 | resident appears to have needs in addition to those identified
2611 | in the community living support plan, the agency may require an
2612 | evaluation by a mental health professional, as determined by the
2613 | Department of Children and Family Services. A facility may not
2614 | be required to retain a resident who requires more services or
2615 | care than the facility is able to provide in accordance with its
2616 | policies and criteria for admission and continued residency.
2617 | Members of the medical review team making the final
2618 | determination may not include the agency personnel who initially
2619 | questioned the appropriateness of a resident's placement. Such
2620 | determination is final and binding upon the facility and the
2621 | resident. Any resident who is determined by the medical review
2622 | team to be inappropriately residing in a facility shall be given
2623 | 30 days' written notice to relocate by the owner or
2624 | administrator, unless the resident's continued residence in the
2625 | facility presents an imminent danger to the health, safety, or
2626 | welfare of the resident or a substantial probability exists that
2627 | death or serious physical harm would result to the resident if
2628 | allowed to remain in the facility.

2629 | (10) A terminally ill resident who no longer meets the
2630 | criteria for continued residency may remain in the facility if
2631 | the arrangement is mutually agreeable to the resident and the

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2632 facility; additional care is rendered through a licensed
 2633 hospice, and the resident is under the care of a physician who
 2634 agrees that the physical needs of the resident are being met.

2635 (11) Facilities licensed to provide extended congregate
 2636 care services shall promote aging in place by determining
 2637 appropriateness of continued residency based on a comprehensive
 2638 review of the resident's physical and functional status; the
 2639 ability of the facility, family members, friends, or any other
 2640 pertinent individuals or agencies to provide the care and
 2641 services required; and documentation that a written service plan
 2642 consistent with facility policy has been developed and
 2643 implemented to ensure that the resident's needs and preferences
 2644 are addressed.

2645 (12) No resident who requires 24-hour nursing supervision,
 2646 except for a resident who is an enrolled hospice patient
 2647 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
 2648 a facility licensed under this part.

2649 Section 51. Section 400.427, Florida Statutes, is
 2650 renumbered as section 429.27, Florida Statutes, and amended to
 2651 read:

2652 429.27 ~~400.427~~ Property and personal affairs of
 2653 residents.--

2654 (1) (a) A resident shall be given the option of using his
 2655 or her own belongings, as space permits; choosing his or her
 2656 roommate; and, whenever possible, unless the resident is
 2657 adjudicated incompetent or incapacitated under state law,
 2658 managing his or her own affairs.

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2659 (b) The admission of a resident to a facility and his or
 2660 her presence therein shall not confer on the facility or its
 2661 owner, administrator, employees, or representatives any
 2662 authority to manage, use, or dispose of any property of the
 2663 resident; nor shall such admission or presence confer on any of
 2664 such persons any authority or responsibility for the personal
 2665 affairs of the resident, except that which may be necessary for
 2666 the safe management of the facility or for the safety of the
 2667 resident.

2668 (2) A facility, or an owner, administrator, employee, or
 2669 representative thereof, may not act as the guardian, trustee, or
 2670 conservator for any resident of the assisted living facility or
 2671 any of such resident's property. An owner, administrator, or
 2672 staff member, or representative thereof, may not act as a
 2673 competent resident's payee for social security, veteran's, or
 2674 railroad benefits without the consent of the resident. Any
 2675 facility whose owner, administrator, or staff, or representative
 2676 thereof, serves as representative payee for any resident of the
 2677 facility shall file a surety bond with the agency in an amount
 2678 equal to twice the average monthly aggregate income or personal
 2679 funds due to residents, or expendable for their account, which
 2680 are received by a facility. Any facility whose owner,
 2681 administrator, or staff, or a representative thereof, is granted
 2682 power of attorney for any resident of the facility shall file a
 2683 surety bond with the agency for each resident for whom such
 2684 power of attorney is granted. The surety bond shall be in an
 2685 amount equal to twice the average monthly income of the
 2686 resident, plus the value of any resident's property under the

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2687 control of the attorney in fact. The bond shall be executed by
2688 the facility as principal and a licensed surety company. The
2689 bond shall be conditioned upon the faithful compliance of the
2690 facility with this section and shall run to the agency for the
2691 benefit of any resident who suffers a financial loss as a result
2692 of the misuse or misappropriation by a facility of funds held
2693 pursuant to this subsection. Any surety company that cancels or
2694 does not renew the bond of any licensee shall notify the agency
2695 in writing not less than 30 days in advance of such action,
2696 giving the reason for the cancellation or nonrenewal. Any
2697 facility owner, administrator, or staff, or representative
2698 thereof, who is granted power of attorney for any resident of
2699 the facility shall, on a monthly basis, be required to provide
2700 the resident a written statement of any transaction made on
2701 behalf of the resident pursuant to this subsection, and a copy
2702 of such statement given to the resident shall be retained in
2703 each resident's file and available for agency inspection.

2704 (3) A facility, upon mutual consent with the resident,
2705 shall provide for the safekeeping in the facility of personal
2706 effects not in excess of \$500 and funds of the resident not in
2707 excess of \$200 cash, and shall keep complete and accurate
2708 records of all such funds and personal effects received. If a
2709 resident is absent from a facility for 24 hours or more, the
2710 facility may provide for the safekeeping of the resident's
2711 personal effects in excess of \$500.

2712 (4) Any funds or other property belonging to or due to a
2713 resident, or expendable for his or her account, which is
2714 received by a facility shall be trust funds which shall be kept

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2715 separate from the funds and property of the facility and other
2716 residents or shall be specifically credited to such resident.
2717 Such trust funds shall be used or otherwise expended only for
2718 the account of the resident. At least once every 3 months,
2719 unless upon order of a court of competent jurisdiction, the
2720 facility shall furnish the resident and his or her guardian,
2721 trustee, or conservator, if any, a complete and verified
2722 statement of all funds and other property to which this
2723 subsection applies, detailing the amount and items received,
2724 together with their sources and disposition. In any event, the
2725 facility shall furnish such statement annually and upon the
2726 discharge or transfer of a resident. Any governmental agency or
2727 private charitable agency contributing funds or other property
2728 to the account of a resident shall also be entitled to receive
2729 such statement annually and upon the discharge or transfer of
2730 the resident.

2731 (5) Any personal funds available to facility residents may
2732 be used by residents as they choose to obtain clothing, personal
2733 items, leisure activities, and other supplies and services for
2734 their personal use. A facility may not demand, require, or
2735 contract for payment of all or any part of the personal funds in
2736 satisfaction of the facility rate for supplies and services
2737 beyond that amount agreed to in writing and may not levy an
2738 additional charge to the individual or the account for any
2739 supplies or services that the facility has agreed by contract to
2740 provide as part of the standard monthly rate. Any service or
2741 supplies provided by the facility which are charged separately
2742 to the individual or the account may be provided only with the

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

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2743 specific written consent of the individual, who shall be
 2744 furnished in advance of the provision of the services or
 2745 supplies with an itemized written statement to be attached to
 2746 the contract setting forth the charges for the services or
 2747 supplies.

2748 (6) (a) In addition to any damages or civil penalties to
 2749 which a person is subject, any person who:

2750 1. Intentionally withholds a resident's personal funds,
 2751 personal property, or personal needs allowance, or who demands,
 2752 beneficially receives, or contracts for payment of all or any
 2753 part of a resident's personal property or personal needs
 2754 allowance in satisfaction of the facility rate for supplies and
 2755 services; or

2756 2. Borrows from or pledges any personal funds of a
 2757 resident, other than the amount agreed to by written contract
 2758 under s. 429.24 ~~s. 400.424~~,

2759
 2760 commits a misdemeanor of the first degree, punishable as
 2761 provided in s. 775.082 or s. 775.083.

2762 (b) Any facility owner, administrator, or staff, or
 2763 representative thereof, who is granted power of attorney for any
 2764 resident of the facility and who misuses or misappropriates
 2765 funds obtained through this power commits a felony of the third
 2766 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 2767 775.084.

2768 (7) In the event of the death of a resident, a licensee
 2769 shall return all refunds, funds, and property held in trust to
 2770 the resident's personal representative, if one has been

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2771 appointed at the time the facility disburses such funds, and, if
 2772 not, to the resident's spouse or adult next of kin named in a
 2773 beneficiary designation form provided by the facility to the
 2774 resident. If the resident has no spouse or adult next of kin or
 2775 such person cannot be located, funds due the resident shall be
 2776 placed in an interest-bearing account, and all property held in
 2777 trust by the facility shall be safeguarded until such time as
 2778 the funds and property are disbursed pursuant to the Florida
 2779 Probate Code. Such funds shall be kept separate from the funds
 2780 and property of the facility and other residents of the
 2781 facility. If the funds of the deceased resident are not
 2782 disbursed pursuant to the Florida Probate Code within 2 years
 2783 after the resident's death, the funds shall be deposited in the
 2784 Health Care Trust Fund administered by the agency.

2785 (8) The department may by rule clarify terms and specify
 2786 procedures and documentation necessary to administer the
 2787 provisions of this section relating to the proper management of
 2788 residents' funds and personal property and the execution of
 2789 surety bonds.

2790 Section 52. Section 400.428, Florida Statutes, is
 2791 renumbered as section 429.28, Florida Statutes, and amended to
 2792 read:

2793 429.28 ~~400.428~~ Resident bill of rights.--

2794 (1) No resident of a facility shall be deprived of any
 2795 civil or legal rights, benefits, or privileges guaranteed by
 2796 law, the Constitution of the State of Florida, or the
 2797 Constitution of the United States as a resident of a facility.
 2798 Every resident of a facility shall have the right to:

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2799 (a) Live in a safe and decent living environment, free
2800 from abuse and neglect.

2801 (b) Be treated with consideration and respect and with due
2802 recognition of personal dignity, individuality, and the need for
2803 privacy.

2804 (c) Retain and use his or her own clothes and other
2805 personal property in his or her immediate living quarters, so as
2806 to maintain individuality and personal dignity, except when the
2807 facility can demonstrate that such would be unsafe, impractical,
2808 or an infringement upon the rights of other residents.

2809 (d) Unrestricted private communication, including
2810 receiving and sending unopened correspondence, access to a
2811 telephone, and visiting with any person of his or her choice, at
2812 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
2813 Upon request, the facility shall make provisions to extend
2814 visiting hours for caregivers and out-of-town guests, and in
2815 other similar situations.

2816 (e) Freedom to participate in and benefit from community
2817 services and activities and to achieve the highest possible
2818 level of independence, autonomy, and interaction within the
2819 community.

2820 (f) Manage his or her financial affairs unless the
2821 resident or, if applicable, the resident's representative,
2822 designee, surrogate, guardian, or attorney in fact authorizes
2823 the administrator of the facility to provide safekeeping for
2824 funds as provided in s. 429.27 ~~s. 400.427~~.

2825 (g) Share a room with his or her spouse if both are
2826 residents of the facility.

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2827 (h) Reasonable opportunity for regular exercise several
 2828 times a week and to be outdoors at regular and frequent
 2829 intervals except when prevented by inclement weather.

2830 (i) Exercise civil and religious liberties, including the
 2831 right to independent personal decisions. No religious beliefs or
 2832 practices, nor any attendance at religious services, shall be
 2833 imposed upon any resident.

2834 (j) Access to adequate and appropriate health care
 2835 consistent with established and recognized standards within the
 2836 community.

2837 (k) At least 45 days' notice of relocation or termination
 2838 of residency from the facility unless, for medical reasons, the
 2839 resident is certified by a physician to require an emergency
 2840 relocation to a facility providing a more skilled level of care
 2841 or the resident engages in a pattern of conduct that is harmful
 2842 or offensive to other residents. In the case of a resident who
 2843 has been adjudicated mentally incapacitated, the guardian shall
 2844 be given at least 45 days' notice of a nonemergency relocation
 2845 or residency termination. Reasons for relocation shall be set
 2846 forth in writing. In order for a facility to terminate the
 2847 residency of an individual without notice as provided herein,
 2848 the facility shall show good cause in a court of competent
 2849 jurisdiction.

2850 (l) Present grievances and recommend changes in policies,
 2851 procedures, and services to the staff of the facility, governing
 2852 officials, or any other person without restraint, interference,
 2853 coercion, discrimination, or reprisal. Each facility shall
 2854 establish a grievance procedure to facilitate the residents'

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2855 | exercise of this right. This right includes access to ombudsman
2856 | volunteers and advocates and the right to be a member of, to be
2857 | active in, and to associate with advocacy or special interest
2858 | groups.

2859 | (2) The administrator of a facility shall ensure that a
2860 | written notice of the rights, obligations, and prohibitions set
2861 | forth in this part is posted in a prominent place in each
2862 | facility and read or explained to residents who cannot read.
2863 | This notice shall include the name, address, and telephone
2864 | numbers of the local ombudsman council and central abuse hotline
2865 | and, when applicable, the Advocacy Center for Persons with
2866 | Disabilities, Inc., and the Florida local advocacy council,
2867 | where complaints may be lodged. The facility must ensure a
2868 | resident's access to a telephone to call the local ombudsman
2869 | council, central abuse hotline, Advocacy Center for Persons with
2870 | Disabilities, Inc., and the Florida local advocacy council.

2871 | (3) (a) The agency shall conduct a survey to determine
2872 | general compliance with facility standards and compliance with
2873 | residents' rights as a prerequisite to initial licensure or
2874 | licensure renewal.

2875 | (b) In order to determine whether the facility is
2876 | adequately protecting residents' rights, the biennial survey
2877 | shall include private informal conversations with a sample of
2878 | residents and consultation with the ombudsman council in the
2879 | planning and service area in which the facility is located to
2880 | discuss residents' experiences within the facility.

2881 | (c) During any calendar year in which no survey is
2882 | conducted, the agency shall conduct at least one monitoring

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2883 | visit of each facility cited in the previous year for a class I
2884 | or class II violation, or more than three uncorrected class III
2885 | violations.

2886 | (d) The agency may conduct periodic followup inspections
2887 | as necessary to monitor the compliance of facilities with a
2888 | history of any class I, class II, or class III violations that
2889 | threaten the health, safety, or security of residents.

2890 | (e) The agency may conduct complaint investigations as
2891 | warranted to investigate any allegations of noncompliance with
2892 | requirements required under this part or rules adopted under
2893 | this part.

2894 | (4) The facility shall not hamper or prevent residents
2895 | from exercising their rights as specified in this section.

2896 | (5) No facility or employee of a facility may serve notice
2897 | upon a resident to leave the premises or take any other
2898 | retaliatory action against any person who:

2899 | (a) Exercises any right set forth in this section.

2900 | (b) Appears as a witness in any hearing, inside or outside
2901 | the facility.

2902 | (c) Files a civil action alleging a violation of the
2903 | provisions of this part or notifies a state attorney or the
2904 | Attorney General of a possible violation of such provisions.

2905 | (6) Any facility which terminates the residency of an
2906 | individual who participated in activities specified in
2907 | subsection (5) shall show good cause in a court of competent
2908 | jurisdiction.

2909 | (7) Any person who submits or reports a complaint
2910 | concerning a suspected violation of the provisions of this part

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2911 or concerning services and conditions in facilities, or who
 2912 testifies in any administrative or judicial proceeding arising
 2913 from such a complaint, shall have immunity from any civil or
 2914 criminal liability therefor, unless such person has acted in bad
 2915 faith or with malicious purpose or the court finds that there
 2916 was a complete absence of a justiciable issue of either law or
 2917 fact raised by the losing party.

2918 Section 53. Section 400.429, Florida Statutes, is
 2919 renumbered as section 429.29, Florida Statutes, and amended to
 2920 read:

2921 429.29 ~~400.429~~ Civil actions to enforce rights.--

2922 (1) Any person or resident whose rights as specified in
 2923 this part are violated shall have a cause of action. The action
 2924 may be brought by the resident or his or her guardian, or by a
 2925 person or organization acting on behalf of a resident with the
 2926 consent of the resident or his or her guardian, or by the
 2927 personal representative of the estate of a deceased resident
 2928 regardless of the cause of death. If the action alleges a claim
 2929 for the resident's rights or for negligence that caused the
 2930 death of the resident, the claimant shall be required to elect
 2931 either survival damages pursuant to s. 46.021 or wrongful death
 2932 damages pursuant to s. 768.21. If the action alleges a claim for
 2933 the resident's rights or for negligence that did not cause the
 2934 death of the resident, the personal representative of the estate
 2935 may recover damages for the negligence that caused injury to the
 2936 resident. The action may be brought in any court of competent
 2937 jurisdiction to enforce such rights and to recover actual
 2938 damages, and punitive damages for violation of the rights of a

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2939 resident or negligence. Any resident who prevails in seeking
 2940 injunctive relief or a claim for an administrative remedy is
 2941 entitled to recover the costs of the action and a reasonable
 2942 attorney's fee assessed against the defendant not to exceed
 2943 \$25,000. Fees shall be awarded solely for the injunctive or
 2944 administrative relief and not for any claim or action for
 2945 damages whether such claim or action is brought together with a
 2946 request for an injunction or administrative relief or as a
 2947 separate action, except as provided under s. 768.79 or the
 2948 Florida Rules of Civil Procedure. Sections 429.29-429.298
 2949 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
 2950 action for recovery of damages for the personal injury or death
 2951 of a resident arising out of negligence or a violation of rights
 2952 specified in s. 429.28 ~~s. 400.428~~. This section does not
 2953 preclude theories of recovery not arising out of negligence or
 2954 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
 2955 agency. The provisions of chapter 766 do not apply to any cause
 2956 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.

2957 (2) In any claim brought pursuant to this part alleging a
 2958 violation of resident's rights or negligence causing injury to
 2959 or the death of a resident, the claimant shall have the burden
 2960 of proving, by a preponderance of the evidence, that:

- 2961 (a) The defendant owed a duty to the resident;
- 2962 (b) The defendant breached the duty to the resident;
- 2963 (c) The breach of the duty is a legal cause of loss,
 2964 injury, death, or damage to the resident; and
- 2965 (d) The resident sustained loss, injury, death, or damage
 2966 as a result of the breach.

