

1 A bill to be entitled
2 An act relating to long-term care facilities; providing a
3 short title; amending s. 400.021, F.S.; providing
4 definitions; amending s. 400.071, F.S.; requiring
5 additional information to be submitted with an application
6 for a nursing home facility license; amending s. 400.102,
7 F.S.; providing additional grounds for action by the
8 Agency for Health Care Administration against a licensee;
9 amending s. 400.111, F.S.; requiring licensees to disclose
10 financial or ownership interests acquired by certain
11 entities within a specified period of time; amending s.
12 400.121, F.S.; specifying additional circumstances under
13 which the agency may deny, revoke, or suspend a facility's
14 license or impose a fine; amending s. 400.141, F.S.;
15 prohibiting the use of liability insurance for litigation
16 costs or attorney's fees under certain circumstances;
17 requiring the licensee to notify the agency when policy
18 limits are exhausted; amending s. 400.191, F.S.;
19 specifying additional information that must be included on
20 the agency's Internet website; requiring the posting in
21 the nursing home of a copy of the conditional license;
22 creating s. 400.197, F.S.; requiring nursing home
23 licensees to provide notice of a change of ownership to
24 the agency and specified persons; requiring the licensee
25 to post the notice in writing and on its Internet website;
26 providing for certain affected parties to submit
27 information to the agency regarding the applicant for
28 ownership; authorizing the agency to investigate the

29 applicant; requiring the licensee to assume certain
30 liabilities if the agency grants a change of ownership;
31 amending s. 419.001, F.S.; revising provisions restricting
32 the siting of community residential homes; amending s.
33 429.02, F.S.; providing definitions; amending s. 429.11,
34 F.S.; requiring additional information to be submitted
35 with an application for an assisted living facility
36 license; prohibiting the use of liability insurance for
37 litigation costs or attorney's fees under certain
38 circumstances; requiring licensees to disclose financial
39 or ownership interests acquired by certain entities within
40 a specified period of time; amending s. 429.12, F.S.;
41 requiring assisted living facility licensees to provide
42 notice of a change of ownership to the agency and
43 specified persons; requiring the licensee to post the
44 notice in writing and on its Internet website; providing
45 for certain affected parties to submit information to the
46 agency regarding the applicant for ownership; authorizing
47 the agency to investigate the applicant; requiring the
48 licensee to assume certain liabilities if the agency
49 grants a change of ownership; amending s. 429.14, F.S.;
50 specifying additional circumstances under which the agency
51 may deny, revoke, or suspend a facility's license or
52 impose a fine; requiring the posting in the facility of
53 notice of the issuance of a conditional license; amending
54 s. 429.174, F.S.; conforming a cross-reference; amending
55 s. 429.275, F.S.; prohibiting the use of liability
56 insurance for litigation costs or attorney's fees under

57 certain circumstances; requiring the administrator or
 58 facility owner to notify the agency when policy limits are
 59 exhausted; providing an effective date.

60

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

62

63 Section 1. This act may be cited as the "Long-term Care
 64 Transparency Act."

65 Section 2. Present subsections (2) through (4) of section
 66 400.021, Florida Statutes, are renumbered as subsections (3)
 67 through (5), respectively, present subsections (5) and (6) are
 68 renumbered as subsections (8) and (9), respectively, present
 69 subsections (7) through (9) are renumbered as subsections (11)
 70 through (13), respectively, present subsections (10) through
 71 (18) are renumbered as subsections (15) through (23),
 72 respectively, and new subsections (2), (6), (7), (10), and (14)
 73 are added to that section to read:

74 400.021 Definitions.--When used in this part, unless the
 75 context otherwise requires, the term:

76 (2) "Affiliated entity" means any entity, entities, or
 77 persons with the same or similar officers, board members,
 78 directors, limited liability company members, operating company,
 79 management company, or addresses.

80 (6) "Controlling entity" means any entity, entities, or
 81 persons that exhibit any indicia of control over the licensee or
 82 applicant, including, but not limited to, control over resident
 83 care, a facility's budget, or staffing levels; setting or
 84 monitoring census goals; power over or responsibility for

85 employment decisions, capital purchases, facility improvements,
 86 or plant improvements; access to or use of the licensee's or
 87 applicant's assets, equipment, or financing or lending
 88 agreements; or influence over the business decisions of the
 89 licensee or applicant.

