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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/25/2009	.	
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	.	
	.	

The Committee on Health Regulation (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 395.0199, Florida Statutes, is repealed.

Section 2. Section 395.405, Florida Statutes, is amended to
read:

395.405 Rulemaking.—The department shall adopt and enforce
all rules necessary to administer ss. ~~395.0199~~, 395.401,
395.4015, 395.402, 395.4025, 395.403, 395.404, and 395.4045.

Section 3. Subsection (1) of section 400.0712, Florida



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12 Statutes, is amended to read:

13 400.0712 Application for inactive license.—

14 (1) As specified in ~~s. 408.831(4)~~ and this section, the
15 agency may issue an inactive license to a nursing home facility
16 for all or a portion of its beds. Any request by a licensee that
17 a nursing home or portion of a nursing home become inactive must
18 be submitted to the agency in the approved format. The facility
19 may not initiate any suspension of services, notify residents,
20 or initiate inactivity before receiving approval from the
21 agency; and a licensee that violates this provision may not be
22 issued an inactive license.

23 Section 4. Subsection (2) of section 400.118, Florida
24 Statutes, is repealed.

25 Section 5. Section 400.141, Florida Statutes, is amended to
26 read:

27 400.141 Administration and management of nursing home
28 facilities.—

29 (1) Every licensed facility shall comply with all
30 applicable standards and rules of the agency and shall:

31 (a) ~~(1)~~ Be under the administrative direction and charge of
32 a licensed administrator.

33 (b) ~~(2)~~ Appoint a medical director licensed pursuant to
34 chapter 458 or chapter 459. The agency may establish by rule
35 more specific criteria for the appointment of a medical
36 director.

37 (c) ~~(3)~~ Have available the regular, consultative, and
38 emergency services of physicians licensed by the state.

39 (d) ~~(4)~~ Provide for resident use of a community pharmacy as
40 specified in s. 400.022(1)(q). Any other law to the contrary



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41 notwithstanding, a registered pharmacist licensed in Florida,
42 that is under contract with a facility licensed under this
43 chapter or chapter 429, shall repackage a nursing facility
44 resident's bulk prescription medication which has been packaged
45 by another pharmacist licensed in any state in the United States
46 into a unit dose system compatible with the system used by the
47 nursing facility, if the pharmacist is requested to offer such
48 service. In order to be eligible for the repackaging, a resident
49 or the resident's spouse must receive prescription medication
50 benefits provided through a former employer as part of his or
51 her retirement benefits, a qualified pension plan as specified
52 in s. 4972 of the Internal Revenue Code, a federal retirement
53 program as specified under 5 C.F.R. s. 831, or a long-term care
54 policy as defined in s. 627.9404(1). A pharmacist who correctly
55 repackages and relabels the medication and the nursing facility
56 which correctly administers such repackaged medication under ~~the~~
57 ~~provisions of this paragraph may subsection shall~~ not be held
58 liable in any civil or administrative action arising from the
59 repackaging. In order to be eligible for the repackaging, a
60 nursing facility resident for whom the medication is to be
61 repackaged shall sign an informed consent form provided by the
62 facility which includes an explanation of the repackaging
63 process and which notifies the resident of the immunities from
64 liability provided in this paragraph ~~herein~~. A pharmacist who
65 repackages and relabels prescription medications, as authorized
66 under this paragraph ~~subsection~~, may charge a reasonable fee for
67 costs resulting from the implementation of this provision.

68 (e)(5) Provide for the access of the facility residents to
69 dental and other health-related services, recreational services,



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70 rehabilitative services, and social work services appropriate to
71 their needs and conditions and not directly furnished by the
72 licensee. When a geriatric outpatient nurse clinic is conducted
73 in accordance with rules adopted by the agency, outpatients
74 attending such clinic shall not be counted as part of the
75 general resident population of the nursing home facility, nor
76 shall the nursing staff of the geriatric outpatient clinic be
77 counted as part of the nursing staff of the facility, until the
78 outpatient clinic load exceeds 15 a day.