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2967
2968 Nothing in this part shall be interpreted to create strict
2969 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
2970 ~~400.428~~ or in any other standard or guidelines specified in this
2971 part or in any applicable administrative standard or guidelines
2972 of this state or a federal regulatory agency shall be evidence
2973 of negligence but shall not be considered negligence per se.

2974 (3) In any claim brought pursuant to this section, a
2975 licensee, person, or entity shall have a duty to exercise
2976 reasonable care. Reasonable care is that degree of care which a
2977 reasonably careful licensee, person, or entity would use under
2978 like circumstances.

2979 (4) In any claim for resident's rights violation or
2980 negligence by a nurse licensed under part I of chapter 464, such
2981 nurse shall have the duty to exercise care consistent with the
2982 prevailing professional standard of care for a nurse. The
2983 prevailing professional standard of care for a nurse shall be
2984 that level of care, skill, and treatment which, in light of all
2985 relevant surrounding circumstances, is recognized as acceptable
2986 and appropriate by reasonably prudent similar nurses.

2987 (5) Discovery of financial information for the purpose of
2988 determining the value of punitive damages may not be had unless
2989 the plaintiff shows the court by proffer or evidence in the
2990 record that a reasonable basis exists to support a claim for
2991 punitive damages.

2992 (6) In addition to any other standards for punitive
2993 damages, any award of punitive damages must be reasonable in
2994 light of the actual harm suffered by the resident and the

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2995 | egregiousness of the conduct that caused the actual harm to the
2996 | resident.

2997 | (7) The resident or the resident's legal representative
2998 | shall serve a copy of any complaint alleging in whole or in part
2999 | a violation of any rights specified in this part to the Agency
3000 | for Health Care Administration at the time of filing the initial
3001 | complaint with the clerk of the court for the county in which
3002 | the action is pursued. The requirement of providing a copy of
3003 | the complaint to the agency does not impair the resident's legal
3004 | rights or ability to seek relief for his or her claim.

3005 | Section 54. Section 400.4293, Florida Statutes, is
3006 | renumbered as section 429.293, Florida Statutes, and amended to
3007 | read:

3008 | 429.293 ~~400.4293~~ Presuit notice; investigation;
3009 | notification of violation of residents' rights or alleged
3010 | negligence; claims evaluation procedure; informal discovery;
3011 | review; settlement offer; mediation.--

3012 | (1) As used in this section, the term:

3013 | (a) "Claim for residents' rights violation or negligence"
3014 | means a negligence claim alleging injury to or the death of a
3015 | resident arising out of an asserted violation of the rights of a
3016 | resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
3017 | from the applicable standard of care.

3018 | (b) "Insurer" means any self-insurer authorized under s.
3019 | 627.357, liability insurance carrier, joint underwriting
3020 | association, or uninsured prospective defendant.

3021 | (2) Prior to filing a claim for a violation of a
3022 | resident's rights or a claim for negligence, a claimant alleging

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3023 injury to or the death of a resident shall notify each
 3024 prospective defendant by certified mail, return receipt
 3025 requested, of an asserted violation of a resident's rights
 3026 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
 3027 of care. Such notification shall include an identification of
 3028 the rights the prospective defendant has violated and the
 3029 negligence alleged to have caused the incident or incidents and
 3030 a brief description of the injuries sustained by the resident
 3031 which are reasonably identifiable at the time of notice. The
 3032 notice shall contain a certificate of counsel that counsel's
 3033 reasonable investigation gave rise to a good faith belief that
 3034 grounds exist for an action against each prospective defendant.

3035 (3)(a) No suit may be filed for a period of 75 days after
 3036 notice is mailed to any prospective defendant. During the 75-day
 3037 period, the prospective defendants or their insurers shall
 3038 conduct an evaluation of the claim to determine the liability of
 3039 each defendant and to evaluate the damages of the claimants.
 3040 Each defendant or insurer of the defendant shall have a
 3041 procedure for the prompt evaluation of claims during the 75-day
 3042 period. The procedure shall include one or more of the
 3043 following:

3044 1. Internal review by a duly qualified facility risk
 3045 manager or claims adjuster;

3046 2. Internal review by counsel for each prospective
 3047 defendant;

3048 3. A quality assurance committee authorized under any
 3049 applicable state or federal statutes or regulations; or

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3050 4. Any other similar procedure that fairly and promptly
3051 evaluates the claims.

3052
3053 Each defendant or insurer of the defendant shall evaluate the
3054 claim in good faith.

3055 (b) At or before the end of the 75 days, the defendant or
3056 insurer of the defendant shall provide the claimant with a
3057 written response:

- 3058 1. Rejecting the claim; or
3059 2. Making a settlement offer.

3060 (c) The response shall be delivered to the claimant if not
3061 represented by counsel or to the claimant's attorney, by
3062 certified mail, return receipt requested. Failure of the
3063 prospective defendant or insurer of the defendant to reply to
3064 the notice within 75 days after receipt shall be deemed a
3065 rejection of the claim for purposes of this section.

3066 (4) The notification of a violation of a resident's rights
3067 or alleged negligence shall be served within the applicable
3068 statute of limitations period; however, during the 75-day
3069 period, the statute of limitations is tolled as to all
3070 prospective defendants. Upon stipulation by the parties, the 75-
3071 day period may be extended and the statute of limitations is
3072 tolled during any such extension. Upon receiving written notice
3073 by certified mail, return receipt requested, of termination of
3074 negotiations in an extended period, the claimant shall have 60
3075 days or the remainder of the period of the statute of
3076 limitations, whichever is greater, within which to file suit.

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3077 (5) No statement, discussion, written document, report, or
 3078 other work product generated by presuit claims evaluation
 3079 procedures under this section is discoverable or admissible in
 3080 any civil action for any purpose by the opposing party. All
 3081 participants, including, but not limited to, physicians,
 3082 investigators, witnesses, and employees or associates of the
 3083 defendant, are immune from civil liability arising from
 3084 participation in the presuit claims evaluation procedure. Any
 3085 licensed physician or registered nurse may be retained by either
 3086 party to provide an opinion regarding the reasonable basis of
 3087 the claim. The presuit opinions of the expert are not
 3088 discoverable or admissible in any civil action for any purpose
 3089 by the opposing party.

3090 (6) Upon receipt by a prospective defendant of a notice of
 3091 claim, the parties shall make discoverable information available
 3092 without formal discovery as provided in subsection (7).

3093 (7) Informal discovery may be used by a party to obtain
 3094 unsworn statements and the production of documents or things, as
 3095 follows:

3096 (a) Unsworn statements.--Any party may require other
 3097 parties to appear for the taking of an unsworn statement. Such
 3098 statements may be used only for the purpose of claims evaluation
 3099 and are not discoverable or admissible in any civil action for
 3100 any purpose by any party. A party seeking to take the unsworn
 3101 statement of any party must give reasonable notice in writing to
 3102 all parties. The notice must state the time and place for taking
 3103 the statement and the name and address of the party to be
 3104 examined. Unless otherwise impractical, the examination of any

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3105 party must be done at the same time by all other parties. Any
 3106 party may be represented by counsel at the taking of an unsworn
 3107 statement. An unsworn statement may be recorded electronically,
 3108 stenographically, or on videotape. The taking of unsworn
 3109 statements is subject to the provisions of the Florida Rules of
 3110 Civil Procedure and may be terminated for abuses.

3111 (b) Documents or things.--Any party may request discovery
 3112 of relevant documents or things. The documents or things must be
 3113 produced, at the expense of the requesting party, within 20 days
 3114 after the date of receipt of the request. A party is required to
 3115 produce relevant and discoverable documents or things within
 3116 that party's possession or control, if in good faith it can
 3117 reasonably be done within the timeframe of the claims evaluation
 3118 process.

3119 (8) Each request for and notice concerning informal
 3120 discovery pursuant to this section must be in writing, and a
 3121 copy thereof must be sent to all parties. Such a request or
 3122 notice must bear a certificate of service identifying the name
 3123 and address of the person to whom the request or notice is
 3124 served, the date of the request or notice, and the manner of
 3125 service thereof.

3126 (9) If a prospective defendant makes a written settlement
 3127 offer, the claimant shall have 15 days from the date of receipt
 3128 to accept the offer. An offer shall be deemed rejected unless
 3129 accepted by delivery of a written notice of acceptance.

3130 (10) To the extent not inconsistent with this part, the
 3131 provisions of the Florida Mediation Code, Florida Rules of Civil
 3132 Procedure, shall be applicable to such proceedings.

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3133 (11) Within 30 days after the claimant's receipt of
 3134 defendant's response to the claim, the parties or their
 3135 designated representatives shall meet in mediation to discuss
 3136 the issues of liability and damages in accordance with the
 3137 mediation rules of practice and procedures adopted by the
 3138 Supreme Court. Upon stipulation of the parties, this 30-day
 3139 period may be extended and the statute of limitations is tolled
 3140 during the mediation and any such extension. At the conclusion
 3141 of mediation, the claimant shall have 60 days or the remainder
 3142 of the period of the statute of limitations, whichever is
 3143 greater, within which to file suit.

3144 Section 55. Section 400.431, Florida Statutes, is
 3145 renumbered as section 429.31, Florida Statutes, and amended to
 3146 read:

3147 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

3148 (1) Whenever a facility voluntarily discontinues
 3149 operation, it shall inform the agency in writing at least 90
 3150 days prior to the discontinuance of operation. The facility
 3151 shall also inform each resident or the next of kin, legal
 3152 representative, or agency acting on each resident's behalf, of
 3153 the fact and the proposed time of such discontinuance, following
 3154 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
 3155 ~~400.428(1)(k)~~. In the event a resident has no person to
 3156 represent him or her, the facility shall be responsible for
 3157 referral to an appropriate social service agency for placement.

3158 (2) Immediately upon the notice by the agency of the
 3159 voluntary or involuntary termination of such operation, the
 3160 agency shall monitor the transfer of residents to other

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3161 facilities and ensure that residents' rights are being
3162 protected. The department, in consultation with the Department
3163 of Children and Family Services, shall specify procedures for
3164 ensuring that all residents who receive services are
3165 appropriately relocated.

3166 (3) All charges shall be prorated as of the date on which
3167 the facility discontinues operation, and if any payments have
3168 been made in advance, the payments for services not received
3169 shall be refunded to the resident or the resident's guardian
3170 within 10 working days of voluntary or involuntary closure of
3171 the facility, whether or not such refund is requested by the
3172 resident or guardian.

3173 (4) Immediately upon discontinuance of the operation of a
3174 facility, the owner shall surrender the license therefor to the
3175 agency, and the license shall be canceled.

3176 (5) The agency may levy a fine in an amount no greater
3177 than \$5,000 upon each person or business entity that owns any
3178 interest in a facility that terminates operation without
3179 providing notice to the agency and the residents of the facility
3180 at least 30 days before operation ceases. This fine shall not be
3181 levied against any facility involuntarily closed at the
3182 initiation of the agency. The agency shall use the proceeds of
3183 the fines to operate the facility until all residents of the
3184 facility are relocated and shall deposit any balance of the
3185 proceeds into the Health Care Trust Fund established pursuant to
3186 s. 429.18 ~~s. 400.418~~.

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3187 Section 56. Section 400.441, Florida Statutes, is
 3188 renumbered as section 429.41, Florida Statutes, and amended to
 3189 read:

3190 429.41 ~~400.441~~ Rules establishing standards.--

3191 (1) It is the intent of the Legislature that rules
 3192 published and enforced pursuant to this section shall include
 3193 criteria by which a reasonable and consistent quality of
 3194 resident care and quality of life may be ensured and the results
 3195 of such resident care may be demonstrated. Such rules shall also
 3196 ensure a safe and sanitary environment that is residential and
 3197 noninstitutional in design or nature. It is further intended
 3198 that reasonable efforts be made to accommodate the needs and
 3199 preferences of residents to enhance the quality of life in a
 3200 facility. In order to provide safe and sanitary facilities and
 3201 the highest quality of resident care accommodating the needs and
 3202 preferences of residents, the department, in consultation with
 3203 the agency, the Department of Children and Family Services, and
 3204 the Department of Health, shall adopt rules, policies, and
 3205 procedures to administer this part, which must include
 3206 reasonable and fair minimum standards in relation to:

3207 (a) The requirements for and maintenance of facilities,
 3208 not in conflict with the provisions of chapter 553, relating to
 3209 plumbing, heating, cooling, lighting, ventilation, living space,
 3210 and other housing conditions, which will ensure the health,
 3211 safety, and comfort of residents and protection from fire
 3212 hazard, including adequate provisions for fire alarm and other
 3213 fire protection suitable to the size of the structure. Uniform
 3214 firesafety standards shall be established and enforced by the

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3215 State Fire Marshal in cooperation with the agency, the
 3216 department, and the Department of Health.
 3217 1. Evacuation capability determination.--
 3218 a. The provisions of the National Fire Protection
 3219 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
 3220 for determining the ability of the residents, with or without
 3221 staff assistance, to relocate from or within a licensed facility
 3222 to a point of safety as provided in the fire codes adopted
 3223 herein. An evacuation capability evaluation for initial
 3224 licensure shall be conducted within 6 months after the date of
 3225 licensure. For existing licensed facilities that are not
 3226 equipped with an automatic fire sprinkler system, the
 3227 administrator shall evaluate the evacuation capability of
 3228 residents at least annually. The evacuation capability
 3229 evaluation for each facility not equipped with an automatic fire
 3230 sprinkler system shall be validated, without liability, by the
 3231 State Fire Marshal, by the local fire marshal, or by the local
 3232 authority having jurisdiction over firesafety, before the
 3233 license renewal date. If the State Fire Marshal, local fire
 3234 marshal, or local authority having jurisdiction over firesafety
 3235 has reason to believe that the evacuation capability of a
 3236 facility as reported by the administrator may have changed, it
 3237 may, with assistance from the facility administrator, reevaluate
 3238 the evacuation capability through timed exiting drills.
 3239 Translation of timed fire exiting drills to evacuation
 3240 capability may be determined:
 3241 (I) Three minutes or less: prompt.

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3242 (II) More than 3 minutes, but not more than 13 minutes:
3243 slow.

3244 (III) More than 13 minutes: impractical.

3245 b. The Office of the State Fire Marshal shall provide or
3246 cause the provision of training and education on the proper
3247 application of Chapter 5, NFPA 101A, 1995 edition, to its
3248 employees, to staff of the Agency for Health Care Administration
3249 who are responsible for regulating facilities under this part,
3250 and to local governmental inspectors. The Office of the State
3251 Fire Marshal shall provide or cause the provision of this
3252 training within its existing budget, but may charge a fee for
3253 this training to offset its costs. The initial training must be
3254 delivered within 6 months after July 1, 1995, and as needed
3255 thereafter.

3256 c. The Office of the State Fire Marshal, in cooperation
3257 with provider associations, shall provide or cause the provision
3258 of a training program designed to inform facility operators on
3259 how to properly review bid documents relating to the
3260 installation of automatic fire sprinklers. The Office of the
3261 State Fire Marshal shall provide or cause the provision of this
3262 training within its existing budget, but may charge a fee for
3263 this training to offset its costs. The initial training must be
3264 delivered within 6 months after July 1, 1995, and as needed
3265 thereafter.

3266 d. The administrator of a licensed facility shall sign an
3267 affidavit verifying the number of residents occupying the
3268 facility at the time of the evacuation capability evaluation.

3269 2. Firesafety requirements.--

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3270 a. Except for the special applications provided herein,
3271 effective January 1, 1996, the provisions of the National Fire
3272 Protection Association, Life Safety Code, NFPA 101, 1994
3273 edition, Chapter 22 for new facilities and Chapter 23 for
3274 existing facilities shall be the uniform fire code applied by
3275 the State Fire Marshal for assisted living facilities, pursuant
3276 to s. 633.022.

3277 b. Any new facility, regardless of size, that applies for
3278 a license on or after January 1, 1996, must be equipped with an
3279 automatic fire sprinkler system. The exceptions as provided in
3280 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
3281 apply to any new facility housing eight or fewer residents. On
3282 July 1, 1995, local governmental entities responsible for the
3283 issuance of permits for construction shall inform, without
3284 liability, any facility whose permit for construction is
3285 obtained prior to January 1, 1996, of this automatic fire
3286 sprinkler requirement. As used in this part, the term "a new
3287 facility" does not mean an existing facility that has undergone
3288 change of ownership.

3289 c. Notwithstanding any provision of s. 633.022 or of the
3290 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
3291 edition, to the contrary, any existing facility housing eight or
3292 fewer residents is not required to install an automatic fire
3293 sprinkler system, nor to comply with any other requirement in
3294 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
3295 requirements of NFPA 101, 1988 edition, that applies to this
3296 size facility, unless the facility has been classified as
3297 impractical to evacuate. Any existing facility housing eight or

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3298 fewer residents that is classified as impractical to evacuate
 3299 must install an automatic fire sprinkler system within the
 3300 timeframes granted in this section.

3301 d. Any existing facility that is required to install an
 3302 automatic fire sprinkler system under this paragraph need not
 3303 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
 3304 edition, which exceed the provisions of NFPA 101, 1988 edition.
 3305 The mandate contained in this paragraph which requires certain
 3306 facilities to install an automatic fire sprinkler system
 3307 supersedes any other requirement.

3308 e. This paragraph does not supersede the exceptions
 3309 granted in NFPA 101, 1988 edition or 1994 edition.

3310 f. This paragraph does not exempt facilities from other
 3311 firesafety provisions adopted under s. 633.022 and local
 3312 building code requirements in effect before July 1, 1995.

3313 g. A local government may charge fees only in an amount
 3314 not to exceed the actual expenses incurred by local government
 3315 relating to the installation and maintenance of an automatic
 3316 fire sprinkler system in an existing and properly licensed
 3317 assisted living facility structure as of January 1, 1996.

3318 h. If a licensed facility undergoes major reconstruction
 3319 or addition to an existing building on or after January 1, 1996,
 3320 the entire building must be equipped with an automatic fire
 3321 sprinkler system. Major reconstruction of a building means
 3322 repair or restoration that costs in excess of 50 percent of the
 3323 value of the building as reported on the tax rolls, excluding
 3324 land, before reconstruction. Multiple reconstruction projects
 3325 within a 5-year period the total costs of which exceed 50

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3326 | percent of the initial value of the building at the time the
3327 | first reconstruction project was permitted are to be considered
3328 | as major reconstruction. Application for a permit for an
3329 | automatic fire sprinkler system is required upon application for
3330 | a permit for a reconstruction project that creates costs that go
3331 | over the 50-percent threshold.