90 (7) "Controlling financial interest" means any entity that
 91 has a 5 percent or greater financial or ownership interest in
 92 the licensee, an affiliated entity, or a controlling entity.

93 (10) "Entity" means an individual, corporation,
 94 partnership, association, joint venture, sole proprietorship,
 95 limited liability company, professional limited liability
 96 company, or any other manner and form of conducting business.

97 (14) "Governing body" means the individuals responsible
 98 for hiring the nursing home administrator, approving the nursing
 99 home's policies and procedures, and ensuring the proper
 100 implementation of those policies and procedures.

101 Section 3. Subsection (1) of section 400.071, Florida
 102 Statutes, is amended to read:

103 400.071 Application for license.--

104 (1) In addition to the requirements of part II of chapter
 105 408, the application for a license shall be under oath and must
 106 contain the following:

107 (a) The location of the facility for which a license is
 108 sought and an indication, as in the original application, that
 109 such location conforms to the local zoning ordinances.

110 (b) A signed affidavit disclosing any financial or
 111 ownership interest that the applicant, a controlling financial
 112 interest, controlling entity, or affiliated entity ~~as defined in~~

113 ~~part II of chapter 408~~ has held in the last 5 years in any
 114 entity licensed by this state or any other state to provide
 115 health or residential care which has closed voluntarily or
 116 involuntarily; has filed for bankruptcy; has had a receiver
 117 appointed; has had a license denied, suspended, or revoked; or
 118 has had an injunction issued against it which was initiated by a
 119 regulatory agency. The affidavit must disclose the reason any
 120 such entity was closed, whether voluntarily or involuntarily.

121 (c) A signed affidavit disclosing any affiliated entities,
 122 controlling entities, and controlling financial interests of the
 123 licensee.

124 (d) The total number of beds and the total number of
 125 Medicare and Medicaid certified beds.

126 (e) ~~(d)~~ Information relating to the applicant and employees
 127 which the agency requires by rule. The applicant must
 128 demonstrate that sufficient numbers of qualified staff, by
 129 training or experience, will be employed to properly care for
 130 the type and number of residents who will reside in the
 131 facility.

132 (f) An audited financial statement of the applicant if an
 133 audited financial statement is prepared for the applicant or the
 134 consolidated group. In an application relating to change of
 135 ownership of an existing nursing home, financial condition
 136 documentation must include, but need not be limited to, a
 137 balance sheet and a profit and loss statement of the 2 previous
 138 fiscal years' operation.

139 (g) Proof of financial ability to operate. The applicant
 140 must demonstrate an ability to provide staffing at levels

141 required by law and maintain solvency in accordance with the
142 requirements of this part, applicable sections of chapter 408,
143 and applicable rules. Documentation shall include, but is not
144 limited to, a statement of the projected revenue and expenses
145 for the first 12 months of operation following licensure, a
146 detailed explanation of the assumptions implicit in these
147 projections, the basis for financing the anticipated cash-flow
148 requirements of the provider, and the applicant's access to
149 contingency financing.

150 (h)(e) Copies of any civil verdict or judgment involving
151 the applicant, affiliated entities, or controlling entities
152 rendered within the 10 years preceding the application, relating
153 to medical negligence, violation of residents' rights, or
154 wrongful death. As a condition of licensure, the licensee agrees
155 to provide to the agency copies of any new verdict or judgment
156 involving the applicant, relating to such matters, within 30
157 days after filing with the clerk of the court. The information
158 required in this paragraph shall be maintained in the facility's
159 licensure file and in an agency database which is available as a
160 public record.

161 (i) Copies of any contracts with affiliated entities or
162 controlling entities, including details of goods and services
163 provided and the intended method of payment for those goods and
164 services.

165 (j) Copies of any audits, investigations, or fines related
166 to the receipt or use of federal and state funds by all
167 affiliated entities, controlling entities, and controlling
168 financial interests, including the results of or documentation

HB 1335

2008

169 pertaining to any ongoing investigation into Medicaid or
 170 Medicare fraud or overpayment, any standing corporate integrity
 171 agreements, or other remedial action by any public entity.

172 (k) The names and dates of service of all members of the
 173 facility's governing body.