79 (f)~~(6)~~ Be allowed and encouraged by the agency to provide
80 other needed services under certain conditions. If the facility
81 has a standard licensure status, and has had no class I or class
82 II deficiencies during the past 2 years or has been awarded a
83 Gold Seal under the program established in s. 400.235, it may be
84 encouraged by the agency to provide services, including, but not
85 limited to, respite and adult day services, which enable
86 individuals to move in and out of the facility. A facility is
87 not subject to any additional licensure requirements for
88 providing these services. Respite care may be offered to persons
89 in need of short-term or temporary nursing home services.
90 Respite care must be provided in accordance with this part and
91 rules adopted by the agency. However, the agency shall, by rule,
92 adopt modified requirements for resident assessment, resident
93 care plans, resident contracts, physician orders, and other
94 provisions, as appropriate, for short-term or temporary nursing
95 home services. The agency shall allow for shared programming and
96 staff in a facility which meets minimum standards and offers
97 services pursuant to this paragraph ~~subsection~~, but, if the
98 facility is cited for deficiencies in patient care, may require



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99 additional staff and programs appropriate to the needs of
100 service recipients. A person who receives respite care may not
101 be counted as a resident of the facility for purposes of the
102 facility's licensed capacity unless that person receives 24-hour
103 respite care. A person receiving either respite care for 24
104 hours or longer or adult day services must be included when
105 calculating minimum staffing for the facility. Any costs and
106 revenues generated by a nursing home facility from
107 nonresidential programs or services shall be excluded from the
108 calculations of Medicaid per diems for nursing home
109 institutional care reimbursement.

110 (g) ~~(7)~~ If the facility has a standard license or is a Gold
111 Seal facility, exceeds the minimum required hours of licensed
112 nursing and certified nursing assistant direct care per resident
113 per day, and is part of a continuing care facility licensed
114 under chapter 651 or a retirement community that offers other
115 services pursuant to part III of this chapter or part I or part
116 III of chapter 429 on a single campus, be allowed to share
117 programming and staff. At the time of inspection and in the
118 semiannual report required pursuant to paragraph (o) ~~subsection~~
119 ~~(15)~~, a continuing care facility or retirement community that
120 uses this option must demonstrate through staffing records that
121 minimum staffing requirements for the facility were met.

122 Licensed nurses and certified nursing assistants who work in the
123 nursing home facility may be used to provide services elsewhere
124 on campus if the facility exceeds the minimum number of direct
125 care hours required per resident per day and the total number of
126 residents receiving direct care services from a licensed nurse
127 or a certified nursing assistant does not cause the facility to



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128 violate the staffing ratios required under s. 400.23(3)(a).
129 Compliance with the minimum staffing ratios shall be based on
130 total number of residents receiving direct care services,
131 regardless of where they reside on campus. If the facility
132 receives a conditional license, it may not share staff until the
133 conditional license status ends. This paragraph ~~subsection~~ does
134 not restrict the agency's authority under federal or state law
135 to require additional staff if a facility is cited for
136 deficiencies in care which are caused by an insufficient number
137 of certified nursing assistants or licensed nurses. The agency
138 may adopt rules for the documentation necessary to determine
139 compliance with this provision.

140 (h) ~~(8)~~ Maintain the facility premises and equipment and
141 conduct its operations in a safe and sanitary manner.

142 (i) ~~(9)~~ If the licensee furnishes food service, provide a
143 wholesome and nourishing diet sufficient to meet generally
144 accepted standards of proper nutrition for its residents and
145 provide such therapeutic diets as may be prescribed by attending
146 physicians. In making rules to implement this paragraph
147 ~~subsection~~, the agency shall be guided by standards recommended
148 by nationally recognized professional groups and associations
149 with knowledge of dietetics.

150 (j) ~~(10)~~ Keep full records of resident admissions and
151 discharges; medical and general health status, including medical
152 records, personal and social history, and identity and address
153 of next of kin or other persons who may have responsibility for
154 the affairs of the residents; and individual resident care plans
155 including, but not limited to, prescribed services, service
156 frequency and duration, and service goals. The records shall be



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157 open to inspection by the agency.

158 (k) ~~(11)~~ Keep such fiscal records of its operations and
159 conditions as may be necessary to provide information pursuant
160 to this part.

161 (l) ~~(12)~~ Furnish copies of personnel records for employees
162 affiliated with such facility, to any other facility licensed by
163 this state requesting this information pursuant to this part.
164 Such information contained in the records may include, but is
165 not limited to, disciplinary matters and any reason for
166 termination. Any facility releasing such records pursuant to
167 this part shall be considered to be acting in good faith and may
168 not be held liable for information contained in such records,
169 absent a showing that the facility maliciously falsified such
170 records.

171 (m) ~~(13)~~ Publicly display a poster provided by the agency
172 containing the names, addresses, and telephone numbers for the
173 state's abuse hotline, the State Long-Term Care Ombudsman, the
174 Agency for Health Care Administration consumer hotline, the
175 Advocacy Center for Persons with Disabilities, the Florida
176 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
177 with a clear description of the assistance to be expected from
178 each.