3332 | i. Any facility licensed before January 1, 1996, that is
3333 | required to install an automatic fire sprinkler system shall
3334 | ensure that the installation is completed within the following
3335 | timeframes based upon evacuation capability of the facility as
3336 | determined under subparagraph 1.:

3337 | (I) Impractical evacuation capability, 24 months.

3338 | (II) Slow evacuation capability, 48 months.

3339 | (III) Prompt evacuation capability, 60 months.

3340 |

3341 | The beginning date from which the deadline for the automatic
3342 | fire sprinkler installation requirement must be calculated is
3343 | upon receipt of written notice from the local fire official that
3344 | an automatic fire sprinkler system must be installed. The local
3345 | fire official shall send a copy of the document indicating the
3346 | requirement of a fire sprinkler system to the Agency for Health
3347 | Care Administration.

3348 | j. It is recognized that the installation of an automatic
3349 | fire sprinkler system may create financial hardship for some
3350 | facilities. The appropriate local fire official shall, without
3351 | liability, grant two 1-year extensions to the timeframes for
3352 | installation established herein, if an automatic fire sprinkler
3353 | installation cost estimate and proof of denial from two

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3354 financial institutions for a construction loan to install the
 3355 automatic fire sprinkler system are submitted. However, for any
 3356 facility with a class I or class II, or a history of uncorrected
 3357 class III, firesafety deficiencies, an extension must not be
 3358 granted. The local fire official shall send a copy of the
 3359 document granting the time extension to the Agency for Health
 3360 Care Administration.

3361 k. A facility owner whose facility is required to be
 3362 equipped with an automatic fire sprinkler system under Chapter
 3363 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
 3364 any potential buyer of the facility that an installation of an
 3365 automatic fire sprinkler requirement exists. The sale of the
 3366 facility does not alter the timeframe for the installation of
 3367 the automatic fire sprinkler system.

3368 l. Existing facilities required to install an automatic
 3369 fire sprinkler system as a result of construction-type
 3370 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
 3371 herein, or evacuation capability requirements shall be notified
 3372 by the local fire official in writing of the automatic fire
 3373 sprinkler requirement, as well as the appropriate date for final
 3374 compliance as provided in this subparagraph. The local fire
 3375 official shall send a copy of the document to the Agency for
 3376 Health Care Administration.

3377 m. Except in cases of life-threatening fire hazards, if an
 3378 existing facility experiences a change in the evacuation
 3379 capability, or if the local authority having jurisdiction
 3380 identifies a construction-type restriction, such that an

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3381 automatic fire sprinkler system is required, it shall be
3382 afforded time for installation as provided in this subparagraph.

3383
3384 Facilities that are fully sprinkled and in compliance with other
3385 firesafety standards are not required to conduct more than one
3386 of the required fire drills between the hours of 11 p.m. and 7
3387 a.m., per year. In lieu of the remaining drills, staff
3388 responsible for residents during such hours may be required to
3389 participate in a mock drill that includes a review of evacuation
3390 procedures. Such standards must be included or referenced in the
3391 rules adopted by the State Fire Marshal. Pursuant to s.
3392 633.022(1)(b), the State Fire Marshal is the final
3393 administrative authority for firesafety standards established
3394 and enforced pursuant to this section. All licensed facilities
3395 must have an annual fire inspection conducted by the local fire
3396 marshal or authority having jurisdiction.

3397 3. Resident elopement requirements.--Facilities are
3398 required to conduct a minimum of two resident elopement
3399 prevention and response drills per year. All administrators and
3400 direct care staff must participate in the drills which shall
3401 include a review of procedures to address resident elopement.
3402 Facilities must document the implementation of the drills and
3403 ensure that the drills are conducted in a manner consistent with
3404 the facility's resident elopement policies and procedures.

3405 (b) The preparation and annual update of a comprehensive
3406 emergency management plan. Such standards must be included in
3407 the rules adopted by the department after consultation with the
3408 Department of Community Affairs. At a minimum, the rules must

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3409 provide for plan components that address emergency evacuation
3410 transportation; adequate sheltering arrangements; postdisaster
3411 activities, including provision of emergency power, food, and
3412 water; postdisaster transportation; supplies; staffing;
3413 emergency equipment; individual identification of residents and
3414 transfer of records; communication with families; and responses
3415 to family inquiries. The comprehensive emergency management plan
3416 is subject to review and approval by the local emergency
3417 management agency. During its review, the local emergency
3418 management agency shall ensure that the following agencies, at a
3419 minimum, are given the opportunity to review the plan: the
3420 Department of Elderly Affairs, the Department of Health, the
3421 Agency for Health Care Administration, and the Department of
3422 Community Affairs. Also, appropriate volunteer organizations
3423 must be given the opportunity to review the plan. The local
3424 emergency management agency shall complete its review within 60
3425 days and either approve the plan or advise the facility of
3426 necessary revisions.

3427 (c) The number, training, and qualifications of all
3428 personnel having responsibility for the care of residents. The
3429 rules must require adequate staff to provide for the safety of
3430 all residents. Facilities licensed for 17 or more residents are
3431 required to maintain an alert staff for 24 hours per day.

3432 (d) All sanitary conditions within the facility and its
3433 surroundings which will ensure the health and comfort of
3434 residents. The rules must clearly delineate the responsibilities
3435 of the agency's licensure and survey staff, the county health
3436 departments, and the local authority having jurisdiction over

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3437 fire safety and ensure that inspections are not duplicative. The
 3438 agency may collect fees for food service inspections conducted
 3439 by the county health departments and transfer such fees to the
 3440 Department of Health.

3441 (e) License application and license renewal, transfer of
 3442 ownership, proper management of resident funds and personal
 3443 property, surety bonds, resident contracts, refund policies,
 3444 financial ability to operate, and facility and staff records.

3445 (f) Inspections, complaint investigations, moratoriums,
 3446 classification of deficiencies, levying and enforcement of
 3447 penalties, and use of income from fees and fines.

3448 (g) The enforcement of the resident bill of rights
 3449 specified in s. 429.28 ~~s. 400.428~~.

3450 (h) The care and maintenance of residents, which must
 3451 include, but is not limited to:

- 3452 1. The supervision of residents;
- 3453 2. The provision of personal services;
- 3454 3. The provision of, or arrangement for, social and
 3455 leisure activities;
- 3456 4. The arrangement for appointments and transportation to
 3457 appropriate medical, dental, nursing, or mental health services,
 3458 as needed by residents;
- 3459 5. The management of medication;
- 3460 6. The nutritional needs of residents;
- 3461 7. Resident records; and
- 3462 8. Internal risk management and quality assurance.

3463 (i) Facilities holding a limited nursing, extended
 3464 congregate care, or limited mental health license.

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3465 (j) The establishment of specific criteria to define
3466 appropriateness of resident admission and continued residency in
3467 a facility holding a standard, limited nursing, extended
3468 congregate care, and limited mental health license.

3469 (k) The use of physical or chemical restraints. The use of
3470 physical restraints is limited to half-bed rails as prescribed
3471 and documented by the resident's physician with the consent of
3472 the resident or, if applicable, the resident's representative or
3473 designee or the resident's surrogate, guardian, or attorney in
3474 fact. The use of chemical restraints is limited to prescribed
3475 dosages of medications authorized by the resident's physician
3476 and must be consistent with the resident's diagnosis. Residents
3477 who are receiving medications that can serve as chemical
3478 restraints must be evaluated by their physician at least
3479 annually to assess:

- 3480 1. The continued need for the medication.
- 3481 2. The level of the medication in the resident's blood.
- 3482 3. The need for adjustments in the prescription.

3483 (1) The establishment of specific policies and procedures
3484 on resident elopement. Facilities shall conduct a minimum of two
3485 resident elopement drills each year. All administrators and
3486 direct care staff shall participate in the drills. Facilities
3487 shall document the drills.

3488 (2) In adopting any rules pursuant to this part, the
3489 department, in conjunction with the agency, shall make distinct
3490 standards for facilities based upon facility size; the types of
3491 care provided; the physical and mental capabilities and needs of
3492 residents; the type, frequency, and amount of services and care

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3493 | offered; and the staffing characteristics of the facility. Rules
3494 | developed pursuant to this section shall not restrict the use of
3495 | shared staffing and shared programming in facilities that are
3496 | part of retirement communities that provide multiple levels of
3497 | care and otherwise meet the requirements of law and rule. Except
3498 | for uniform firesafety standards, the department shall adopt by
3499 | rule separate and distinct standards for facilities with 16 or
3500 | fewer beds and for facilities with 17 or more beds. The
3501 | standards for facilities with 16 or fewer beds shall be
3502 | appropriate for a noninstitutional residential environment,
3503 | provided that the structure is no more than two stories in
3504 | height and all persons who cannot exit the facility unassisted
3505 | in an emergency reside on the first floor. The department, in
3506 | conjunction with the agency, may make other distinctions among
3507 | types of facilities as necessary to enforce the provisions of
3508 | this part. Where appropriate, the agency shall offer alternate
3509 | solutions for complying with established standards, based on
3510 | distinctions made by the department and the agency relative to
3511 | the physical characteristics of facilities and the types of care
3512 | offered therein.

3513 | (3) The department shall submit a copy of proposed rules
3514 | to the Speaker of the House of Representatives, the President of
3515 | the Senate, and appropriate committees of substance for review
3516 | and comment prior to the promulgation thereof.

3517 | (a) Rules promulgated by the department shall encourage
3518 | the development of homelike facilities which promote the
3519 | dignity, individuality, personal strengths, and decisionmaking
3520 | ability of residents.

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3521 (b) The agency, in consultation with the department, may
 3522 waive rules promulgated pursuant to this part in order to
 3523 demonstrate and evaluate innovative or cost-effective congregate
 3524 care alternatives which enable individuals to age in place. Such
 3525 waivers may be granted only in instances where there is
 3526 reasonable assurance that the health, safety, or welfare of
 3527 residents will not be endangered. To apply for a waiver, the
 3528 licensee shall submit to the agency a written description of the
 3529 concept to be demonstrated, including goals, objectives, and
 3530 anticipated benefits; the number and types of residents who will
 3531 be affected, if applicable; a brief description of how the
 3532 demonstration will be evaluated; and any other information
 3533 deemed appropriate by the agency. Any facility granted a waiver
 3534 shall submit a report of findings to the agency and the
 3535 department within 12 months. At such time, the agency may renew
 3536 or revoke the waiver or pursue any regulatory or statutory
 3537 changes necessary to allow other facilities to adopt the same
 3538 practices. The department may by rule clarify terms and
 3539 establish waiver application procedures, criteria for reviewing
 3540 waiver proposals, and procedures for reporting findings, as
 3541 necessary to implement this subsection.

3542 (4) The agency may use an abbreviated biennial standard
 3543 licensure inspection that consists of a review of key quality-
 3544 of-care standards in lieu of a full inspection in facilities
 3545 which have a good record of past performance. However, a full
 3546 inspection shall be conducted in facilities which have had a
 3547 history of class I or class II violations, uncorrected class III
 3548 violations, confirmed ombudsman council complaints, or confirmed

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3549 licensure complaints, within the previous licensure period
 3550 immediately preceding the inspection or when a potentially
 3551 serious problem is identified during the abbreviated inspection.
 3552 The agency, in consultation with the department, shall develop
 3553 the key quality-of-care standards with input from the State
 3554 Long-Term Care Ombudsman Council and representatives of provider
 3555 groups for incorporation into its rules. The department, in
 3556 consultation with the agency, shall report annually to the
 3557 Legislature concerning its implementation of this subsection.
 3558 The report shall include, at a minimum, the key quality-of-care
 3559 standards which have been developed; the number of facilities
 3560 identified as being eligible for the abbreviated inspection; the
 3561 number of facilities which have received the abbreviated
 3562 inspection and, of those, the number that were converted to full
 3563 inspection; the number and type of subsequent complaints
 3564 received by the agency or department on facilities which have
 3565 had abbreviated inspections; any recommendations for
 3566 modification to this subsection; any plans by the agency to
 3567 modify its implementation of this subsection; and any other
 3568 information which the department believes should be reported.

3569 (5) A fee shall be charged by the department to any person
 3570 requesting a copy of this part or rules promulgated under this
 3571 part. Such fees shall not exceed the actual cost of duplication
 3572 and postage.

3573 Section 57. Section 400.442, Florida Statutes, is
 3574 renumbered as section 429.42, Florida Statutes, and amended to
 3575 read:

3576 429.42 ~~400.442~~ Pharmacy and dietary services.--

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3577 (1) Any assisted living facility in which the agency has
 3578 documented a class I or class II deficiency or uncorrected class
 3579 III deficiencies regarding medicinal drugs or over-the-counter
 3580 preparations, including their storage, use, delivery, or
 3581 administration, or dietary services, or both, during a biennial
 3582 survey or a monitoring visit or an investigation in response to
 3583 a complaint, shall, in addition to or as an alternative to any
 3584 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
 3585 employ the consultant services of a licensed pharmacist, a
 3586 licensed registered nurse, or a registered or licensed
 3587 dietitian, as applicable. The consultant shall, at a minimum,
 3588 provide onsite quarterly consultation until the inspection team
 3589 from the agency determines that such consultation services are
 3590 no longer required.

3591 (2) A corrective action plan for deficiencies related to
 3592 assistance with the self-administration of medication or the
 3593 administration of medication must be developed and implemented
 3594 by the facility within 48 hours after notification of such
 3595 deficiency, or sooner if the deficiency is determined by the
 3596 agency to be life-threatening.

3597 (3) The agency shall employ at least two pharmacists
 3598 licensed pursuant to chapter 465 among its personnel who
 3599 biennially inspect assisted living facilities licensed under
 3600 this part, to participate in biennial inspections or consult
 3601 with the agency regarding deficiencies relating to medicinal
 3602 drugs or over-the-counter preparations.

3603 (4) The department may by rule establish procedures and
 3604 specify documentation as necessary to implement this section.

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3605 Section 58. Section 400.444, Florida Statutes, is
3606 renumbered as section 429.44, Florida Statutes, and amended to
3607 read:

3608 429.44 ~~400.444~~ Construction and renovation;
3609 requirements.--

3610 (1) The requirements for the construction and renovation
3611 of a facility shall comply with the provisions of chapter 553
3612 which pertain to building construction standards, including
3613 plumbing, electrical code, glass, manufactured buildings,
3614 accessibility for persons with disabilities, and the state
3615 minimum building code and with the provisions of s. 633.022,
3616 which pertain to uniform firesafety standards.

3617 (2) Upon notification by the local authority having
3618 jurisdiction over life-threatening violations which seriously
3619 threaten the health, safety, or welfare of a resident of a
3620 facility, the agency shall take action as specified in s. 429.14
3621 ~~s. 400.414~~.

3622 (3) The department may adopt rules to establish procedures
3623 and specify the documentation necessary to implement this
3624 section.

3625 Section 59. Section 400.447, Florida Statutes, is
3626 renumbered as section 429.47, Florida Statutes, and amended to
3627 read:

3628 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--

3629 (1) It is unlawful for any person or public body to offer
3630 or advertise to the public, in any way by any medium whatever,
3631 personal services as defined in this act, without obtaining a
3632 valid current license. It is unlawful for any holder of a

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3633 | license issued pursuant to the provisions of this act to
 3634 | advertise or hold out to the public that it holds a license for
 3635 | a facility other than that for which it actually holds a
 3636 | license.

3637 | (2) It is unlawful for any holder of a license issued
 3638 | pursuant to the provisions of this act to withhold from the
 3639 | agency any evidence of financial instability, including, but not
 3640 | limited to, bad checks, delinquent accounts, nonpayment of
 3641 | withholding taxes, unpaid utility expenses, nonpayment for
 3642 | essential services, or adverse court action concerning the
 3643 | financial viability of the facility or any other facility
 3644 | licensed under this part or under part II of chapter 400 ~~or part~~
 3645 | ~~III of this chapter~~ which is owned by the licensee.

3646 | (3) Any person found guilty of violating subsection (1) or
 3647 | subsection (2) commits a misdemeanor of the second degree,
 3648 | punishable as provided in s. 775.083. Each day of continuing
 3649 | violation shall be considered a separate offense.

3650 | (4) While a facility is under construction, the owner may
 3651 | advertise to the public prior to obtaining a license. Facilities
 3652 | that are certified under chapter 651 shall comply with the
 3653 | advertising provisions of s. 651.095 rather than those provided
 3654 | for in this subsection.

3655 | (5) A freestanding facility shall not advertise or imply
 3656 | that any part of it is a nursing home. For the purpose of this
 3657 | subsection, "freestanding facility" means a facility that is not
 3658 | operated in conjunction with a nursing home to which residents
 3659 | of the facility are given priority when nursing care is

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3660 required. A person who violates this subsection is subject to
3661 fine as specified in s. 429.19 ~~s. 400.419~~.

3662 (6) Any facility which is affiliated with any religious
3663 organization or which has a name implying religious affiliation
3664 shall include in its advertising whether or not it is affiliated
3665 with any religious organization and, if so, which organization.

3666 (7) A facility licensed under this part which is not part
3667 of a facility authorized under chapter 651 shall include the
3668 facility's license number as given by the agency in all
3669 advertising. A company or person owning more than one facility
3670 shall include at least one license number per advertisement. All
3671 advertising shall include the term "assisted living facility"
3672 before the license number.

3673 Section 60. Section 400.452, Florida Statutes, is
3674 renumbered as section 429.52, Florida Statutes, and amended to
3675 read:

3676 429.52 ~~400.452~~ Staff training and educational programs;
3677 core educational requirement.--

3678 (1) Administrators and other assisted living facility
3679 staff must meet minimum training and education requirements
3680 established by the Department of Elderly Affairs by rule. This
3681 training and education is intended to assist facilities to
3682 appropriately respond to the needs of residents, to maintain
3683 resident care and facility standards, and to meet licensure
3684 requirements.