174 Section 4. Section 400.102, Florida Statutes, is amended
 175 to read:

176 400.102 Action by agency against licensee; grounds.--In
 177 addition to the grounds listed in part II of chapter 408, any of
 178 the following conditions shall be grounds for action by the
 179 agency against a licensee:

180 (1) An intentional or negligent act materially affecting
 181 the health or safety of residents of the facility;

182 (2) Misappropriation or conversion of the property of a
 183 resident of the facility;

184 (3) Failure to follow the criteria and procedures provided
 185 under part I of chapter 394 relating to the transportation,
 186 voluntary admission, and involuntary examination of a nursing
 187 home resident; ~~or~~

188 (4) Fraudulent altering, defacing, or falsifying any
 189 medical or nursing home records, or causing or procuring any of
 190 these offenses to be committed; or-

191 (5) Failure to disclose at the time of licensure,
 192 relicensure, or change of ownership all affiliated entities,
 193 controlling entities, controlling financial interests, and
 194 members of the facility's governing body.

195 Section 5. Section 400.111, Florida Statutes, is amended
 196 to read:

197 400.111 Disclosure of controlling financial interest and
 198 affiliated or controlling entity.--In addition to the
 199 requirements of part II of chapter 408, at the time of
 200 licensure, relicensure, or change of ownership, the licensee
 201 shall submit a signed affidavit disclosing any financial or
 202 ownership financial interest that a controlling interest and any
 203 affiliated entity or controlling entity has held within the last
 204 5 years in any entity licensed by the state or any other state
 205 to provide health or residential care which entity has closed
 206 voluntarily or involuntarily; has filed for bankruptcy; has had
 207 a receiver appointed; has had a license denied, suspended, or
 208 revoked; or has had an injunction issued against it which was
 209 initiated by a regulatory agency. The affidavit must disclose
 210 the reason such entity was closed, whether voluntarily or
 211 involuntarily. As a condition of licensure, relicensure, or
 212 change of ownership, the licensee shall provide to the agency a
 213 signed affidavit disclosing any financial or ownership interest
 214 that an affiliated entity, controlling entity, or controlling
 215 financial interest acquires within 30 days after the
 216 acquisition.

217 Section 6. Subsections (1) and (3) of section 400.121,
 218 Florida Statutes, are amended to read:

219 400.121 Denial, suspension, revocation of license;
 220 administrative fines; procedure; order to increase staffing.--

221 (1) The agency may deny an application, revoke or suspend
 222 a license, and impose an administrative fine, not to exceed \$500
 223 per violation per day for the violation of any provision of this
 224 part, part II of chapter 408, or applicable rules, against any

225 applicant or licensee for the following violations by the
 226 applicant, licensee, or other controlling interest:

227 (a) A violation of any provision of this part, part II of
 228 chapter 408, or applicable rules; or

229 (b) An adverse action by a regulatory agency against any
 230 other licensed facility that has a common controlling entity or
 231 controlling financial interest with the licensee or applicant
 232 against whom the action under this section is being brought. If
 233 the adverse action involves solely the management company, the
 234 applicant or licensee shall be given 30 days to remedy before
 235 final action is taken. If the adverse action is based solely
 236 upon actions by a controlling interest, the applicant or
 237 licensee may present factors in mitigation of any proposed
 238 penalty based upon a showing that such penalty is inappropriate
 239 under the circumstances.

240
 241 All hearings shall be held within the county in which the
 242 licensee or applicant operates or applies for a license to
 243 operate a facility as defined herein.

244 (3) The agency shall revoke or deny a nursing home license
 245 if the licensee, a controlling entity, or a controlling
 246 financial interest operates a facility in this state that:

247 (a) Has had two moratoria issued pursuant to this part or
 248 part II of chapter 408 which are imposed by final order for
 249 substandard quality of care, as defined by 42 C.F.R. part 483,
 250 within any 30-month period;

251 (b) Is conditionally licensed for 180 or more continuous
 252 days;

253 (c) Is cited for two class I deficiencies arising from
 254 unrelated circumstances during the same survey or investigation;
 255 or

256 (d) Is cited for two class I deficiencies arising from
 257 separate surveys or investigations within a 30-month period.
 258

259 The licensee may present factors in mitigation of revocation,
 260 and the agency may make a determination not to revoke a license
 261 based upon a showing that revocation is inappropriate under the
 262 circumstances.