179 (n) ~~(14)~~ Submit to the agency the information specified in
180 s. 400.071(1)(b) for a management company within 30 days after
181 the effective date of the management agreement.

182 (o) 1. ~~(15)~~ Submit semiannually to the agency, or more
183 frequently if requested by the agency, information regarding
184 facility staff-to-resident ratios, staff turnover, and staff
185 stability, including information regarding certified nursing



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186 assistants, licensed nurses, the director of nursing, and the
187 facility administrator. For purposes of this reporting:

188 a.~~(a)~~ Staff-to-resident ratios must be reported in the
189 categories specified in s. 400.23(3)(a) and applicable rules.
190 The ratio must be reported as an average for the most recent
191 calendar quarter.

192 b.~~(b)~~ Staff turnover must be reported for the most recent
193 12-month period ending on the last workday of the most recent
194 calendar quarter prior to the date the information is submitted.
195 The turnover rate must be computed quarterly, with the annual
196 rate being the cumulative sum of the quarterly rates. The
197 turnover rate is the total number of terminations or separations
198 experienced during the quarter, excluding any employee
199 terminated during a probationary period of 3 months or less,
200 divided by the total number of staff employed at the end of the
201 period for which the rate is computed, and expressed as a
202 percentage.

203 c.~~(c)~~ The formula for determining staff stability is the
204 total number of employees that have been employed for more than
205 12 months, divided by the total number of employees employed at
206 the end of the most recent calendar quarter, and expressed as a
207 percentage.

208 d.~~(d)~~ A nursing facility that has failed to comply with
209 state minimum-staffing requirements for 2 consecutive days is
210 prohibited from accepting new admissions until the facility has
211 achieved the minimum-staffing requirements for a period of 6
212 consecutive days. For the purposes of this sub-subparagraph
213 ~~paragraph~~, any person who was a resident of the facility and was
214 absent from the facility for the purpose of receiving medical



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215 care at a separate location or was on a leave of absence is not
216 considered a new admission. Failure to impose such an admissions
217 moratorium constitutes a class II deficiency.

218 e.~~(e)~~ A nursing facility which does not have a conditional
219 license may be cited for failure to comply with the standards in
220 s. 400.23(3)(a)1.a. only if it has failed to meet those
221 standards on 2 consecutive days or if it has failed to meet at
222 least 97 percent of those standards on any one day.

223 f.~~(f)~~ A facility which has a conditional license must be in
224 compliance with the standards in s. 400.23(3)(a) at all times.
225

226 2. ~~Nothing in~~ This paragraph does not ~~section shall~~ limit
227 the agency's ability to impose a deficiency or take other
228 actions if a facility does not have enough staff to meet the
229 residents' needs.

230 ~~(16) Report monthly the number of vacant beds in the~~
231 ~~facility which are available for resident occupancy on the day~~
232 ~~the information is reported.~~

233 (p)~~(17)~~ Notify a licensed physician when a resident
234 exhibits signs of dementia or cognitive impairment or has a
235 change of condition in order to rule out the presence of an
236 underlying physiological condition that may be contributing to
237 such dementia or impairment. The notification must occur within
238 30 days after the acknowledgment of such signs by facility
239 staff. If an underlying condition is determined to exist, the
240 facility shall arrange, with the appropriate health care
241 provider, the necessary care and services to treat the
242 condition.

243 (q)~~(18)~~ If the facility implements a dining and hospitality



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244 attendant program, ensure that the program is developed and
245 implemented under the supervision of the facility director of
246 nursing. A licensed nurse, licensed speech or occupational
247 therapist, or a registered dietitian must conduct training of
248 dining and hospitality attendants. A person employed by a
249 facility as a dining and hospitality attendant must perform
250 tasks under the direct supervision of a licensed nurse.

251 (r) ~~(19)~~ Report to the agency any filing for bankruptcy
252 protection by the facility or its parent corporation,
253 divestiture or spin-off of its assets, or corporate
254 reorganization within 30 days after the completion of such
255 activity.

256 (s) ~~(20)~~ Maintain general and professional liability
257 insurance coverage that is in force at all times. In lieu of
258 general and professional liability insurance coverage, a state-
259 designated teaching nursing home and its affiliated assisted
260 living facilities created under s. 430.80 may demonstrate proof
261 of financial responsibility as provided in s. 430.80 (3) (h).