3685 (2) The department shall establish a competency test and a
3686 minimum required score to indicate successful completion of the
3687 training and educational requirements. The competency test must

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3688 | be developed by the department in conjunction with the agency
 3689 | and providers. The required training and education must cover at
 3690 | least the following topics:

3691 | (a) State law and rules relating to assisted living
 3692 | facilities.

3693 | (b) Resident rights and identifying and reporting abuse,
 3694 | neglect, and exploitation.

3695 | (c) Special needs of elderly persons, persons with mental
 3696 | illness, and persons with developmental disabilities and how to
 3697 | meet those needs.

3698 | (d) Nutrition and food service, including acceptable
 3699 | sanitation practices for preparing, storing, and serving food.

3700 | (e) Medication management, recordkeeping, and proper
 3701 | techniques for assisting residents with self-administered
 3702 | medication.

3703 | (f) Firesafety requirements, including fire evacuation
 3704 | drill procedures and other emergency procedures.

3705 | (g) Care of persons with Alzheimer's disease and related
 3706 | disorders.

3707 | (3) Effective January 1, 2004, a new facility
 3708 | administrator must complete the required training and education,
 3709 | including the competency test, within a reasonable time after
 3710 | being employed as an administrator, as determined by the
 3711 | department. Failure to do so is a violation of this part and
 3712 | subjects the violator to an administrative fine as prescribed in
 3713 | s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with
 3714 | chapter 468, part II, are exempt from this requirement. Other

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3715 licensed professionals may be exempted, as determined by the
3716 department by rule.

3717 (4) Administrators are required to participate in
3718 continuing education for a minimum of 12 contact hours every 2
3719 years.

3720 (5) Staff involved with the management of medications and
3721 assisting with the self-administration of medications under s.
3722 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
3723 hours of training provided by a registered nurse, licensed
3724 pharmacist, or department staff. The department shall establish
3725 by rule the minimum requirements of this additional training.

3726 (6) Other facility staff shall participate in training
3727 relevant to their job duties as specified by rule of the
3728 department.

3729 (7) If the department or the agency determines that there
3730 are problems in a facility that could be reduced through
3731 specific staff training or education beyond that already
3732 required under this section, the department or the agency may
3733 require, and provide, or cause to be provided, the training or
3734 education of any personal care staff in the facility.

3735 (8) The department shall adopt rules related to these
3736 training requirements, the competency test, necessary
3737 procedures, and competency test fees.

3738 Section 61. Subsections (1), (10), and (18) of section
3739 400.462, Florida Statutes, are amended to read:

3740 400.462 Definitions.--As used in this part, the term:

3741 (1) "Administrator" means a direct employee, as defined in
3742 subsection (9). The administrator must be a licensed physician,

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3743 | physician assistant, or registered nurse licensed to practice in
 3744 | this state or an individual having at least 1 year of
 3745 | supervisory or administrative experience in home health care or
 3746 | in a facility licensed under chapter 395, ~~or under part II or~~
 3747 | ~~part III~~ of this chapter, or chapter 429. An administrator may
 3748 | manage a maximum of five licensed home health agencies located
 3749 | within one agency service district or within an immediately
 3750 | contiguous county. If the home health agency is licensed under
 3751 | this chapter and is part of a retirement community that provides
 3752 | multiple levels of care, an employee of the retirement community
 3753 | may administer the home health agency and up to a maximum of
 3754 | four entities licensed under this chapter or chapter 429 that
 3755 | are owned, operated, or managed by the same corporate entity. An
 3756 | administrator shall designate, in writing, for each licensed
 3757 | entity, a qualified alternate administrator to serve during
 3758 | absences.

3759 | (10) "Director of nursing" means a registered nurse who is
 3760 | a direct employee, as defined in subsection (9), of the agency
 3761 | and who is a graduate of an approved school of nursing and is
 3762 | licensed in this state; who has at least 1 year of supervisory
 3763 | experience as a registered nurse; and who is responsible for
 3764 | overseeing the professional nursing and home health aid delivery
 3765 | of services of the agency. A director of nursing may be the
 3766 | director of a maximum of five licensed home health agencies
 3767 | operated by a related business entity and located within one
 3768 | agency service district or within an immediately contiguous
 3769 | county. If the home health agency is licensed under this chapter
 3770 | and is part of a retirement community that provides multiple

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3771 | levels of care, an employee of the retirement community may
 3772 | serve as the director of nursing of the home health agency and
 3773 | of up to four entities licensed under this chapter or chapter
 3774 | 429 which are owned, operated, or managed by the same corporate
 3775 | entity.

3776 | (18) "Nurse registry" means any person that procures,
 3777 | offers, promises, or attempts to secure health-care-related
 3778 | contracts for registered nurses, licensed practical nurses,
 3779 | certified nursing assistants, home health aides, companions, or
 3780 | homemakers, who are compensated by fees as independent
 3781 | contractors, including, but not limited to, contracts for the
 3782 | provision of services to patients and contracts to provide
 3783 | private duty or staffing services to health care facilities
 3784 | licensed under chapter 395, ~~or~~ this chapter, or chapter 429 or
 3785 | other business entities.

3786 | Section 62. Paragraphs (h), (i), and (n) of subsection (5)
 3787 | of section 400.464, Florida Statutes, are amended to read:

3788 | 400.464 Home health agencies to be licensed; expiration of
 3789 | license; exemptions; unlawful acts; penalties.--

3790 | (5) The following are exempt from the licensure
 3791 | requirements of this part:

3792 | (h) The delivery of assisted living facility services for
 3793 | which the assisted living facility is licensed under part I ~~III~~
 3794 | of ~~this~~ chapter 429, to serve its residents in its facility.

3795 | (i) The delivery of hospice services for which the hospice
 3796 | is licensed under part IV ~~VI~~ of this chapter, to serve hospice
 3797 | patients admitted to its service.

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3798 (n) The delivery of adult family care home services for
3799 which the adult family care home is licensed under part II ~~VII~~
3800 of ~~this~~ chapter 429, to serve the residents in its facility.

3801 Section 63. Subsection (2) of section 400.497, Florida
3802 Statutes, is amended to read:

3803 400.497 Rules establishing minimum standards.--The agency
3804 shall adopt, publish, and enforce rules to implement this part,
3805 including, as applicable, ss. 400.506 and 400.509, which must
3806 provide reasonable and fair minimum standards relating to:

3807 (2) Shared staffing. The agency shall allow shared
3808 staffing if the home health agency is part of a retirement
3809 community that provides multiple levels of care, is located on
3810 one campus, is licensed under this chapter or chapter 429, and
3811 otherwise meets the requirements of law and rule.

3812 Section 64. Section 400.552, Florida Statutes, is
3813 renumbered as section 429.903, Florida Statutes, and amended to
3814 read:

3815 429.903 ~~400.552~~ Applicability.--Any facility that comes
3816 within the definition of an adult day care center which is not
3817 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
3818 agency as an adult day care center.

3819 Section 65. Section 400.555, Florida Statutes, is
3820 renumbered as section 429.909, Florida Statutes, and amended to
3821 read:

3822 429.909 ~~400.555~~ Application for license.--

3823 (1) An application for a license to operate an adult day
3824 care center must be made to the agency on forms furnished by the
3825 agency and must be accompanied by the appropriate license fee

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3826 unless the applicant is exempt from payment of the fee as
3827 provided in s. 429.907(4) ~~s. 400.554(4)~~.

3828 (2) The applicant for licensure must furnish:

3829 (a) A description of the physical and mental capabilities
3830 and needs of the participants to be served and the availability,
3831 frequency, and intensity of basic services and of supportive and
3832 optional services to be provided;

3833 (b) Satisfactory proof of financial ability to operate and
3834 conduct the center in accordance with the requirements of this
3835 part, which must include, in the case of an initial application,
3836 a 1-year operating plan and proof of a 3-month operating reserve
3837 fund; and

3838 (c) Proof of adequate liability insurance coverage.

3839 (d) Proof of compliance with level 2 background screening
3840 as required under s. 429.919 ~~s. 400.5572~~.

3841 (e) A description and explanation of any exclusions,
3842 permanent suspensions, or terminations of the application from
3843 the Medicare or Medicaid programs. Proof of compliance with
3844 disclosure of ownership and control interest requirements of the
3845 Medicare or Medicaid programs shall be accepted in lieu of this
3846 submission.

3847 Section 66. Section 400.556, Florida Statutes, is
3848 renumbered as section 429.911, Florida Statutes, and amended to
3849 read:

3850 429.911 ~~400.556~~ Denial, suspension, revocation of license;
3851 administrative fines; investigations and inspections.--

3852 (1) The agency may deny, revoke, or suspend a license
3853 under this part or may impose an administrative fine against the

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3854 owner of an adult day care center or its operator or employee in
3855 the manner provided in chapter 120.

3856 (2) Each of the following actions by the owner of an adult
3857 day care center or by its operator or employee is a ground for
3858 action by the agency against the owner of the center or its
3859 operator or employee:

3860 (a) An intentional or negligent act materially affecting
3861 the health or safety of center participants.

3862 (b) A violation of this part or of any standard or rule
3863 under this part.

3864 (c) A failure of persons subject to level 2 background
3865 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
3866 screening standards of s. 435.04, or the retention by the center
3867 of an employee subject to level 1 background screening standards
3868 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the
3869 screening standards of s. 435.03 and for whom exemptions from
3870 disqualification have not been provided by the agency.

3871 (d) Failure to follow the criteria and procedures provided
3872 under part I of chapter 394 relating to the transportation,
3873 voluntary admission, and involuntary examination of center
3874 participants.

3875 (e) Multiple or repeated violations of this part or of any
3876 standard or rule adopted under this part.

3877 (f) Exclusion, permanent suspension, or termination of the
3878 owner, if an individual, officer, or board member of the adult
3879 day care center, if the owner is a firm, corporation,
3880 partnership, or association, or any person owning 5 percent or
3881 more of the center, from the Medicare or Medicaid program.

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3882 (3) The agency is responsible for all investigations and
3883 inspections conducted pursuant to this part.

3884 Section 67. Section 400.557, Florida Statutes, is
3885 renumbered as section 429.915, Florida Statutes, and amended to
3886 read:

3887 429.915 ~~400.557~~ Expiration of license; renewal;
3888 conditional license or permit.--

3889 (1) A license issued for the operation of an adult day
3890 care center, unless sooner suspended or revoked, expires 2 years
3891 after the date of issuance. The agency shall notify a licensee
3892 at least 120 days before the expiration date that license
3893 renewal is required to continue operation. The notification must
3894 be provided electronically or by mail delivery. At least 90 days
3895 prior to the expiration date, an application for renewal must be
3896 submitted to the agency. A license shall be renewed, upon the
3897 filing of an application on forms furnished by the agency, if
3898 the applicant has first met the requirements of this part and of
3899 the rules adopted under this part. The applicant must file with
3900 the application satisfactory proof of financial ability to
3901 operate the center in accordance with the requirements of this
3902 part and in accordance with the needs of the participants to be
3903 served and an affidavit of compliance with the background
3904 screening requirements of s. 429.919 ~~s. 400.5572~~.

3905 (2) A licensee against whom a revocation or suspension
3906 proceeding is pending at the time for license renewal may be
3907 issued a conditional license effective until final disposition
3908 by the agency of the proceeding. If judicial relief is sought
3909 from the final disposition, the court having jurisdiction may

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3910 | issue a conditional permit effective for the duration of the
3911 | judicial proceeding.

3912 | (3) The agency may issue a conditional license to an
3913 | applicant for license renewal or change of ownership if the
3914 | applicant fails to meet all standards and requirements for
3915 | licensure. A conditional license issued under this subsection
3916 | must be limited to a specific period not exceeding 6 months, as
3917 | determined by the agency, and must be accompanied by an approved
3918 | plan of correction.

3919 | Section 68. Section 400.5572, Florida Statutes, is
3920 | renumbered as section 429.919, Florida Statutes, and amended to
3921 | read:

3922 | 429.919 ~~400.5572~~ Background screening.--

3923 | (1) (a) Level 2 background screening must be conducted on
3924 | each of the following persons, who shall be considered employees
3925 | for the purposes of conducting screening under chapter 435:

3926 | 1. The adult day care center owner if an individual, the
3927 | operator, and the financial officer.

3928 | 2. An officer or board member if the owner of the adult
3929 | day care center is a firm, corporation, partnership, or
3930 | association, or any person owning 5 percent or more of the
3931 | facility, if the agency has probable cause to believe that such
3932 | person has been convicted of any offense prohibited by s.
3933 | 435.04. For each officer, board member, or person owning 5
3934 | percent or more who has been convicted of any such offense, the
3935 | facility shall submit to the agency a description and
3936 | explanation of the conviction at the time of license
3937 | application. This subparagraph does not apply to a board member

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3938 | of a not-for-profit corporation or organization if the board
 3939 | member serves solely in a voluntary capacity, does not regularly
 3940 | take part in the day-to-day operational decisions of the
 3941 | corporation or organization, receives no remuneration for his or
 3942 | her services, and has no financial interest and has no family
 3943 | members with a financial interest in the corporation or
 3944 | organization, provided that the board member and facility submit
 3945 | a statement affirming that the board member's relationship to
 3946 | the facility satisfies the requirements of this subparagraph.

3947 | (b) Proof of compliance with level 2 screening standards
 3948 | which has been submitted within the previous 5 years to meet any
 3949 | facility or professional licensure requirements of the agency or
 3950 | the Department of Health satisfies the requirements of this
 3951 | subsection.

3952 | (c) The agency may grant a provisional license to an adult
 3953 | day care center applying for an initial license when each
 3954 | individual required by this subsection to undergo screening has
 3955 | completed the Department of Law Enforcement background check,
 3956 | but has not yet received results from the Federal Bureau of
 3957 | Investigation, or when a request for an exemption from
 3958 | disqualification has been submitted to the agency pursuant to s.
 3959 | 435.07, but a response has not been issued.

3960 | (2) The owner or administrator of an adult day care center
 3961 | must conduct level 1 background screening as set forth in
 3962 | chapter 435 on all employees hired on or after October 1, 1998,
 3963 | who provide basic services or supportive and optional services
 3964 | to the participants. Such persons satisfy this requirement if:

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3965 (a) Proof of compliance with level 1 screening
 3966 requirements obtained to meet any professional license
 3967 requirements in this state is provided and accompanied, under
 3968 penalty of perjury, by a copy of the person's current
 3969 professional license and an affidavit of current compliance with
 3970 the background screening requirements.

3971 (b) The person required to be screened has been
 3972 continuously employed, without a breach in service that exceeds
 3973 180 days, in the same type of occupation for which the person is
 3974 seeking employment and provides proof of compliance with the
 3975 level 1 screening requirement which is no more than 2 years old.
 3976 Proof of compliance must be provided directly from one employer
 3977 or contractor to another, and not from the person screened. Upon
 3978 request, a copy of screening results shall be provided to the
 3979 person screened by the employer retaining documentation of the
 3980 screening.

3981 (c) The person required to be screened is employed by a
 3982 corporation or business entity or related corporation or
 3983 business entity that owns, operates, or manages more than one
 3984 facility or agency licensed under this chapter or under chapter
 3985 400, and for whom a level 1 screening was conducted by the
 3986 corporation or business entity as a condition of initial or
 3987 continued employment.

3988 Section 69. Subsection (5) of section 400.601, Florida
 3989 Statutes, is amended to read:

3990 400.601 Definitions.--As used in this part, the term:

3991 (5) "Hospice residential unit" means a homelike living
 3992 facility, other than a facility licensed under other parts of

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3993 | this chapter, ~~or~~ under chapter 395, or under chapter 429, that
 3994 | is operated by a hospice for the benefit of its patients and is
 3995 | considered by a patient who lives there to be his or her primary
 3996 | residence.

3997 | Section 70. Section 400.618, Florida Statutes, is
 3998 | renumbered as section 429.65, Florida Statutes, and amended to
 3999 | read:

4000 | 429.65 ~~400.618~~ Definitions.--As used in this part, the
 4001 | term:

4002 | (1) "Activities of daily living" means functions and tasks
 4003 | for self-care, including eating, bathing, grooming, dressing,
 4004 | ambulating, and other similar tasks.

4005 | (2) "Adult family-care home" means a full-time, family-
 4006 | type living arrangement, in a private home, under which a person
 4007 | who owns or rents the home provides room, board, and personal
 4008 | care, on a 24-hour basis, for no more than five disabled adults
 4009 | or frail elders who are not relatives. The following family-type
 4010 | living arrangements are not required to be licensed as an adult
 4011 | family-care home:

4012 | (a) An arrangement whereby the person who owns or rents
 4013 | the home provides room, board, and personal services for not
 4014 | more than two adults who do not receive optional state
 4015 | supplementation under s. 409.212. The person who provides the
 4016 | housing, meals, and personal care must own or rent the home and
 4017 | reside therein.

4018 | (b) An arrangement whereby the person who owns or rents
 4019 | the home provides room, board, and personal services only to his
 4020 | or her relatives.

4021 (c) An establishment that is licensed as an assisted
4022 living facility under this chapter ~~part III~~.

4023 (3) "Agency" means the Agency for Health Care
4024 Administration.

4025 (4) "Aging in place" means remaining in a noninstitutional
4026 living environment despite the physical or mental changes that
4027 may occur in a person who is aging. For aging in place to occur,
4028 needed services are added, increased, or adjusted to compensate
4029 for a person's physical or mental changes.

4030 (5) "Appropriate placement" means that the resident's
4031 needs can be met by the adult family-care home or can be met by
4032 services arranged by the adult family-care home or the resident.

4033 (6) "Chemical restraint" means a pharmacologic drug that
4034 physically limits, restricts, or deprives an individual of
4035 movement or mobility, and is used for discipline or convenience
4036 and not required for the treatment of medical symptoms.

4037 (7) "Department" means the Department of Elderly Affairs.

4038 (8) "Disabled adult" means any person between 18 and 59
4039 years of age, inclusive, who is a resident of the state and who
4040 has one or more permanent physical or mental limitations that
4041 restrict the person's ability to perform the normal activities
4042 of daily living.