263 Section 7. Subsection (20) of section 400.141, Florida
 264 Statutes, is amended to read:

265 400.141 Administration and management of nursing home
 266 facilities.--Every licensed facility shall comply with all
 267 applicable standards and rules of the agency and shall:

268 (20) Maintain general and professional liability insurance
 269 coverage that is in force at all times. The required general and
 270 professional liability insurance may not be used for litigation
 271 costs or attorney's fees for the defense of any claim against a
 272 nursing home pursuant to the common law, s. 400.023, or s.
 273 400.0233. The licensee shall notify the agency immediately when
 274 the policy limits have been exhausted. In lieu of general and
 275 professional liability insurance coverage, a state-designated
 276 teaching nursing home and its affiliated assisted living
 277 facilities created under s. 430.80 may demonstrate proof of
 278 financial responsibility as provided in s. 430.80(3)(h).
 279

280 Facilities that have been awarded a Gold Seal under the program
 281 established in s. 400.235 may develop a plan to provide
 282 certified nursing assistant training as prescribed by federal
 283 regulations and state rules and may apply to the agency for
 284 approval of their program.

285 Section 8. Subsections (2) and (5) of section 400.191,
 286 Florida Statutes, are amended to read:

287 400.191 Availability, distribution, and posting of reports
 288 and records.--

289 (2) The agency shall publish the Nursing Home Guide
 290 annually in consumer-friendly printed form and quarterly in
 291 electronic form to assist consumers and their families in
 292 comparing and evaluating nursing home facilities.

293 (a) The agency shall provide an Internet website ~~site~~
 294 which shall include at least the following information either
 295 directly or indirectly through a link to another established
 296 site or sites of the agency's choosing:

297 1. A section entitled "Have you considered programs that
 298 provide alternatives to nursing home care?" which shall be the
 299 first section of the Nursing Home Guide and which shall
 300 prominently display information about available alternatives to
 301 nursing homes and how to obtain additional information regarding
 302 these alternatives. The Nursing Home Guide shall explain that
 303 this state offers alternative programs that permit qualified
 304 elderly persons to stay in their homes instead of being placed
 305 in nursing homes and shall encourage interested persons to call
 306 the Comprehensive Assessment Review and Evaluation for Long-Term
 307 Care Services (CARES) Program to inquire if they qualify. The

HB 1335

2008

308 Nursing Home Guide shall list available home and community-based
309 programs which shall clearly state the services that are
310 provided and indicate whether nursing home services are included
311 if needed.

312 2. A list by name and address of all nursing home
313 facilities in this state, including any prior name by which a
314 facility was known during the previous 24-month period.

315 3. A list of all affiliated entities, controlling
316 entities, and controlling financial interests that are
317 affiliated with or associated with the licensee.

318 4. Any documents related to audits, investigations, or
319 finances related to the receipt or use of federal or state funds by
320 the licensee or any affiliated entity, controlling entity, or
321 controlling financial interest, including all documents
322 submitted under s. 400.071.

323 ~~5.3.~~ Whether such nursing home facilities are proprietary
324 or nonproprietary.

325 ~~6.4.~~ The current owner of the facility's license and the
326 year that that entity became the owner of the license.

327 ~~7.5.~~ The name of the owner or owners of each facility and
328 whether the facility is affiliated with a company or other
329 organization owning or managing more than one nursing facility
330 in this state.

331 ~~8.6.~~ The total number of beds in each facility and the
332 most recently available occupancy levels.

333 ~~9.7.~~ The number of private and semiprivate rooms in each
334 facility.

335 ~~10.8.~~ The religious affiliation, if any, of each facility.

336 ~~11.9.~~ The languages spoken by the administrator and staff
337 of each facility.

338 ~~12.10.~~ Whether or not each facility accepts Medicare or
339 Medicaid recipients or insurance, health maintenance
340 organization, Veterans Administration, CHAMPUS program, or
341 workers' compensation coverage.

342 ~~13.11.~~ Recreational and other programs available at each
343 facility.

344 ~~14.12.~~ Special care units or programs offered at each
345 facility.

346 ~~15.13.~~ Whether the facility is a part of a retirement
347 community that offers other services pursuant to part III of
348 this chapter or part I or part III of chapter 429.

349 ~~16.14.~~ Survey and deficiency information, including all
350 federal and state recertification, licensure, revisit, and
351 complaint survey information, for each facility for the past 30
352 months. For noncertified nursing homes, state survey and
353 deficiency information, including licensure, revisit, and
354 complaint survey information for the past 30 months shall be
355 provided.