262 (t) ~~(21)~~ Maintain in the medical record for each resident a
263 daily chart of certified nursing assistant services provided to
264 the resident. The certified nursing assistant who is caring for
265 the resident must complete this record by the end of his or her
266 shift. This record must indicate assistance with activities of
267 daily living, assistance with eating, and assistance with
268 drinking, and must record each offering of nutrition and
269 hydration for those residents whose plan of care or assessment
270 indicates a risk for malnutrition or dehydration.

271 (u) ~~(22)~~ Before November 30 of each year, subject to the
272 availability of an adequate supply of the necessary vaccine,



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273 provide for immunizations against influenza viruses to all its
274 consenting residents in accordance with the recommendations of
275 the United States Centers for Disease Control and Prevention,
276 subject to exemptions for medical contraindications and
277 religious or personal beliefs. Subject to these exemptions, any
278 consenting person who becomes a resident of the facility after
279 November 30 but before March 31 of the following year must be
280 immunized within 5 working days after becoming a resident.
281 Immunization shall not be provided to any resident who provides
282 documentation that he or she has been immunized as required by
283 this paragraph subsection. This paragraph subsection does not
284 prohibit a resident from receiving the immunization from his or
285 her personal physician if he or she so chooses. A resident who
286 chooses to receive the immunization from his or her personal
287 physician shall provide proof of immunization to the facility.
288 The agency may adopt and enforce any rules necessary to comply
289 with or implement this subsection.

290 (v) ~~(23)~~ Assess all residents for eligibility for
291 pneumococcal polysaccharide vaccination (PPV) and vaccinate
292 residents when indicated within 60 days after the effective date
293 of this act in accordance with the recommendations of the United
294 States Centers for Disease Control and Prevention, subject to
295 exemptions for medical contraindications and religious or
296 personal beliefs. Residents admitted after the effective date of
297 this act shall be assessed within 5 working days of admission
298 and, when indicated, vaccinated within 60 days in accordance
299 with the recommendations of the United States Centers for
300 Disease Control and Prevention, subject to exemptions for
301 medical contraindications and religious or personal beliefs.



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302 Immunization shall not be provided to any resident who provides
303 documentation that he or she has been immunized as required by
304 this paragraph subsection. This paragraph subsection does not
305 prohibit a resident from receiving the immunization from his or
306 her personal physician if he or she so chooses. A resident who
307 chooses to receive the immunization from his or her personal
308 physician shall provide proof of immunization to the facility.
309 The agency may adopt and enforce any rules necessary to comply
310 with or implement this paragraph subsection.

311 (w) ~~(24)~~ Annually encourage and promote to its employees the
312 benefits associated with immunizations against influenza viruses
313 in accordance with the recommendations of the United States
314 Centers for Disease Control and Prevention. The agency may adopt
315 and enforce any rules necessary to comply with or implement this
316 paragraph subsection.

317 (2) Facilities that have been awarded a Gold Seal under the
318 program established in s. 400.235 may develop a plan to provide
319 certified nursing assistant training as prescribed by federal
320 regulations and state rules and may apply to the agency for
321 approval of their program.

322 Section 6. Subsections (5), (9), (10), (11), (12), (13),
323 (14), and (15) of section 400.147, Florida Statutes, are amended
324 to read:

325 400.147 Internal risk management and quality assurance
326 program.—

327 (5) For purposes of reporting to the agency under this
328 section, the term "adverse incident" means:

329 (a) An event over which facility personnel could exercise
330 control and which is associated in whole or in part with the



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331 facility's intervention, rather than the condition for which
332 such intervention occurred, and which results in one of the
333 following:

- 334 1. Death;
- 335 2. Brain or spinal damage;
- 336 3. Permanent disfigurement;
- 337 4. Fracture or dislocation of bones or joints;
- 338 5. A limitation of neurological, physical, or sensory
339 function;

340 6. Any condition that required medical attention to which
341 the resident has not given his or her informed consent,
342 including failure to honor advanced directives; or

343 7. Any condition that required the transfer of the
344 resident, within or outside the facility, to a unit providing a
345 more acute level of care due to the adverse incident, rather
346 than the resident's condition prior to the adverse incident; or

347 8. An event that is reported to law enforcement or its
348 personnel for investigation; or

349 ~~(b) Abuse, neglect, or exploitation as defined in s.~~
350 ~~415.102;~~

351 ~~(c) Abuse, neglect and harm as defined in s. 39.01;~~

352 (b)(d) Resident elopement, if the elopement places the
353 resident at risk of harm or injury. ~~;~~ ~~or~~

354 ~~(e) An event that is reported to law enforcement.~~

355 (9) Abuse, neglect, or exploitation must be reported to the
356 agency as required by 42 C.F.R. s. 483.13(c) and to the
357 department as required by chapters 39 and 415.