4043 (9) "Frail elder" means a functionally impaired elderly
4044 person who is 60 years of age or older and who has physical or
4045 mental limitations that restrict the person's ability to perform
4046 the normal activities of daily living and that impede the
4047 person's capacity to live independently.

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4048 (10) "Personal services" or "personal care" includes
4049 individual assistance with or supervision of the activities of
4050 daily living and the self-administration of medication, and
4051 other similar services.

4052 (11) "Provider" means a person who is licensed to operate
4053 an adult family-care home.

4054 (12) "Relative" means an individual who is the father,
4055 mother, son, daughter, brother, sister, grandfather,
4056 grandmother, great-grandfather, great-grandmother, uncle, aunt,
4057 first cousin, nephew, niece, husband, wife, father-in-law,
4058 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4059 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
4060 stepbrother, stepsister, half brother, or half sister of a
4061 provider.

4062 (13) "Relief person" means an adult designated by the
4063 provider to supervise the residents during the provider's
4064 absence.

4065 (14) "Resident" means a person receiving room, board, and
4066 personal care in an adult family-care home.

4067 Section 71. Section 400.6194, Florida Statutes, is
4068 renumbered as section 429.69, Florida Statutes, and amended to
4069 read:

4070 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
4071 license.--The agency may deny, suspend, or revoke a license for
4072 any of the following reasons:

4073 (1) Failure of any of the persons required to undergo
4074 background screening under s. 429.67 ~~s. 400.619~~ to meet the

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4075 level 1 screening standards of s. 435.03, unless an exemption
4076 from disqualification has been provided by the agency.

4077 (2) An intentional or negligent act materially affecting
4078 the health, safety, or welfare of the adult family-care home
4079 residents.

4080 (3) Submission of fraudulent information or omission of
4081 any material fact on a license application or any other document
4082 required by the agency.

4083 (4) Failure to pay an administrative fine assessed under
4084 this part.

4085 (5) A violation of this part or adopted rules which
4086 results in conditions or practices that directly threaten the
4087 physical or emotional health, safety, or welfare of residents.

4088 (6) Failure to correct cited fire code violations that
4089 threaten the health, safety, or welfare of residents.

4090 (7) Failure to submit a completed initial license
4091 application or to complete an application for license renewal
4092 within the specified timeframes.

4093 (8) Exclusion, permanent suspension, or termination of the
4094 provider from the Medicare or Medicaid program.

4095 Section 72. Section 400.621, Florida Statutes, is
4096 renumbered as section 429.73, Florida Statutes, and amended to
4097 read:

4098 429.73 ~~400.621~~ Rules and standards relating to adult
4099 family-care homes.--

4100 (1) The department, in consultation with the Department of
4101 Health, the Department of Children and Family Services, and the
4102 agency shall, by rule, establish minimum standards to ensure the

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4103 health, safety, and well-being of each resident in the adult
 4104 family-care home. The rules must address:
 4105 (a) Requirements for the physical site of the facility and
 4106 facility maintenance.
 4107 (b) Services that must be provided to all residents of an
 4108 adult family-care home and standards for such services, which
 4109 must include, but need not be limited to:
 4110 1. Room and board.
 4111 2. Assistance necessary to perform the activities of daily
 4112 living.
 4113 3. Assistance necessary to administer medication.
 4114 4. Supervision of residents.
 4115 5. Health monitoring.
 4116 6. Social and leisure activities.
 4117 (c) Standards and procedures for license application and
 4118 annual license renewal, advertising, proper management of each
 4119 resident's funds and personal property and personal affairs,
 4120 financial ability to operate, medication management,
 4121 inspections, complaint investigations, and facility, staff, and
 4122 resident records.
 4123 (d) Qualifications, training, standards, and
 4124 responsibilities for providers and staff.
 4125 (e) Compliance with chapter 419, relating to community
 4126 residential homes.
 4127 (f) Criteria and procedures for determining the
 4128 appropriateness of a resident's placement and continued
 4129 residency in an adult family-care home. A resident who requires
 4130 24-hour nursing supervision may not be retained in an adult

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4131 family-care home unless such resident is an enrolled hospice
4132 patient and the resident's continued residency is mutually
4133 agreeable to the resident and the provider.

4134 (g) Procedures for providing notice and assuring the least
4135 possible disruption of residents' lives when residents are
4136 relocated, an adult family-care home is closed, or the ownership
4137 of an adult family-care home is transferred.

4138 (h) Procedures to protect the residents' rights as
4139 provided in s. 429.85 ~~s. 400.628~~.

4140 (i) Procedures to promote the growth of adult family-care
4141 homes as a component of a long-term care system.

4142 (j) Procedures to promote the goal of aging in place for
4143 residents of adult family-care homes.

4144 (2) The department shall by rule provide minimum standards
4145 and procedures for emergencies. Pursuant to s. 633.022, the
4146 State Fire Marshal, in consultation with the department and the
4147 agency, shall adopt uniform firesafety standards for adult
4148 family-care homes.

4149 (3) The department shall adopt rules providing for the
4150 implementation of orders not to resuscitate. The provider may
4151 withhold or withdraw cardiopulmonary resuscitation if presented
4152 with an order not to resuscitate executed pursuant to s. 401.45.
4153 The provider shall not be subject to criminal prosecution or
4154 civil liability, nor be considered to have engaged in negligent
4155 or unprofessional conduct, for withholding or withdrawing
4156 cardiopulmonary resuscitation pursuant to such an order and
4157 rules adopted by the department.

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4158 (4) The provider of any adult family-care home that is in
4159 operation at the time any rules are adopted or amended under
4160 this part may be given a reasonable time, not exceeding 6
4161 months, within which to comply with the new or revised rules and
4162 standards.

4163 Section 73. Section 400.628, Florida Statutes, is
4164 renumbered as section 429.85, Florida Statutes, and amended to
4165 read:

4166 429.85 ~~400.628~~ Residents' bill of rights.--

4167 (1) A resident of an adult family-care home may not be
4168 deprived of any civil or legal rights, benefits, or privileges
4169 guaranteed by law, the State Constitution, or the Constitution
4170 of the United States solely by reason of status as a resident of
4171 the home. Each resident has the right to:

4172 (a) Live in a safe and decent living environment, free
4173 from abuse and neglect.

4174 (b) Be treated with consideration and respect and with due
4175 recognition of personal dignity, individuality, and privacy.

4176 (c) Keep and use the resident's own clothes and other
4177 personal property in the resident's immediate living quarters,
4178 so as to maintain individuality and personal dignity, except
4179 when the provider can demonstrate that to do so would be unsafe
4180 or an infringement upon the rights of other residents.

4181 (d) Have unrestricted private communication, including
4182 receiving and sending unopened correspondence, having access to
4183 a telephone, and visiting with any person of his or her choice,
4184 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.

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4185 (e) Be free to participate in and benefit from community
4186 services and activities and to achieve the highest possible
4187 level of independence, autonomy, and interaction within the
4188 community.

4189 (f) Manage the resident's own financial affairs unless the
4190 resident or the resident's guardian authorizes the provider to
4191 provide safekeeping for funds in accordance with procedures
4192 equivalent to those provided in s. 429.27 ~~s. 400.427~~.

4193 (g) Share a room with the resident's spouse if both are
4194 residents of the home.

4195 (h) Have reasonable opportunity for regular exercise
4196 several times a week and to be outdoors at regular and frequent
4197 intervals.

4198 (i) Exercise civil and religious liberties, including the
4199 right to independent personal decisions. Religious beliefs or
4200 practices and attendance at religious services may not be
4201 imposed upon a resident.

4202 (j) Have access to adequate and appropriate health care.

4203 (k) Be free from chemical and physical restraints.

4204 (l) Have at least 30 days' notice of relocation or
4205 termination of residency from the home unless, for medical
4206 reasons, the resident is certified by a physician to require an
4207 emergency relocation to a facility providing a more skilled
4208 level of care or the resident engages in a pattern of conduct
4209 that is harmful or offensive to other residents. If a resident
4210 has been adjudicated mentally incompetent, the resident's
4211 guardian must be given at least 30 days' notice, except in an
4212 emergency, of the relocation of a resident or of the termination

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4213 of a residency. The reasons for relocating a resident must be
4214 set forth in writing.

4215 (m) Present grievances and recommend changes to the
4216 provider, to staff, or to any other person without restraint,
4217 interference, coercion, discrimination, or reprisal. This right
4218 includes the right to have access to ombudsman volunteers and
4219 advocates and the right to be a member of, to be active in, and
4220 to associate with advocacy or special interest groups.

4221 (2) The provider shall ensure that residents and their
4222 legal representatives are made aware of the rights, obligations,
4223 and prohibitions set forth in this part. Residents must also be
4224 given the names, addresses, and telephone numbers of the local
4225 ombudsman council and the central abuse hotline where they may
4226 lodge complaints.

4227 (3) The adult family-care home may not hamper or prevent
4228 residents from exercising the rights specified in this section.

4229 (4) A provider or staff of an adult family-care home may
4230 not serve notice upon a resident to leave the premises or take
4231 any other retaliatory action against any person who:

4232 (a) Exercises any right set forth in this section.

4233 (b) Appears as a witness in any hearing, in or out of the
4234 adult family-care home.

4235 (c) Files a civil action alleging a violation of this part
4236 or notifies a state attorney or the Attorney General of a
4237 possible violation of this part.

4238 (5) Any adult family-care home that terminates the
4239 residency of an individual who has participated in activities

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4240 specified in subsection (4) must show good cause for the
4241 termination in a court of competent jurisdiction.

4242 (6) Any person who reports a complaint concerning a
4243 suspected violation of this part or the services and conditions
4244 in an adult family-care home, or who testifies in any
4245 administrative or judicial proceeding arising from such a
4246 complaint, is immune from any civil or criminal liability
4247 therefor, unless the person acted in bad faith or with malicious
4248 purpose or the court finds that there was a complete absence of
4249 a justiciable issue of either law or fact raised by the losing
4250 party.

4251 Section 74. Paragraphs (c), (d), (e), and (f) of
4252 subsection (5) of section 400.93, Florida Statutes, are amended
4253 to read:

4254 400.93 Licensure required; exemptions; unlawful acts;
4255 penalties.--

4256 (5) The following are exempt from home medical equipment
4257 provider licensure, unless they have a separate company,
4258 corporation, or division that is in the business of providing
4259 home medical equipment and services for sale or rent to
4260 consumers at their regular or temporary place of residence
4261 pursuant to the provisions of this part:

4262 (c) Assisted living facilities licensed under chapter 429
4263 ~~part III~~, when serving their residents.

4264 (d) Home health agencies licensed under part III ~~IV~~.

4265 (e) Hospices licensed under part IV ~~V~~.

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4266 (f) Intermediate care facilities, homes for special
4267 services, and transitional living facilities licensed under part
4268 V ~~VIII~~.

4269 Section 75. Paragraph (c) of subsection (10) of section
4270 400.962, Florida Statutes, is amended to read:

4271 400.962 License required; license application.--

4272 (10)

4273 (c) Proof of compliance with the level 2 background
4274 screening requirements of chapter 435 which has been submitted
4275 within the previous 5 years in compliance with any other
4276 licensure requirements under this chapter or chapter 429
4277 satisfies the requirements of paragraph (a). Proof of compliance
4278 with background screening which has been submitted within the
4279 previous 5 years to fulfill the requirements of the Financial
4280 Services Commission and the Office of Insurance Regulation under
4281 chapter 651 as part of an application for a certificate of
4282 authority to operate a continuing care retirement community
4283 satisfies the requirements for the Department of Law Enforcement
4284 and Federal Bureau of Investigation background checks.

4285 Section 76. Paragraph (b) of subsection (1) of section
4286 400.980, Florida Statutes, is amended to read:

4287 400.980 Health care services pools.--

4288 (1) As used in this section, the term:

4289 (b) "Health care services pool" means any person, firm,
4290 corporation, partnership, or association engaged for hire in the
4291 business of providing temporary employment in health care
4292 facilities, residential facilities, and agencies for licensed,
4293 certified, or trained health care personnel including, without

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4294 limitation, nursing assistants, nurses' aides, and orderlies.
 4295 However, the term does not include nursing registries, a
 4296 facility licensed under this chapter or chapter 429 400, a
 4297 health care services pool established within a health care
 4298 facility to provide services only within the confines of such
 4299 facility, or any individual contractor directly providing
 4300 temporary services to a health care facility without use or
 4301 benefit of a contracting agent.

4302 Section 77. Paragraphs (a), (b), (c), and (d) of
 4303 subsection (4) of section 400.9905, Florida Statutes, are
 4304 amended to read:

4305 400.9905 Definitions.--

4306 (4) "Clinic" means an entity at which health care services
 4307 are provided to individuals and which tenders charges for
 4308 reimbursement for such services, including a mobile clinic and a
 4309 portable equipment provider. For purposes of this part, the term
 4310 does not include and the licensure requirements of this part do
 4311 not apply to:

4312 (a) Entities licensed or registered by the state under
 4313 chapter 395; or entities licensed or registered by the state and
 4314 providing only health care services within the scope of services
 4315 authorized under their respective licenses granted under ss.
 4316 383.30-383.335, chapter 390, chapter 394, chapter 397, this
 4317 chapter except part X ~~XIII~~, chapter 429, chapter 463, chapter
 4318 465, chapter 466, chapter 478, part I of chapter 483, chapter
 4319 484, or chapter 651; end-stage renal disease providers
 4320 authorized under 42 C.F.R. part 405, subpart U; or providers
 4321 certified under 42 C.F.R. part 485, subpart B or subpart H; or

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4322 any entity that provides neonatal or pediatric hospital-based
4323 health care services by licensed practitioners solely within a
4324 hospital licensed under chapter 395.

4325 (b) Entities that own, directly or indirectly, entities
4326 licensed or registered by the state pursuant to chapter 395; or
4327 entities that own, directly or indirectly, entities licensed or
4328 registered by the state and providing only health care services
4329 within the scope of services authorized pursuant to their
4330 respective licenses granted under ss. 383.30-383.335, chapter
4331 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4332 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4333 part I of chapter 483, chapter 484, chapter 651; end-stage renal
4334 disease providers authorized under 42 C.F.R. part 405, subpart
4335 U; or providers certified under 42 C.F.R. part 485, subpart B or
4336 subpart H; or any entity that provides neonatal or pediatric
4337 hospital-based health care services by licensed practitioners
4338 solely within a hospital licensed under chapter 395.

4339 (c) Entities that are owned, directly or indirectly, by an
4340 entity licensed or registered by the state pursuant to chapter
4341 395; or entities that are owned, directly or indirectly, by an
4342 entity licensed or registered by the state and providing only
4343 health care services within the scope of services authorized
4344 pursuant to their respective licenses granted under ss. 383.30-
4345 383.335, chapter 390, chapter 394, chapter 397, this chapter
4346 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,
4347 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
4348 chapter 651; end-stage renal disease providers authorized under
4349 42 C.F.R. part 405, subpart U; or providers certified under 42

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4350 C.F.R. part 485, subpart B or subpart H; or any entity that
 4351 provides neonatal or pediatric hospital-based health care
 4352 services by licensed practitioners solely within a hospital
 4353 under chapter 395.

4354 (d) Entities that are under common ownership, directly or
 4355 indirectly, with an entity licensed or registered by the state
 4356 pursuant to chapter 395; or entities that are under common
 4357 ownership, directly or indirectly, with an entity licensed or
 4358 registered by the state and providing only health care services
 4359 within the scope of services authorized pursuant to their
 4360 respective licenses granted under ss. 383.30-383.335, chapter
 4361 390, chapter 394, chapter 397, this chapter except part X XIII,
 4362 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 4363 part I of chapter 483, chapter 484, or chapter 651; end-stage
 4364 renal disease providers authorized under 42 C.F.R. part 405,
 4365 subpart U; or providers certified under 42 C.F.R. part 485,
 4366 subpart B or subpart H; or any entity that provides neonatal or
 4367 pediatric hospital-based health care services by licensed
 4368 practitioners solely within a hospital licensed under chapter
 4369 395.

4370 Section 78. Subsection (12) of section 401.23, Florida
 4371 Statutes, is amended to read:

4372 401.23 Definitions.--As used in this part, the term:

4373 (12) "Interfacility transfer" means the transportation by
 4374 ambulance of a patient between two facilities licensed under
 4375 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
 4376 pursuant to this part.

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4377 Section 79. Paragraph (b) of subsection (2) of section
4378 402.164, Florida Statutes, is amended to read:

4379 402.164 Legislative intent; definitions.--

4380 (2) As used in ss. 402.164-402.167, the term:

4381 (b) "Client" means a client as defined in s. 393.063, s.
4382 394.67, s. 397.311, or s. 400.960, a forensic client or client
4383 as defined in s. 916.106, a child or youth as defined in s.
4384 39.01, a child as defined in s. 827.01, a family as defined in
4385 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
4386 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
4387 recipient or recipient as defined in s. 409.901, a child
4388 receiving child care as defined in s. 402.302, a disabled adult
4389 as defined in s. 410.032 or s. 410.603, or a victim as defined
4390 in s. 39.01 or s. 415.102 as each definition applies within its
4391 respective chapter.

4392 Section 80. Subsection (10) of section 408.032, Florida
4393 Statutes, is amended to read:

4394 408.032 Definitions relating to Health Facility and
4395 Services Development Act.--As used in ss. 408.031-408.045, the
4396 term:

4397 (10) "Hospice" or "hospice program" means a hospice as
4398 defined in part IV ~~VI~~ of chapter 400.

4399 Section 81. Paragraph (b) of subsection (2) of section
4400 408.033, Florida Statutes, is amended to read:

4401 408.033 Local and state health planning.--

4402 (2) FUNDING.--

4403 (b)1. A hospital licensed under chapter 395, a nursing
4404 home licensed under chapter 400, and an assisted living facility

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4405 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
4406 based on number of beds.

4407 2. All other facilities and organizations listed in
4408 paragraph (a) shall each be assessed an annual fee of \$150.

4409 3. Facilities operated by the Department of Children and
4410 Family Services, the Department of Health, or the Department of
4411 Corrections and any hospital which meets the definition of rural
4412 hospital pursuant to s. 395.602 are exempt from the assessment
4413 required in this subsection.