356 ~~17.15.~~ A summary of the deficiency data for each facility
357 over the past 30 months. The summary may include a score,
358 rating, or comparison ranking with respect to other facilities
359 based on the number of citations received by the facility on
360 recertification, licensure, revisit, and complaint surveys; the
361 severity and scope of the citations; and the number of
362 recertification surveys the facility has had during the past 30
363 months. The score, rating, or comparison ranking may be

HB 1335

2008

364 presented in either numeric or symbolic form for the intended
365 consumer audience.

366 18. The name of the nursing home administrator and the
367 names of all members of the governing body, including their
368 dates of service.

369 19. A list of nursing home facilities in the state, by
370 name and address, that have submitted applications for a change
371 of ownership, the date of the submission, and the current status
372 of the application. The agency shall update this list twice a
373 month.

374 (b) The agency shall provide the following information in
375 printed form:

376 1. A section entitled "Have you considered programs that
377 provide alternatives to nursing home care?" which shall be the
378 first section of the Nursing Home Guide and which shall
379 prominently display information about available alternatives to
380 nursing homes and how to obtain additional information regarding
381 these alternatives. The Nursing Home Guide shall explain that
382 this state offers alternative programs that permit qualified
383 elderly persons to stay in their homes instead of being placed
384 in nursing homes and shall encourage interested persons to call
385 the Comprehensive Assessment Review and Evaluation for Long-Term
386 Care Services (CARES) Program to inquire if they qualify. The
387 Nursing Home Guide shall list available home and community-based
388 programs which shall clearly state the services that are
389 provided and indicate whether nursing home services are included
390 if needed.

- 391 2. A list by name and address of all nursing home
 392 facilities in this state.
- 393 3. Whether the nursing home facilities are proprietary or
 394 nonproprietary.
- 395 4. The current owner or owners of the facility's license
 396 and the year that entity became the owner of the license.
- 397 5. The total number of beds, and of private and
 398 semiprivate rooms, in each facility.
- 399 6. The religious affiliation, if any, of each facility.
- 400 7. The name of the owner of each facility and whether the
 401 facility is affiliated with a company or other organization
 402 owning or managing more than one nursing facility in this state.
- 403 8. The languages spoken by the administrator and staff of
 404 each facility.
- 405 9. Whether or not each facility accepts Medicare or
 406 Medicaid recipients or insurance, health maintenance
 407 organization, Veterans Administration, CHAMPUS program, or
 408 workers' compensation coverage.
- 409 10. Recreational programs, special care units, and other
 410 programs available at each facility.
- 411 11. The Internet address for the site where more detailed
 412 information can be seen.
- 413 12. A statement advising consumers that each facility will
 414 have its own policies and procedures related to protecting
 415 resident property.
- 416 13. A summary of the deficiency data for each facility
 417 over the past 30 months. The summary may include a score,
 418 rating, or comparison ranking with respect to other facilities

419 based on the number of citations received by the facility on
 420 recertification, licensure, revisit, and complaint surveys; the
 421 severity and scope of the citations; the number of citations;
 422 and the number of recertification surveys the facility has had
 423 during the past 30 months. The score, rating, or comparison
 424 ranking may be presented in either numeric or symbolic form for
 425 the intended consumer audience.

426 (c) The agency shall ~~may~~ provide the following additional
 427 information on an Internet website ~~site~~ or in printed form as
 428 the information becomes available:

- 429 1. The licensure status history of each facility.
- 430 2. The rating history of each facility.
- 431 3. The regulatory history of each facility, which may
 432 include federal sanctions, state sanctions, federal fines, state
 433 fines, and other actions.
- 434 4. Whether the facility currently possesses the Gold Seal
 435 designation awarded pursuant to s. 400.235.
- 436 5. Known Internet links to the Internet websites ~~sites~~ of
 437 the facilities, ~~or~~ their affiliates, affiliated entities,
 438 controlling entities, and controlling financial interests.

439 (5) Every nursing home facility licensee shall:

440 (a) Post, in a sufficient number of prominent locations
 441 ~~positions~~ in the nursing home so as to be accessible to all
 442 residents and to the general public:

- 443 1. A concise summary of the last inspection report
 444 pertaining to the nursing home and issued by the agency, with
 445 references to the page numbers of the full reports, noting any
 446 deficiencies found by the agency and the actions taken by the

HB 1335

2008

447 licensee to rectify the deficiencies and indicating in the
448 summaries where the full reports may be inspected in the nursing
449 home.

450 2. A copy of all of the pages that list the facility in
451 the most recent version of the Nursing Home Guide.