4414 Section 82. Subsection (2) of section 408.034, Florida
4415 Statutes, is amended to read:

4416 408.034 Duties and responsibilities of agency; rules.--

4417 (2) In the exercise of its authority to issue licenses to
4418 health care facilities and health service providers, as provided
4419 under chapters 393 and~~7~~ 395~~7~~ and parts II and IV ~~VI~~ of chapter
4420 400, the agency may not issue a license to any health care
4421 facility or health service provider that fails to receive a
4422 certificate of need or an exemption for the licensed facility or
4423 service.

4424 Section 83. Subsections (28) and (29) of section 408.07,
4425 Florida Statutes, are amended to read:

4426 408.07 Definitions.--As used in this chapter, with the
4427 exception of ss. 408.031-408.045, the term:

4428 (28) "Home health agency" means an organization licensed
4429 under part III ~~IV~~ of chapter 400.

4430 (29) "Hospice" means an organization licensed under part
4431 IV ~~VI~~ of chapter 400.

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4432 Section 84. Subsection (3) of section 408.831, Florida
4433 Statutes, is amended to read:

4434 408.831 Denial, suspension, or revocation of a license,
4435 registration, certificate, or application.--

4436 (3) This section provides standards of enforcement
4437 applicable to all entities licensed or regulated by the Agency
4438 for Health Care Administration. This section controls over any
4439 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
4440 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
4441 pursuant to those chapters.

4442 Section 85. Subsection (2) of section 409.212, Florida
4443 Statutes, is amended to read:

4444 409.212 Optional supplementation.--

4445 (2) The base rate of payment for optional state
4446 supplementation shall be established by the department within
4447 funds appropriated. Additional amounts may be provided for
4448 mental health residents in facilities designed to provide
4449 limited mental health services as provided for in s. 429.075 ~~s.~~
4450 ~~400.4075~~. The base rate of payment does not include the personal
4451 needs allowance.

4452 Section 86. Paragraph (e) of subsection (4) of section
4453 409.221, Florida Statutes, is amended to read:

4454 409.221 Consumer-directed care program.--

4455 (4) CONSUMER-DIRECTED CARE.--

4456 (e) Services.--Consumers shall use the budget allowance
4457 only to pay for home and community-based services that meet the
4458 consumer's long-term care needs and are a cost-efficient use of

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4459 funds. Such services may include, but are not limited to, the
4460 following:

- 4461 1. Personal care.
- 4462 2. Homemaking and chores, including housework, meals,
4463 shopping, and transportation.
- 4464 3. Home modifications and assistive devices which may
4465 increase the consumer's independence or make it possible to
4466 avoid institutional placement.
- 4467 4. Assistance in taking self-administered medication.
- 4468 5. Day care and respite care services, including those
4469 provided by nursing home facilities pursuant to s. 400.141(6) or
4470 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
4471 ~~400.554~~.
- 4472 6. Personal care and support services provided in an
4473 assisted living facility.

4474 Section 87. Subsection (4) of section 409.905, Florida
4475 Statutes, is amended to read:

4476 409.905 Mandatory Medicaid services.--The agency may make
4477 payments for the following services, which are required of the
4478 state by Title XIX of the Social Security Act, furnished by
4479 Medicaid providers to recipients who are determined to be
4480 eligible on the dates on which the services were provided. Any
4481 service under this section shall be provided only when medically
4482 necessary and in accordance with state and federal law.
4483 Mandatory services rendered by providers in mobile units to
4484 Medicaid recipients may be restricted by the agency. Nothing in
4485 this section shall be construed to prevent or limit the agency
4486 from adjusting fees, reimbursement rates, lengths of stay,

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4487 | number of visits, number of services, or any other adjustments
 4488 | necessary to comply with the availability of moneys and any
 4489 | limitations or directions provided for in the General
 4490 | Appropriations Act or chapter 216.

4491 | (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
 4492 | nursing and home health aide services, supplies, appliances, and
 4493 | durable medical equipment, necessary to assist a recipient
 4494 | living at home. An entity that provides services pursuant to
 4495 | this subsection shall be licensed under part III ~~IV~~ of chapter
 4496 | 400. These services, equipment, and supplies, or reimbursement
 4497 | therefor, may be limited as provided in the General
 4498 | Appropriations Act and do not include services, equipment, or
 4499 | supplies provided to a person residing in a hospital or nursing
 4500 | facility.

4501 | (a) In providing home health care services, the agency may
 4502 | require prior authorization of care based on diagnosis.

4503 | (b) The agency shall implement a comprehensive utilization
 4504 | management program that requires prior authorization of all
 4505 | private duty nursing services, an individualized treatment plan
 4506 | that includes information about medication and treatment orders,
 4507 | treatment goals, methods of care to be used, and plans for care
 4508 | coordination by nurses and other health professionals. The
 4509 | utilization management program shall also include a process for
 4510 | periodically reviewing the ongoing use of private duty nursing
 4511 | services. The assessment of need shall be based on a child's
 4512 | condition, family support and care supplements, a family's
 4513 | ability to provide care, and a family's and child's schedule
 4514 | regarding work, school, sleep, and care for other family

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4515 dependents. When implemented, the private duty nursing
4516 utilization management program shall replace the current
4517 authorization program used by the Agency for Health Care
4518 Administration and the Children's Medical Services program of
4519 the Department of Health. The agency may competitively bid on a
4520 contract to select a qualified organization to provide
4521 utilization management of private duty nursing services. The
4522 agency is authorized to seek federal waivers to implement this
4523 initiative.

4524 Section 88. Subsection (14) of section 409.906, Florida
4525 Statutes, is amended to read:

4526 409.906 Optional Medicaid services.--Subject to specific
4527 appropriations, the agency may make payments for services which
4528 are optional to the state under Title XIX of the Social Security
4529 Act and are furnished by Medicaid providers to recipients who
4530 are determined to be eligible on the dates on which the services
4531 were provided. Any optional service that is provided shall be
4532 provided only when medically necessary and in accordance with
4533 state and federal law. Optional services rendered by providers
4534 in mobile units to Medicaid recipients may be restricted or
4535 prohibited by the agency. Nothing in this section shall be
4536 construed to prevent or limit the agency from adjusting fees,
4537 reimbursement rates, lengths of stay, number of visits, or
4538 number of services, or making any other adjustments necessary to
4539 comply with the availability of moneys and any limitations or
4540 directions provided for in the General Appropriations Act or
4541 chapter 216. If necessary to safeguard the state's systems of
4542 providing services to elderly and disabled persons and subject

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4543 to the notice and review provisions of s. 216.177, the Governor
4544 may direct the Agency for Health Care Administration to amend
4545 the Medicaid state plan to delete the optional Medicaid service
4546 known as "Intermediate Care Facilities for the Developmentally
4547 Disabled." Optional services may include:

4548 (14) HOSPICE CARE SERVICES.--The agency may pay for all
4549 reasonable and necessary services for the palliation or
4550 management of a recipient's terminal illness, if the services
4551 are provided by a hospice that is licensed under part IV ~~VI~~ of
4552 chapter 400 and meets Medicare certification requirements.

4553 Section 89. Subsection (7) and paragraph (a) of subsection
4554 (8) of section 409.907, Florida Statutes, are amended to read:

4555 409.907 Medicaid provider agreements.--The agency may make
4556 payments for medical assistance and related services rendered to
4557 Medicaid recipients only to an individual or entity who has a
4558 provider agreement in effect with the agency, who is performing
4559 services or supplying goods in accordance with federal, state,
4560 and local law, and who agrees that no person shall, on the
4561 grounds of handicap, race, color, or national origin, or for any
4562 other reason, be subjected to discrimination under any program
4563 or activity for which the provider receives payment from the
4564 agency.

4565 (7) The agency may require, as a condition of
4566 participating in the Medicaid program and before entering into
4567 the provider agreement, that the provider submit information, in
4568 an initial and any required renewal applications, concerning the
4569 professional, business, and personal background of the provider
4570 and permit an onsite inspection of the provider's service

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4571 | location by agency staff or other personnel designated by the
 4572 | agency to perform this function. The agency shall perform a
 4573 | random onsite inspection, within 60 days after receipt of a
 4574 | fully complete new provider's application, of the provider's
 4575 | service location prior to making its first payment to the
 4576 | provider for Medicaid services to determine the applicant's
 4577 | ability to provide the services that the applicant is proposing
 4578 | to provide for Medicaid reimbursement. The agency is not
 4579 | required to perform an onsite inspection of a provider or
 4580 | program that is licensed by the agency, that provides services
 4581 | under waiver programs for home and community-based services, or
 4582 | that is licensed as a medical foster home by the Department of
 4583 | Children and Family Services. As a continuing condition of
 4584 | participation in the Medicaid program, a provider shall
 4585 | immediately notify the agency of any current or pending
 4586 | bankruptcy filing. Before entering into the provider agreement,
 4587 | or as a condition of continuing participation in the Medicaid
 4588 | program, the agency may also require that Medicaid providers
 4589 | reimbursed on a fee-for-services basis or fee schedule basis
 4590 | which is not cost-based, post a surety bond not to exceed
 4591 | \$50,000 or the total amount billed by the provider to the
 4592 | program during the current or most recent calendar year,
 4593 | whichever is greater. For new providers, the amount of the
 4594 | surety bond shall be determined by the agency based on the
 4595 | provider's estimate of its first year's billing. If the
 4596 | provider's billing during the first year exceeds the bond
 4597 | amount, the agency may require the provider to acquire an
 4598 | additional bond equal to the actual billing level of the

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4599 provider. A provider's bond shall not exceed \$50,000 if a
 4600 physician or group of physicians licensed under chapter 458,
 4601 chapter 459, or chapter 460 has a 50 percent or greater
 4602 ownership interest in the provider or if the provider is an
 4603 assisted living facility licensed under ~~part III of~~ chapter 429
 4604 ~~400~~. The bonds permitted by this section are in addition to the
 4605 bonds referenced in s. 400.179(5)(d). If the provider is a
 4606 corporation, partnership, association, or other entity, the
 4607 agency may require the provider to submit information concerning
 4608 the background of that entity and of any principal of the
 4609 entity, including any partner or shareholder having an ownership
 4610 interest in the entity equal to 5 percent or greater, and any
 4611 treating provider who participates in or intends to participate
 4612 in Medicaid through the entity. The information must include:

4613 (a) Proof of holding a valid license or operating
 4614 certificate, as applicable, if required by the state or local
 4615 jurisdiction in which the provider is located or if required by
 4616 the Federal Government.

4617 (b) Information concerning any prior violation, fine,
 4618 suspension, termination, or other administrative action taken
 4619 under the Medicaid laws, rules, or regulations of this state or
 4620 of any other state or the Federal Government; any prior
 4621 violation of the laws, rules, or regulations relating to the
 4622 Medicare program; any prior violation of the rules or
 4623 regulations of any other public or private insurer; and any
 4624 prior violation of the laws, rules, or regulations of any
 4625 regulatory body of this or any other state.

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4626 (c) Full and accurate disclosure of any financial or
4627 ownership interest that the provider, or any principal, partner,
4628 or major shareholder thereof, may hold in any other Medicaid
4629 provider or health care related entity or any other entity that
4630 is licensed by the state to provide health or residential care
4631 and treatment to persons.

4632 (d) If a group provider, identification of all members of
4633 the group and attestation that all members of the group are
4634 enrolled in or have applied to enroll in the Medicaid program.

4635 (8)(a) Each provider, or each principal of the provider if
4636 the provider is a corporation, partnership, association, or
4637 other entity, seeking to participate in the Medicaid program
4638 must submit a complete set of his or her fingerprints to the
4639 agency for the purpose of conducting a criminal history record
4640 check. Principals of the provider include any officer, director,
4641 billing agent, managing employee, or affiliated person, or any
4642 partner or shareholder who has an ownership interest equal to 5
4643 percent or more in the provider. However, a director of a not-
4644 for-profit corporation or organization is not a principal for
4645 purposes of a background investigation as required by this
4646 section if the director: serves solely in a voluntary capacity
4647 for the corporation or organization, does not regularly take
4648 part in the day-to-day operational decisions of the corporation
4649 or organization, receives no remuneration from the not-for-
4650 profit corporation or organization for his or her service on the
4651 board of directors, has no financial interest in the not-for-
4652 profit corporation or organization, and has no family members
4653 with a financial interest in the not-for-profit corporation or

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4654 organization; and if the director submits an affidavit, under
 4655 penalty of perjury, to this effect to the agency and the not-
 4656 for-profit corporation or organization submits an affidavit,
 4657 under penalty of perjury, to this effect to the agency as part
 4658 of the corporation's or organization's Medicaid provider
 4659 agreement application. Notwithstanding the above, the agency may
 4660 require a background check for any person reasonably suspected
 4661 by the agency to have been convicted of a crime. This subsection
 4662 shall not apply to:

- 4663 1. A hospital licensed under chapter 395;
 - 4664 2. A nursing home licensed under chapter 400;
 - 4665 3. A hospice licensed under chapter 400;
 - 4666 4. An assisted living facility licensed under chapter 429;
 - 4667 ~~400.~~
 - 4668 5. A unit of local government, except that requirements of
 4669 this subsection apply to nongovernmental providers and entities
 4670 when contracting with the local government to provide Medicaid
 4671 services. The actual cost of the state and national criminal
 4672 history record checks must be borne by the nongovernmental
 4673 provider or entity; or
 - 4674 6. Any business that derives more than 50 percent of its
 4675 revenue from the sale of goods to the final consumer, and the
 4676 business or its controlling parent either is required to file a
 4677 form 10-K or other similar statement with the Securities and
 4678 Exchange Commission or has a net worth of \$50 million or more.
- 4679 Section 90. Paragraph (c) of subsection (5) of section
 4680 409.912, Florida Statutes, is amended to read:

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4681 409.912 Cost-effective purchasing of health care.--The
4682 agency shall purchase goods and services for Medicaid recipients
4683 in the most cost-effective manner consistent with the delivery
4684 of quality medical care. To ensure that medical services are
4685 effectively utilized, the agency may, in any case, require a
4686 confirmation or second physician's opinion of the correct
4687 diagnosis for purposes of authorizing future services under the
4688 Medicaid program. This section does not restrict access to
4689 emergency services or poststabilization care services as defined
4690 in 42 C.F.R. part 438.114. Such confirmation or second opinion
4691 shall be rendered in a manner approved by the agency. The agency
4692 shall maximize the use of prepaid per capita and prepaid
4693 aggregate fixed-sum basis services when appropriate and other
4694 alternative service delivery and reimbursement methodologies,
4695 including competitive bidding pursuant to s. 287.057, designed
4696 to facilitate the cost-effective purchase of a case-managed
4697 continuum of care. The agency shall also require providers to
4698 minimize the exposure of recipients to the need for acute
4699 inpatient, custodial, and other institutional care and the
4700 inappropriate or unnecessary use of high-cost services. The
4701 agency shall contract with a vendor to monitor and evaluate the
4702 clinical practice patterns of providers in order to identify
4703 trends that are outside the normal practice patterns of a
4704 provider's professional peers or the national guidelines of a
4705 provider's professional association. The vendor must be able to
4706 provide information and counseling to a provider whose practice
4707 patterns are outside the norms, in consultation with the agency,
4708 to improve patient care and reduce inappropriate utilization.

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

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4709 | The agency may mandate prior authorization, drug therapy
4710 | management, or disease management participation for certain
4711 | populations of Medicaid beneficiaries, certain drug classes, or
4712 | particular drugs to prevent fraud, abuse, overuse, and possible
4713 | dangerous drug interactions. The Pharmaceutical and Therapeutics
4714 | Committee shall make recommendations to the agency on drugs for
4715 | which prior authorization is required. The agency shall inform
4716 | the Pharmaceutical and Therapeutics Committee of its decisions
4717 | regarding drugs subject to prior authorization. The agency is
4718 | authorized to limit the entities it contracts with or enrolls as
4719 | Medicaid providers by developing a provider network through
4720 | provider credentialing. The agency may competitively bid single-
4721 | source-provider contracts if procurement of goods or services
4722 | results in demonstrated cost savings to the state without
4723 | limiting access to care. The agency may limit its network based
4724 | on the assessment of beneficiary access to care, provider
4725 | availability, provider quality standards, time and distance
4726 | standards for access to care, the cultural competence of the
4727 | provider network, demographic characteristics of Medicaid
4728 | beneficiaries, practice and provider-to-beneficiary standards,
4729 | appointment wait times, beneficiary use of services, provider
4730 | turnover, provider profiling, provider licensure history,
4731 | previous program integrity investigations and findings, peer
4732 | review, provider Medicaid policy and billing compliance records,
4733 | clinical and medical record audits, and other factors. Providers
4734 | shall not be entitled to enrollment in the Medicaid provider
4735 | network. The agency shall determine instances in which allowing
4736 | Medicaid beneficiaries to purchase durable medical equipment and

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

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4737 other goods is less expensive to the Medicaid program than long-
4738 term rental of the equipment or goods. The agency may establish
4739 rules to facilitate purchases in lieu of long-term rentals in
4740 order to protect against fraud and abuse in the Medicaid program
4741 as defined in s. 409.913. The agency may seek federal waivers
4742 necessary to administer these policies.

4743 (5) By December 1, 2005, the Agency for Health Care
4744 Administration, in partnership with the Department of Elderly
4745 Affairs, shall create an integrated, fixed-payment delivery
4746 system for Medicaid recipients who are 60 years of age or older.
4747 The Agency for Health Care Administration shall implement the
4748 integrated system initially on a pilot basis in two areas of the
4749 state. In one of the areas enrollment shall be on a voluntary
4750 basis. The program must transfer all Medicaid services for
4751 eligible elderly individuals who choose to participate into an
4752 integrated-care management model designed to serve Medicaid
4753 recipients in the community. The program must combine all
4754 funding for Medicaid services provided to individuals 60 years
4755 of age or older into the integrated system, including funds for
4756 Medicaid home and community-based waiver services; all Medicaid
4757 services authorized in ss. 409.905 and 409.906, excluding funds
4758 for Medicaid nursing home services unless the agency is able to
4759 demonstrate how the integration of the funds will improve
4760 coordinated care for these services in a less costly manner; and
4761 Medicare coinsurance and deductibles for persons dually eligible
4762 for Medicaid and Medicare as prescribed in s. 409.908(13).