452 3. A copy of the conditional license regardless of any
453 administrative challenge as a matter of public transparency and
454 timely notification.

455 (b) Upon request, provide to any person who has completed
456 a written application with an intent to be admitted to, or to
457 any resident of, a nursing home, or to any relative, spouse, or
458 guardian of the person, a copy of the last inspection report
459 pertaining to the nursing home and issued by the agency,
460 provided the person requesting the report agrees to pay a
461 reasonable charge to cover copying costs.

462 Section 9. Section 400.197, Florida Statutes, is created
463 to read:

464 400.197 Change of ownership of a facility.--

465 (1) Within 5 days after a licensee submits a request for a
466 change of ownership of a facility to the agency, the licensee
467 shall notify all residents of a request for a change of
468 ownership in writing and post that information in a sufficient
469 number of prominent locations in the nursing home and on the
470 primary Internet website of the nursing home and its controlling
471 entities so that the information is accessible to all residents
472 and the general public.

473 (2) Affected parties, including, but not limited to, a
474 resident, a resident's family member, a resident's legal

475 representative, a resident's guardian, and the staff of the
 476 nursing facility may submit information for the agency to
 477 consider when evaluating the applicant's character, experience,
 478 background, qualifications, and fitness for licensure to
 479 determine whether to grant a change of ownership.

480 (3) The agency may propound any reasonable interrogatories
 481 in addition to those contained in the application or make such
 482 further investigation as it deems necessary or advisable for the
 483 protection of the public and to ascertain the applicant's
 484 character, experience, background, qualifications, and fitness
 485 for the license.

486 (4) When the agency grants a change of ownership, the new
 487 licensee shall assume all the liabilities of the prior licensee,
 488 affiliated entities of the prior licensee, and controlling
 489 entities of the prior licensee.

490 Section 10. Subsection (2) of section 419.001, Florida
 491 Statutes, is amended to read:

492 419.001 Site selection of community residential homes.--

493 (2) Homes of six or fewer residents which otherwise meet
 494 the definition of a community residential home shall be deemed a
 495 single-family unit and a noncommercial, residential use for the
 496 purpose of local laws and ordinances. Homes of six or fewer
 497 residents which otherwise meet the definition of a community
 498 residential home shall be allowed in single-family or
 499 multifamily zoning with ~~without~~ approval by the local
 500 government, provided that such homes shall not be located within
 501 a radius of 1,000 feet of another existing such home with six or
 502 fewer residents and provided that the owner of the home resides

503 therein. Such homes with six or fewer residents shall not be
 504 required to comply with the notification provisions of this
 505 section; provided that, prior to licensure, the sponsoring
 506 agency provides the local government with the most recently
 507 published data compiled from the licensing entities that
 508 identifies all community residential homes within the
 509 jurisdictional limits of the local government in which the
 510 proposed site is to be located in order to show that no other
 511 community residential home is within a radius of 1,000 feet of
 512 the proposed home with six or fewer residents. At the time of
 513 home occupancy, the sponsoring agency must notify the local
 514 government that the home is licensed by the licensing entity.

515 Section 11. Present subsections (3) through (7) of section
 516 429.02, Florida Statutes, are renumbered as subsections (4)
 517 through (8), respectively, present subsections (8) through (10)
 518 are renumbered as subsections (11) through (13), respectively,
 519 present subsections (11) through (26) are renumbered as
 520 subsections (15) through (30), respectively, present subsection
 521 (11) is amended, and new subsections (3), (10), (11), and (14)
 522 are added to that section to read:

523 429.02 Definitions.--When used in this part, the term:

524 (3) "Affiliated entity" means any entity, entities, or
 525 persons with the same or similar officers, board members,
 526 directors, limited liability company members, operating company,
 527 management company, or addresses.

528 (9) "Controlling entity" means any entity, entities, or
 529 persons that exhibit any indicia of control over the licensee or
 530 applicant, including, but not limited to, control over resident

531 care, a facility's budget, or staffing levels; power over or
 532 responsibility for employment decisions, capital purchases,
 533 facility improvements, or plant improvements; access to or use
 534 of the licensee's or applicant's assets or equipment; or
 535 influence over the business decisions of the licensee or
 536 applicant.

537 (10) "Controlling financial interest" means any entity
 538 that has a 5 percent or greater financial or ownership interest
 539 in the licensee, an affiliated entity, or a controlling entity.