4763 (c) The agency must ensure that the capitation-rate-
4764 setting methodology for the integrated system is actuarially

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4765 sound and reflects the intent to provide quality care in the
4766 least restrictive setting. The agency must also require
4767 integrated-system providers to develop a credentialing system
4768 for service providers and to contract with all Gold Seal nursing
4769 homes, where feasible, and exclude, where feasible, chronically
4770 poor-performing facilities and providers as defined by the
4771 agency. The integrated system must provide that if the recipient
4772 resides in a noncontracted residential facility licensed under
4773 chapter 400 or chapter 429 at the time the integrated system is
4774 initiated, the recipient must be permitted to continue to reside
4775 in the noncontracted facility as long as the recipient desires.
4776 The integrated system must also provide that, in the absence of
4777 a contract between the integrated-system provider and the
4778 residential facility licensed under chapter 400 or chapter 429,
4779 current Medicaid rates must prevail. The agency and the
4780 Department of Elderly Affairs must jointly develop procedures to
4781 manage the services provided through the integrated system in
4782 order to ensure quality and recipient choice.

4783 Section 91. Section 410.031, Florida Statutes, is amended
4784 to read:

4785 410.031 Legislative intent.--It is the intent of the
4786 Legislature to encourage the provision of care for disabled
4787 adults in family-type living arrangements in private homes as an
4788 alternative to institutional or nursing home care for such
4789 persons. The provisions of ss. 410.031-410.036 are intended to
4790 be supplemental to the provisions of chapters ~~chapter~~ 400 and
4791 429, relating to the licensing and regulation of nursing homes
4792 and assisted living facilities, and do not exempt any person who

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4793 | is otherwise subject to regulation under chapter 400 or chapter
4794 | 429.

4795 | Section 92. Section 410.034, Florida Statutes, is amended
4796 | to read:

4797 | 410.034 Department determination of fitness to provide
4798 | home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
4799 | caring for an adult who is related to such person by blood or
4800 | marriage is not subject to the Assisted Living Facilities Act.
4801 | If, however, the person who plans to provide home care under
4802 | this act is found by the department to be unable to provide this
4803 | care, the department shall notify the person wishing to provide
4804 | home care of this determination, and the person shall not be
4805 | eligible for subsidy payments under ss. 410.031-410.036.

4806 | Section 93. Section 415.1111, Florida Statutes, is amended
4807 | to read:

4808 | 415.1111 Civil actions.--A vulnerable adult who has been
4809 | abused, neglected, or exploited as specified in this chapter has
4810 | a cause of action against any perpetrator and may recover actual
4811 | and punitive damages for such abuse, neglect, or exploitation.
4812 | The action may be brought by the vulnerable adult, or that
4813 | person's guardian, by a person or organization acting on behalf
4814 | of the vulnerable adult with the consent of that person or that
4815 | person's guardian, or by the personal representative of the
4816 | estate of a deceased victim without regard to whether the cause
4817 | of death resulted from the abuse, neglect, or exploitation. The
4818 | action may be brought in any court of competent jurisdiction to
4819 | enforce such action and to recover actual and punitive damages
4820 | for any deprivation of or infringement on the rights of a

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4821 vulnerable adult. A party who prevails in any such action may be
 4822 entitled to recover reasonable attorney's fees, costs of the
 4823 action, and damages. The remedies provided in this section are
 4824 in addition to and cumulative with other legal and
 4825 administrative remedies available to a vulnerable adult.
 4826 Notwithstanding the foregoing, any civil action for damages
 4827 against any licensee or entity who establishes, controls,
 4828 conducts, manages, or operates a facility licensed under part II
 4829 of chapter 400 relating to its operation of the licensed
 4830 facility shall be brought pursuant to s. 400.023, or against any
 4831 licensee or entity who establishes, controls, conducts, manages,
 4832 or operates a facility licensed under part I ~~III~~ of chapter 429
 4833 ~~400~~ relating to its operation of the licensed facility shall be
 4834 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
 4835 entity shall not be vicariously liable for the acts or omissions
 4836 of its employees or agents or any other third party in an action
 4837 brought under this section.

4838 Section 94. Paragraph (d) of subsection (1) of section
 4839 419.001, Florida Statutes, is amended to read:

4840 419.001 Site selection of community residential homes.--

4841 (1) For the purposes of this section, the following
 4842 definitions shall apply:

4843 (d) "Resident" means any of the following: a frail elder
 4844 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
 4845 handicapped person as defined in s. 760.22(7)(a); a
 4846 developmentally disabled person as defined in s. 393.063; a
 4847 nondangerous mentally ill person as defined in s. 394.455(18);

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4848 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
4849 s. 985.03(8).

4850 Section 95. Section 430.601, Florida Statutes, is amended
4851 to read:

4852 430.601 Home care for the elderly; legislative intent.--It
4853 is the intent of the Legislature to encourage the provision of
4854 care for the elderly in family-type living arrangements in
4855 private homes as an alternative to institutional or nursing home
4856 care for such persons. The provisions of ss. 430.601-430.606 are
4857 intended to be supplemental to the provisions of chapters
4858 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
4859 nursing homes and assisted living facilities, and do not exempt
4860 any person who is otherwise subject to regulation under those
4861 chapters ~~the provisions of that chapter~~.

4862 Section 96. Subsection (7) of section 430.703, Florida
4863 Statutes, is amended to read:

4864 430.703 Definitions.--As used in this act, the term:

4865 (7) "Other qualified provider" means an entity licensed
4866 under chapter 400 or chapter 429 that demonstrates a long-term
4867 care continuum and meets all requirements pursuant to an
4868 interagency agreement between the agency and the department.

4869 Section 97. Paragraph (a) of subsection (3) of section
4870 435.03, Florida Statutes, is amended to read:

4871 435.03 Level 1 screening standards.--

4872 (3) Standards must also ensure that the person:

4873 (a) For employees and employers licensed or registered
4874 pursuant to chapter 400 or chapter 429, and for employees and
4875 employers of developmental services institutions as defined in

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4876 s. 393.063, intermediate care facilities for the developmentally
4877 disabled as defined in s. 393.063, and mental health treatment
4878 facilities as defined in s. 394.455, meets the requirements of
4879 this chapter.

4880 Section 98. Paragraph (a) of subsection (4) of section
4881 435.04, Florida Statutes, is amended to read:

4882 435.04 Level 2 screening standards.--

4883 (4) Standards must also ensure that the person:

4884 (a) For employees or employers licensed or registered
4885 pursuant to chapter 400 or chapter 429, does not have a
4886 confirmed report of abuse, neglect, or exploitation as defined
4887 in s. 415.102(6), which has been uncontested or upheld under s.
4888 415.103.

4889 Section 99. Paragraph (g) of subsection (1) of section
4890 440.13, Florida Statutes, is amended to read:

4891 440.13 Medical services and supplies; penalty for
4892 violations; limitations.--

4893 (1) DEFINITIONS.--As used in this section, the term:

4894 (g) "Health care facility" means any hospital licensed
4895 under chapter 395 and any health care institution licensed under
4896 chapter 400 or chapter 429.

4897 Section 100. Subsection (1) of section 465.0235, Florida
4898 Statutes, is amended to read:

4899 465.0235 Automated pharmacy systems used by long-term care
4900 facilities, hospices, or state correctional institutions.--

4901 (1) A pharmacy may provide pharmacy services to a long-
4902 term care facility or hospice licensed under chapter 400 or
4903 chapter 429 or a state correctional institution operated under

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4904 chapter 944 through the use of an automated pharmacy system that
4905 need not be located at the same location as the pharmacy.

4906 Section 101. Subsection (8) of section 468.1685, Florida
4907 Statutes, is amended to read:

4908 468.1685 Powers and duties of board and department.--It is
4909 the function and duty of the board, together with the
4910 department, to:

4911 (8) Set up procedures by rule for advising and acting
4912 together with the Department of Health and other boards of other
4913 health professions in matters affecting procedures and methods
4914 for effectively enforcing the purpose of this part and the
4915 administration of chapters ~~chapter~~ 400 and 429.

4916 Section 102. Paragraph (k) of subsection (1) of section
4917 468.505, Florida Statutes, is amended to read:

4918 468.505 Exemptions; exceptions.--

4919 (1) Nothing in this part may be construed as prohibiting
4920 or restricting the practice, services, or activities of:

4921 (k) A person employed by a hospital licensed under chapter
4922 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
4923 under part II ~~or part III~~ of chapter 400, by an assisted living
4924 facility licensed under chapter 429, or by a continuing care
4925 facility certified under chapter 651, if the person is employed
4926 in compliance with the laws and rules adopted thereunder
4927 regarding the operation of its dietetic department.

4928 Section 103. Subsection (11) of section 477.025, Florida
4929 Statutes, is amended to read:

4930 477.025 Cosmetology salons; specialty salons; requisites;
4931 licensure; inspection; mobile cosmetology salons.--

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4932 (11) Facilities licensed under part II ~~or part III~~ of
 4933 chapter 400 or part I of chapter 429 are ~~shall be~~ exempt from
 4934 ~~the provisions of this section,~~ and a cosmetologist licensed
 4935 pursuant to s. 477.019 may provide salon services exclusively
 4936 for facility residents.

4937 Section 104. Subsection (5) of section 483.285, Florida
 4938 Statutes, is amended to read:

4939 483.285 Application of part; exemptions.--This part
 4940 applies to all multiphasic health testing centers within the
 4941 state, but does not apply to:

4942 (5) A home health agency licensed under part III ~~IV~~ of
 4943 chapter 400.

4944 Section 105. Paragraph (a) of subsection (2) of section
 4945 509.032, Florida Statutes, is amended to read:

4946 509.032 Duties.--

4947 (2) INSPECTION OF PREMISES.--

4948 (a) The division has responsibility and jurisdiction for
 4949 all inspections required by this chapter. The division has
 4950 responsibility for quality assurance. Each licensed
 4951 establishment shall be inspected at least biannually, except for
 4952 transient and nontransient apartments, which shall be inspected
 4953 at least annually, and shall be inspected at such other times as
 4954 the division determines is necessary to ensure the public's
 4955 health, safety, and welfare. The division shall establish a
 4956 system to determine inspection frequency. Public lodging units
 4957 classified as resort condominiums or resort dwellings are not
 4958 subject to this requirement, but shall be made available to the
 4959 division upon request. If, during the inspection of a public

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4960 lodging establishment classified for renting to transient or
 4961 nontransient tenants, an inspector identifies vulnerable adults
 4962 who appear to be victims of neglect, as defined in s. 415.102,
 4963 or, in the case of a building that is not equipped with
 4964 automatic sprinkler systems, tenants or clients who may be
 4965 unable to self-preserve in an emergency, the division shall
 4966 convene meetings with the following agencies as appropriate to
 4967 the individual situation: the Department of Health, the
 4968 Department of Elderly Affairs, the area agency on aging, the
 4969 local fire marshal, the landlord and affected tenants and
 4970 clients, and other relevant organizations, to develop a plan
 4971 which improves the prospects for safety of affected residents
 4972 and, if necessary, identifies alternative living arrangements
 4973 such as facilities licensed under part II ~~or part III~~ of chapter
 4974 400 or under chapter 429.

4975 Section 106. Subsection (1) of section 509.241, Florida
 4976 Statutes, is amended to read:

4977 509.241 Licenses required; exceptions.--

4978 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
 4979 establishment and public food service establishment shall obtain
 4980 a license from the division. Such license may not be transferred
 4981 from one place or individual to another. It shall be a
 4982 misdemeanor of the second degree, punishable as provided in s.
 4983 775.082 or s. 775.083, for such an establishment to operate
 4984 without a license. Local law enforcement shall provide immediate
 4985 assistance in pursuing an illegally operating establishment. The
 4986 division may refuse a license, or a renewal thereof, to any
 4987 establishment that is not constructed and maintained in

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4988 | accordance with law and with the rules of the division. The
 4989 | division may refuse to issue a license, or a renewal thereof, to
 4990 | any establishment an operator of which, within the preceding 5
 4991 | years, has been adjudicated guilty of, or has forfeited a bond
 4992 | when charged with, any crime reflecting on professional
 4993 | character, including soliciting for prostitution, pandering,
 4994 | letting premises for prostitution, keeping a disorderly place,
 4995 | or illegally dealing in controlled substances as defined in
 4996 | chapter 893, whether in this state or in any other jurisdiction
 4997 | within the United States, or has had a license denied, revoked,
 4998 | or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
 4999 | renewed annually, and the division shall adopt a rule
 5000 | establishing a staggered schedule for license renewals. If any
 5001 | license expires while administrative charges are pending against
 5002 | the license, the proceedings against the license shall continue
 5003 | to conclusion as if the license were still in effect.

5004 | Section 107. Subsection (1) of section 627.6617, Florida
 5005 | Statutes, is amended to read:

5006 | 627.6617 Coverage for home health care services.--

5007 | (1) Any group health insurance policy providing coverage
 5008 | on an expense-incurred basis shall provide coverage for home
 5009 | health care by a home health care agency licensed pursuant to
 5010 | part III ~~IV~~ of chapter 400. Such coverage may be limited to home
 5011 | health care under a plan of treatment prescribed by a licensed
 5012 | physician. Services may be performed by a registered graduate
 5013 | nurse, a licensed practical nurse, a physical therapist, a
 5014 | speech therapist, an occupational therapist, or a home health
 5015 | aide. Provisions for utilization review may be imposed, provided

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5016 | that similar provisions apply to all other types of health care
5017 | services.

5018 | Section 108. Subsection (1) of section 627.732, Florida
5019 | Statutes, is amended to read:

5020 | 627.732 Definitions.--As used in ss. 627.730-627.7405, the
5021 | term:

5022 | (1) "Broker" means any person not possessing a license
5023 | under chapter 395, chapter 400, chapter 429, chapter 458,
5024 | chapter 459, chapter 460, chapter 461, or chapter 641 who
5025 | charges or receives compensation for any use of medical
5026 | equipment and is not the 100-percent owner or the 100-percent
5027 | lessee of such equipment. For purposes of this section, such
5028 | owner or lessee may be an individual, a corporation, a
5029 | partnership, or any other entity and any of its 100-percent-
5030 | owned affiliates and subsidiaries. For purposes of this
5031 | subsection, the term "lessee" means a long-term lessee under a
5032 | capital or operating lease, but does not include a part-time
5033 | lessee. The term "broker" does not include a hospital or
5034 | physician management company whose medical equipment is
5035 | ancillary to the practices managed, a debt collection agency, or
5036 | an entity that has contracted with the insurer to obtain a
5037 | discounted rate for such services; nor does the term include a
5038 | management company that has contracted to provide general
5039 | management services for a licensed physician or health care
5040 | facility and whose compensation is not materially affected by
5041 | the usage or frequency of usage of medical equipment or an
5042 | entity that is 100-percent owned by one or more hospitals or

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5043 | physicians. The term "broker" does not include a person or
 5044 | entity that certifies, upon request of an insurer, that:
 5045 | (a) It is a clinic licensed under ss. 400.990-400.995;
 5046 | (b) It is a 100-percent owner of medical equipment; and
 5047 | (c) The owner's only part-time lease of medical equipment
 5048 | for personal injury protection patients is on a temporary basis
 5049 | not to exceed 30 days in a 12-month period, and such lease is
 5050 | solely for the purposes of necessary repair or maintenance of
 5051 | the 100-percent-owned medical equipment or pending the arrival
 5052 | and installation of the newly purchased or a replacement for the
 5053 | 100-percent-owned medical equipment, or for patients for whom,
 5054 | because of physical size or claustrophobia, it is determined by
 5055 | the medical director or clinical director to be medically
 5056 | necessary that the test be performed in medical equipment that
 5057 | is open-style. The leased medical equipment cannot be used by
 5058 | patients who are not patients of the registered clinic for
 5059 | medical treatment of services. Any person or entity making a
 5060 | false certification under this subsection commits insurance
 5061 | fraud as defined in s. 817.234. However, the 30-day period
 5062 | provided in this paragraph may be extended for an additional 60
 5063 | days as applicable to magnetic resonance imaging equipment if
 5064 | the owner certifies that the extension otherwise complies with
 5065 | this paragraph.

5066 | Section 109. Subsection (2) of section 651.011, Florida
 5067 | Statutes, is amended to read:

5068 | 651.011 Definitions.--For the purposes of this chapter,
 5069 | the term:

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5070 (2) "Continuing care" or "care" means furnishing pursuant
 5071 to a contract shelter and either nursing care or personal
 5072 services as defined in s. 429.02 ~~s. 400.402~~, whether such
 5073 nursing care or personal services are provided in the facility
 5074 or in another setting designated by the contract for continuing
 5075 care, to an individual not related by consanguinity or affinity
 5076 to the provider furnishing such care, upon payment of an
 5077 entrance fee. Other personal services provided shall be
 5078 designated in the continuing care contract. Contracts to provide
 5079 continuing care include agreements to provide care for any
 5080 duration, including contracts that are terminable by either
 5081 party.

5082 Section 110. Paragraph (c) of subsection (2) of section
 5083 651.022, Florida Statutes, is amended to read:

5084 651.022 Provisional certificate of authority;
 5085 application.--

5086 (2) The application for a provisional certificate of
 5087 authority shall be on a form prescribed by the commission and
 5088 shall contain the following information:

5089 (c)1. Evidence that the applicant is reputable and of
 5090 responsible character. If the applicant is a firm, association,
 5091 organization, partnership, business trust, corporation, or
 5092 company, the form shall require evidence that the members or
 5093 shareholders are reputable and of responsible character, and the
 5094 person in charge of providing care under a certificate of
 5095 authority shall likewise be required to produce evidence of
 5096 being reputable and of responsible character.

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5097 | 2. Evidence satisfactory to the office of the ability of
5098 | the applicant to comply with the provisions of this chapter and
5099 | with rules adopted by the commission pursuant to this chapter.

5100 | 3. A statement of whether a person identified in the
5101 | application for a provisional certificate of authority or the
5102 | administrator or manager of the facility, if such person has
5103 | been designated, or any such person living in the same location:

5104 | a. Has been convicted of a felony or has pleaded nolo
5105 | contendere to a felony charge, or has been held liable or has
5106 | been enjoined in a civil action by final judgment, if the felony
5107 | or civil action involved fraud, embezzlement, fraudulent
5108 | conversion, or misappropriation of property.

5109 | b. Is subject to a currently effective injunctive or
5110 | restrictive order or federal or state administrative order
5111 | relating to business activity or health care as a result of an
5112 | action brought by a public agency or department, including,
5113 | without limitation, an action affecting a license under chapter
5114 | 400 or chapter 429.

5115 |
5116 | The statement shall set forth the court or agency, the date of
5117 | conviction or judgment, and the penalty imposed or damages
5118 | assessed, or the date, nature, and issuer of the order. Before
5119 | determining whether a provisional certificate of authority is to
5120 | be issued, the office may make an inquiry to determine the
5121 | accuracy of the information submitted pursuant to subparagraphs
5122 | 1. and 2.

5123 | Section 111. Subsection (6) of section 651.023, Florida
5124 | Statutes, is amended to read:

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5125 | 651.023 Certificate of authority; application.--
5126 | (6) The timeframes provided under s. 651.022(5) and (6)
5127 | apply to applications submitted under s. 651.021(2). The office
5128 | may not issue a certificate of authority under this chapter to
5129 | any facility which does not have a component which is to be
5130 | licensed pursuant to part II ~~or part III~~ of chapter 400 or part
5131 | I of chapter 429 or which will not offer personal services or
5132 | nursing services through written contractual agreement. Any
5133 | written contractual agreement must be disclosed in the
5134 | continuing care contract and is subject to the provisions of s.
5135 | 651.1151, relating to administrative, vendor, and management
5136 | contracts.

5137 | Section 112. Subsection (8) of section 651.055, Florida
5138 | Statutes, is amended to read:

5139 | 651.055 Contracts; right to rescind.--

5140 | (8) The provisions of this section shall control over any
5141 | conflicting provisions contained in part II ~~or part III~~ of
5142 | chapter 400 or in part I of chapter 429.

5143 | Section 113. Subsection (5) of section 651.095, Florida
5144 | Statutes, is amended to read:

5145 | 651.095 Advertisements; requirements; penalties.--

5146 | (5) The provisions of this section shall control over any
5147 | conflicting provisions contained in part II ~~or part III~~ of
5148 | chapter 400 or in part I of chapter 429.

5149 | Section 114. Subsections (1), (4), (6), (7), and (8) of
5150 | section 651.118, Florida Statutes, are amended to read:

5151 | 651.118 Agency for Health Care Administration;
5152 | certificates of need; sheltered beds; community beds.--

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5153 (1) The provisions of this section shall control in the
5154 case of conflict with the provisions of the Health Facility and
5155 Services Development Act, ss. 408.031-408.045; the provisions of
5156 chapter 395; ~~or the provisions of part II ~~parts II and III~~ of~~
5157 chapter 400; or the provisions of part I of chapter 429.

5158 (4) The Agency for Health Care Administration shall
5159 approve one sheltered nursing home bed for every four proposed
5160 residential units, including those that are licensed under part
5161 I of chapter 429 ~~part III of chapter 400~~, in the continuing care
5162 facility unless the provider demonstrates the need for a lesser
5163 number of sheltered nursing home beds based on proposed
5164 utilization by prospective residents or demonstrates the need
5165 for additional sheltered nursing home beds based on actual
5166 utilization and demand by current residents.

5167 (6) Unless the provider already has a component that is to
5168 be a part of the continuing care facility and that is licensed
5169 under chapter 395, ~~or part II or ~~part III~~ of chapter 400, or~~
5170 part I of chapter 429 at the time of construction of the
5171 continuing care facility, the provider must construct the
5172 nonnursing home portion of the facility and the nursing home
5173 portion of the facility at the same time. If a provider
5174 constructs less than the number of residential units approved in
5175 the certificate of authority, the number of licensed sheltered
5176 nursing home beds shall be reduced by a proportionate share.

5177 (7) Notwithstanding the provisions of subsection (2), at
5178 the discretion of the continuing care provider, sheltered
5179 nursing home beds may be used for persons who are not residents
5180 of the continuing care facility and who are not parties to a

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5181 continuing care contract for a period of up to 5 years after the
 5182 date of issuance of the initial nursing home license. A provider
 5183 whose 5-year period has expired or is expiring may request the
 5184 Agency for Health Care Administration for an extension, not to
 5185 exceed 30 percent of the total sheltered nursing home beds, if
 5186 the utilization by residents of the nursing home facility in the
 5187 sheltered beds will not generate sufficient income to cover
 5188 nursing home facility expenses, as evidenced by one of the
 5189 following:

5190 (a) The nursing home facility has a net loss for the most
 5191 recent fiscal year as determined under generally accepted
 5192 accounting principles, excluding the effects of extraordinary or
 5193 unusual items, as demonstrated in the most recently audited
 5194 financial statement; or

5195 (b) The nursing home facility would have had a pro forma
 5196 loss for the most recent fiscal year, excluding the effects of
 5197 extraordinary or unusual items, if revenues were reduced by the
 5198 amount of revenues from persons in sheltered beds who were not
 5199 residents, as reported on by a certified public accountant.

5200
 5201 The agency shall be authorized to grant an extension to the
 5202 provider based on the evidence required in this subsection. The
 5203 agency may request a continuing care facility to use up to 25
 5204 percent of the patient days generated by new admissions of
 5205 nonresidents during the extension period to serve Medicaid
 5206 recipients for those beds authorized for extended use if there
 5207 is a demonstrated need in the respective service area and if
 5208 funds are available. A provider who obtains an extension is

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5209 prohibited from applying for additional sheltered beds under the
 5210 provision of subsection (2), unless additional residential units
 5211 are built or the provider can demonstrate need by continuing
 5212 care facility residents to the Agency for Health Care
 5213 Administration. The 5-year limit does not apply to up to five
 5214 sheltered beds designated for inpatient hospice care as part of
 5215 a contractual arrangement with a hospice licensed under part IV
 5216 ~~VI~~ of chapter 400. A continuing care facility that uses such
 5217 beds after the 5-year period shall report such use to the Agency
 5218 for Health Care Administration. For purposes of this subsection,
 5219 "resident" means a person who, upon admission to the continuing
 5220 care facility, initially resides in a part of the continuing
 5221 care facility not licensed under part II of chapter 400.

5222 (8) A provider may petition the Agency for Health Care
 5223 Administration to use a designated number of sheltered nursing
 5224 home beds to provide extended congregate care as defined in s.
 5225 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
 5226 nursing home which can be adapted to meet the requirements for
 5227 extended congregate care. The provider may subsequently use such
 5228 beds as sheltered beds after notifying the agency of the
 5229 intended change. Any sheltered beds used to provide extended
 5230 congregate care pursuant to this subsection may not qualify for
 5231 funding under the Medicaid waiver. Any sheltered beds used to
 5232 provide extended congregate care pursuant to this subsection may
 5233 share common areas, services, and staff with beds designated for
 5234 nursing home care, provided that all of the beds are under
 5235 common ownership. For the purposes of this subsection, fire and

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5236 | life safety codes applicable to nursing home facilities shall
5237 | apply.

5238 | Section 115. Subsection (2) of section 765.1103, Florida
5239 | Statutes, is amended to read:

5240 | 765.1103 Pain management and palliative care.--

5241 | (2) Health care providers and practitioners regulated
5242 | under chapter 458, chapter 459, or chapter 464 must, as
5243 | appropriate, comply with a request for pain management or
5244 | palliative care from a patient under their care or, for an
5245 | incapacitated patient under their care, from a surrogate, proxy,
5246 | guardian, or other representative permitted to make health care
5247 | decisions for the incapacitated patient. Facilities regulated
5248 | under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
5249 | with the pain management or palliative care measures ordered by
5250 | the patient's physician.

5251 | Section 116. Subsection (2) of section 765.205, Florida
5252 | Statutes, is amended to read:

5253 | 765.205 Responsibility of the surrogate.--

5254 | (2) The surrogate may authorize the release of information
5255 | and medical records to appropriate persons to ensure the
5256 | continuity of the principal's health care and may authorize the
5257 | admission, discharge, or transfer of the principal to or from a
5258 | health care facility or other facility or program licensed under
5259 | chapter 400 or chapter 429.

5260 | Section 117. Subsection (1) of section 768.735, Florida
5261 | Statutes, is amended to read:

5262 | 768.735 Punitive damages; exceptions; limitation.--

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5263 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
 5264 apply to any civil action based upon child abuse, abuse of the
 5265 elderly under chapter 415, or abuse of the developmentally
 5266 disabled. Such actions are governed by applicable statutes and
 5267 controlling judicial precedent. This section does not apply to
 5268 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.

5269 Section 118. Paragraph (h) of subsection (1) of section
 5270 893.13, Florida Statutes, is amended to read:

5271 893.13 Prohibited acts; penalties.--

5272 (1)

5273 (h) Except as authorized by this chapter, it is unlawful
 5274 for any person to sell, manufacture, or deliver, or possess with
 5275 intent to sell, manufacture, or deliver, a controlled substance
 5276 in, on, or within 1,000 feet of the real property comprising an
 5277 assisted living facility, as that term is used in chapter 429
 5278 ~~400~~. Any person who violates this paragraph with respect to:

5279 1. A controlled substance named or described in s.
 5280 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 5281 commits a felony of the first degree, punishable as provided in
 5282 s. 775.082, s. 775.083, or s. 775.084.

5283 2. A controlled substance named or described in s.
 5284 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 5285 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 5286 the second degree, punishable as provided in s. 775.082, s.
 5287 775.083, or s. 775.084.

5288 Section 119. Paragraph (a) of subsection (4) of section
 5289 943.0585, Florida Statutes, is amended to read:

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5290 943.0585 Court-ordered expunction of criminal history
5291 records.--The courts of this state have jurisdiction over their
5292 own procedures, including the maintenance, expunction, and
5293 correction of judicial records containing criminal history
5294 information to the extent such procedures are not inconsistent
5295 with the conditions, responsibilities, and duties established by
5296 this section. Any court of competent jurisdiction may order a
5297 criminal justice agency to expunge the criminal history record
5298 of a minor or an adult who complies with the requirements of
5299 this section. The court shall not order a criminal justice
5300 agency to expunge a criminal history record until the person
5301 seeking to expunge a criminal history record has applied for and
5302 received a certificate of eligibility for expunction pursuant to
5303 subsection (2). A criminal history record that relates to a
5304 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5305 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5306 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5307 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5308 expunged, without regard to whether adjudication was withheld,
5309 if the defendant was found guilty of or pled guilty or nolo
5310 contendere to the offense, or if the defendant, as a minor, was
5311 found to have committed, or pled guilty or nolo contendere to
5312 committing, the offense as a delinquent act. The court may only
5313 order expunction of a criminal history record pertaining to one
5314 arrest or one incident of alleged criminal activity, except as
5315 provided in this section. The court may, at its sole discretion,
5316 order the expunction of a criminal history record pertaining to
5317 more than one arrest if the additional arrests directly relate

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

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5318 to the original arrest. If the court intends to order the
5319 expunction of records pertaining to such additional arrests,
5320 such intent must be specified in the order. A criminal justice
5321 agency may not expunge any record pertaining to such additional
5322 arrests if the order to expunge does not articulate the
5323 intention of the court to expunge a record pertaining to more
5324 than one arrest. This section does not prevent the court from
5325 ordering the expunction of only a portion of a criminal history
5326 record pertaining to one arrest or one incident of alleged
5327 criminal activity. Notwithstanding any law to the contrary, a
5328 criminal justice agency may comply with laws, court orders, and
5329 official requests of other jurisdictions relating to expunction,
5330 correction, or confidential handling of criminal history records
5331 or information derived therefrom. This section does not confer
5332 any right to the expunction of any criminal history record, and
5333 any request for expunction of a criminal history record may be
5334 denied at the sole discretion of the court.

5335 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5336 criminal history record of a minor or an adult which is ordered
5337 expunged by a court of competent jurisdiction pursuant to this
5338 section must be physically destroyed or obliterated by any
5339 criminal justice agency having custody of such record; except
5340 that any criminal history record in the custody of the
5341 department must be retained in all cases. A criminal history
5342 record ordered expunged that is retained by the department is
5343 confidential and exempt from the provisions of s. 119.07(1) and
5344 s. 24(a), Art. I of the State Constitution and not available to
5345 any person or entity except upon order of a court of competent

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5346 jurisdiction. A criminal justice agency may retain a notation
5347 indicating compliance with an order to expunge.

5348 (a) The person who is the subject of a criminal history
5349 record that is expunged under this section or under other
5350 provisions of law, including former s. 893.14, former s. 901.33,
5351 and former s. 943.058, may lawfully deny or fail to acknowledge
5352 the arrests covered by the expunged record, except when the
5353 subject of the record:

5354 1. Is a candidate for employment with a criminal justice
5355 agency;

5356 2. Is a defendant in a criminal prosecution;

5357 3. Concurrently or subsequently petitions for relief under
5358 this section or s. 943.059;

5359 4. Is a candidate for admission to The Florida Bar;

5360 5. Is seeking to be employed or licensed by or to contract
5361 with the Department of Children and Family Services or the
5362 Department of Juvenile Justice or to be employed or used by such
5363 contractor or licensee in a sensitive position having direct
5364 contact with children, the developmentally disabled, the aged,
5365 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5366 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5367 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5368 985.407, ~~or~~ chapter 400, or chapter 429; or

5369 6. Is seeking to be employed or licensed by the Department
5370 of Education, any district school board, any university
5371 laboratory school, any charter school, any private or parochial
5372 school, or any local governmental entity that licenses child
5373 care facilities.

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5374 Section 120. Paragraph (a) of subsection (4) of section
 5375 943.059, Florida Statutes, is amended to read:
 5376 943.059 Court-ordered sealing of criminal history
 5377 records.--The courts of this state shall continue to have
 5378 jurisdiction over their own procedures, including the
 5379 maintenance, sealing, and correction of judicial records
 5380 containing criminal history information to the extent such
 5381 procedures are not inconsistent with the conditions,
 5382 responsibilities, and duties established by this section. Any
 5383 court of competent jurisdiction may order a criminal justice
 5384 agency to seal the criminal history record of a minor or an
 5385 adult who complies with the requirements of this section. The
 5386 court shall not order a criminal justice agency to seal a
 5387 criminal history record until the person seeking to seal a
 5388 criminal history record has applied for and received a
 5389 certificate of eligibility for sealing pursuant to subsection
 5390 (2). A criminal history record that relates to a violation of s.
 5391 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 5392 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 5393 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
 5394 a violation enumerated in s. 907.041 may not be sealed, without
 5395 regard to whether adjudication was withheld, if the defendant
 5396 was found guilty of or pled guilty or nolo contendere to the
 5397 offense, or if the defendant, as a minor, was found to have
 5398 committed or pled guilty or nolo contendere to committing the
 5399 offense as a delinquent act. The court may only order sealing of
 5400 a criminal history record pertaining to one arrest or one
 5401 incident of alleged criminal activity, except as provided in

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5402 | this section. The court may, at its sole discretion, order the
 5403 | sealing of a criminal history record pertaining to more than one
 5404 | arrest if the additional arrests directly relate to the original
 5405 | arrest. If the court intends to order the sealing of records
 5406 | pertaining to such additional arrests, such intent must be
 5407 | specified in the order. A criminal justice agency may not seal
 5408 | any record pertaining to such additional arrests if the order to
 5409 | seal does not articulate the intention of the court to seal
 5410 | records pertaining to more than one arrest. This section does
 5411 | not prevent the court from ordering the sealing of only a
 5412 | portion of a criminal history record pertaining to one arrest or
 5413 | one incident of alleged criminal activity. Notwithstanding any
 5414 | law to the contrary, a criminal justice agency may comply with
 5415 | laws, court orders, and official requests of other jurisdictions
 5416 | relating to sealing, correction, or confidential handling of
 5417 | criminal history records or information derived therefrom. This
 5418 | section does not confer any right to the sealing of any criminal
 5419 | history record, and any request for sealing a criminal history
 5420 | record may be denied at the sole discretion of the court.

5421 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 5422 | history record of a minor or an adult which is ordered sealed by
 5423 | a court of competent jurisdiction pursuant to this section is
 5424 | confidential and exempt from the provisions of s. 119.07(1) and
 5425 | s. 24(a), Art. I of the State Constitution and is available only
 5426 | to the person who is the subject of the record, to the subject's
 5427 | attorney, to criminal justice agencies for their respective
 5428 | criminal justice purposes, or to those entities set forth in

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5429 | subparagraphs (a)1., 4., 5., and 6. for their respective
5430 | licensing and employment purposes.

5431 | (a) The subject of a criminal history record sealed under
5432 | this section or under other provisions of law, including former
5433 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5434 | deny or fail to acknowledge the arrests covered by the sealed
5435 | record, except when the subject of the record:

5436 | 1. Is a candidate for employment with a criminal justice
5437 | agency;

5438 | 2. Is a defendant in a criminal prosecution;

5439 | 3. Concurrently or subsequently petitions for relief under
5440 | this section or s. 943.0585;

5441 | 4. Is a candidate for admission to The Florida Bar;

5442 | 5. Is seeking to be employed or licensed by or to contract
5443 | with the Department of Children and Family Services or the
5444 | Department of Juvenile Justice or to be employed or used by such
5445 | contractor or licensee in a sensitive position having direct
5446 | contact with children, the developmentally disabled, the aged,
5447 | or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5448 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5449 | 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5450 | (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or

5451 | 6. Is seeking to be employed or licensed by the Department
5452 | of Education, any district school board, any university
5453 | laboratory school, any charter school, any private or parochial
5454 | school, or any local governmental entity that licenses child
5455 | care facilities.

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5456 Section 121. The Division of Statutory Revision of the
5457 Office of Legislative Services is requested to prepare a
5458 reviser's bill for introduction at a subsequent session of the
5459 Legislature to conform the Florida Statutes to changes made by
5460 this act.

5461 Section 122. This act shall take effect July 1, 2006.