540 (14) "Entity" means an individual, corporation,
 541 partnership, association, joint venture, sole proprietorship,
 542 limited liability company, professional limited liability
 543 company, or any other manner and form of conducting business.

544 (15)~~(11)~~ "Extended congregate care" means acts beyond
 545 those authorized in subsection (20) ~~(16)~~ that may be performed
 546 pursuant to part I of chapter 464 by persons licensed thereunder
 547 while carrying out their professional duties, and other
 548 supportive services which may be specified by rule. The purpose
 549 of such services is to enable residents to age in place in a
 550 residential environment despite mental or physical limitations
 551 that might otherwise disqualify them from residency in a
 552 facility licensed under this part.

553 Section 12. Subsections (1) and (2) of section 429.11,
 554 Florida Statutes, are amended, and subsection (8) is added to
 555 that section, to read:

556 429.11 Initial application for license; provisional
 557 license.--

558 (1) Each applicant for licensure must comply with all
559 provisions of part II of chapter 408 and must:

560 (a) Identify all other homes or facilities, including the
561 addresses and the license or licenses under which they operate,
562 if applicable, which are currently operated by the applicant or
563 administrator and which provide housing, meals, and personal
564 services to residents.

565 (b) Submit a signed affidavit disclosing any affiliated
566 entities, controlling entities, and controlling financial
567 interests of the licensee.

568 (c) Provide copies of any contracts with affiliated
569 entities or controlling entities, including details of goods and
570 services provided and the intended method of payment for those
571 goods and services.

572 (d) Provide copies of any audits, investigations, or fines
573 related to the receipt or use of federal or state funds by all
574 affiliated entities, controlling entities, and controlling
575 financial interests, including the results of or documentation
576 pertaining to any ongoing investigation into Medicaid or
577 Medicare fraud or overpayment, any standing corporate integrity
578 agreements, or other remedial action by any public entity.

579 (e) ~~(b)~~ Provide the location of the facility for which a
580 license is sought and documentation, signed by the appropriate
581 local government official, which states that the applicant has
582 met local zoning requirements.

583 (f) ~~(e)~~ Provide the name, address, date of birth, social
584 security number, education, and experience of the administrator,
585 if different from the applicant.

HB 1335

2008

586 (2) The applicant shall provide proof of liability
587 insurance as defined in s. 624.605. The required general and
588 professional liability insurance may not be used for litigation
589 costs or attorney's fees for the defense of any claim against an
590 assisted living facility pursuant to the common law, s. 429.29,
591 or s. 429.293.

592 (8) As a condition of licensure, relicensure, or change of
593 ownership, the licensee shall provide to the agency a signed
594 affidavit disclosing any financial or ownership interest that an
595 affiliated entity, controlling entity, or controlling financial
596 interest acquires within 30 days after the acquisition.

597 Section 13. Section 429.12, Florida Statutes, is amended
598 to read:

599 429.12 Sale or transfer of ownership of a facility.--It is
600 the intent of the Legislature to protect the rights of the
601 residents of an assisted living facility when the facility is
602 sold or the ownership thereof is transferred. Therefore, in
603 addition to the requirements of part II of chapter 408:7

604 (1) Within 5 days after a licensee submits a request for a
605 change of ownership of a facility to the agency, the licensee
606 shall notify all residents of the request in writing and post
607 that information in a sufficient number of prominent locations
608 in the assisted living facility and on the primary Internet
609 website of the facility and its controlling entities so that the
610 information is accessible to all residents and the general
611 public.

612 (2) Affected parties, including, but not limited to, a
613 resident, a resident's family member, a resident's legal

614 representative, a resident's guardian, and the staff of the
615 assisted living facility may submit information for the agency
616 to consider in evaluating the applicant's character, experience,
617 background, qualifications, and fitness for the license when
618 determining whether to grant a change of ownership.

619 (3) The agency may propound any reasonable interrogatories
620 in addition to those contained in the application or make such
621 further investigation as it may deem necessary or advisable for
622 the protection of the public and to ascertain the applicant's
623 character, experience, background, qualifications, and fitness
624 for the license.

625 (4) When the agency grants a change of ownership, the new
626 licensee shall assume all liabilities of a prior licensee, an
627 affiliated entity of the prior licensee, and a controlling
628 entity of the prior licensee.

629 (5) Whenever a facility is sold or the ownership thereof
630 is transferred, including leasing:

631 (a)~~(1)~~ The transferee shall notify the residents, in
632 writing, of the change of ownership within 7 days after receipt
633 of the new license.

634 (b)~~(2)~~ The transferor of a facility the license of which
635 is denied pending an administrative hearing shall, as a part of
636 the written change-of-ownership contract, advise the transferee
637 that a plan of correction must be submitted by the transferee
638 and approved by the agency at least 7 days before the change of
639 ownership and that failure to correct the condition which
640 resulted in the moratorium pursuant to part II of chapter 408 or

HB 1335

2008

641 denial of licensure is grounds for denial of the transferee's
642 license.

643 Section 14. Paragraph (m) is added to subsection (1) of
644 section 429.14, Florida Statutes, and subsections (3) and (7) of
645 that section, are amended to read:

646 429.14 Administrative penalties.--

647 (1) In addition to the requirements of part II of chapter
648 408, the agency may deny, revoke, and suspend any license issued
649 under this part and impose an administrative fine in the manner
650 provided in chapter 120 against a licensee of an assisted living
651 facility for a violation of any provision of this part, part II
652 of chapter 408, or applicable rules, or for any of the following
653 actions by a licensee of an assisted living facility, for the
654 actions of any person subject to level 2 background screening
655 under s. 408.809, or for the actions of any facility employee:

656 (m) Failure to disclose at the time of licensure,
657 relicensure, or change of ownership all affiliated entities,
658 controlling entities, and controlling financial interests.

659 (3) The agency may deny a license to any applicant or
660 controlling interest as defined in part II of chapter 408 which
661 has or had a 25-percent or greater financial or ownership
662 interest in any other facility licensed under this part, in any
663 affiliated entity or controlling entity, or in any entity
664 licensed by this state or another state to provide health or
665 residential care, which facility or entity during the 5 years
666 prior to the application for a license closed due to financial
667 inability to operate; had a receiver appointed or a license

HB 1335

2008

668 denied, suspended, or revoked; was subject to a moratorium; or
669 had an injunctive proceeding initiated against it.

670 (7) Agency notification of a license suspension or
671 revocation, ~~or~~ denial of a license renewal, or issuance of a
672 conditional license, regardless of any administrative challenge,
673 shall be posted and visible to the public at the facility.

674 Section 15. Section 429.174, Florida Statutes, is amended
675 to read:

676 429.174 Background screening; exemptions.--The owner or
677 administrator of an assisted living facility must conduct level
678 1 background screening, as set forth in chapter 435, on all
679 employees hired on or after October 1, 1998, who perform
680 personal services as defined in s. 429.02 (20) ~~(16)~~. The agency
681 may exempt an individual from employment disqualification as set
682 forth in chapter 435. Such persons shall be considered as having
683 met this requirement if:

684 (1) Proof of compliance with level 1 screening
685 requirements obtained to meet any professional license
686 requirements in this state is provided and accompanied, under
687 penalty of perjury, by a copy of the person's current
688 professional license and an affidavit of current compliance with
689 the background screening requirements.

690 (2) The person required to be screened has been
691 continuously employed in the same type of occupation for which
692 the person is seeking employment without a breach in service
693 which exceeds 180 days, and proof of compliance with the level 1
694 screening requirement which is no more than 2 years old is
695 provided. Proof of compliance shall be provided directly from

HB 1335

2008

696 one employer or contractor to another, and not from the person
697 screened. Upon request, a copy of screening results shall be
698 provided by the employer retaining documentation of the
699 screening to the person screened.

700 (3) The person required to be screened is employed by a
701 corporation or business entity or related corporation or
702 business entity that owns, operates, or manages more than one
703 facility or agency licensed under this chapter, and for whom a
704 level 1 screening was conducted by the corporation or business
705 entity as a condition of initial or continued employment.

706 Section 16. Subsection (3) of section 429.275, Florida
707 Statutes, is amended to read:

708 429.275 Business practice; personnel records; liability
709 insurance.--The assisted living facility shall be administered
710 on a sound financial basis that is consistent with good business
711 practices.

712 (3) The administrator or owner of a facility shall
713 maintain liability insurance coverage that is in force at all
714 times. The required general and professional liability insurance
715 shall not be used for litigation costs or attorney's fees for
716 the defense of any claim against an assisted living facility
717 pursuant to the common law, s. 429.29, or s. 429.293. The
718 administrator or owner of a facility shall notify the agency
719 immediately when the policy limits have been exhausted.

720 Section 17. This act shall take effect July 1, 2008.