358 (10) ~~(9)~~ By the 10th of each month, each facility subject to
359 this section shall report any notice received pursuant to s.



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360 400.0233(2) and each initial complaint that was filed with the
361 clerk of the court and served on the facility during the
362 previous month by a resident or a resident's family member,
363 guardian, conservator, or personal legal representative. The
364 report must include the name of the resident, the resident's
365 date of birth and social security number, the Medicaid
366 identification number for Medicaid-eligible persons, the date or
367 dates of the incident leading to the claim or dates of
368 residency, if applicable, and the type of injury or violation of
369 rights alleged to have occurred. Each facility shall also submit
370 a copy of the notices received pursuant to s. 400.0233(2) and
371 complaints filed with the clerk of the court. This report is
372 confidential as provided by law and is not discoverable or
373 admissible in any civil or administrative action, except in such
374 actions brought by the agency to enforce the provisions of this
375 part.

376 (11)~~(10)~~ The agency shall review, as part of its licensure
377 inspection process, the internal risk management and quality
378 assurance program at each facility regulated by this section to
379 determine whether the program meets standards established in
380 statutory laws and rules, is being conducted in a manner
381 designed to reduce adverse incidents, and is appropriately
382 reporting incidents as required by this section.

383 (12)~~(11)~~ There is no monetary liability on the part of, and
384 a cause of action for damages may not arise against, any risk
385 manager for the implementation and oversight of the internal
386 risk management and quality assurance program in a facility
387 licensed under this part as required by this section, or for any
388 act or proceeding undertaken or performed within the scope of



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389 the functions of such internal risk management and quality
390 assurance program if the risk manager acts without intentional
391 fraud.

392 ~~(13)~~ ~~(12)~~ If the agency, through its receipt of the adverse
393 incident reports prescribed in subsection (7), or through any
394 investigation, has a reasonable belief that conduct by a staff
395 member or employee of a facility is grounds for disciplinary
396 action by the appropriate regulatory board, the agency shall
397 report this fact to the regulatory board.

398 ~~(14)~~ ~~(13)~~ The agency may adopt rules to administer this
399 section.

400 ~~(14)~~ ~~The agency shall annually submit to the Legislature a~~
401 ~~report on nursing home adverse incidents. The report must~~
402 ~~include the following information arranged by county:~~

403 ~~(a) The total number of adverse incidents.~~

404 ~~(b) A listing, by category, of the types of adverse~~
405 ~~incidents, the number of incidents occurring within each~~
406 ~~category, and the type of staff involved.~~

407 ~~(c) A listing, by category, of the types of injury caused~~
408 ~~and the number of injuries occurring within each category.~~

409 ~~(d) Types of liability claims filed based on an adverse~~
410 ~~incident or reportable injury.~~

411 ~~(e) Disciplinary action taken against staff, categorized by~~
412 ~~type of staff involved.~~

413 (15) Information gathered by a credentialing organization
414 under a quality assurance program is not discoverable from the
415 credentialing organization. This subsection does not limit
416 discovery of, access to, or use of facility records, including
417 those records from which the credentialing organization gathered



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418 its information.

419 Section 7. Subsection (3) of section 400.162, Florida
420 Statutes, is amended to read:

421 400.162 Property and personal affairs of residents.—

422 (3) A licensee shall provide for the safekeeping of
423 personal effects, funds, and other property of the resident in
424 the facility. Whenever necessary for the protection of
425 valuables, or in order to avoid unreasonable responsibility
426 therefor, the licensee may require that such valuables be
427 excluded or removed from the facility and kept at some place not
428 subject to the control of the licensee. At the request of a
429 resident, the facility shall mark the resident's personal
430 property with the resident's name or another type of
431 identification, without defacing the property. Any theft or loss
432 of a resident's personal property shall be documented by the
433 facility. The facility shall develop policies and procedures to
434 minimize the risk of theft or loss of the personal property of
435 residents. A copy of the policy shall be provided to every
436 employee and to each resident and the resident's representative
437 if appropriate at admission and when revised. Facility policies
438 must include provisions related to reporting theft or loss of a
439 resident's property to law enforcement and any facility waiver
440 of liability for loss or theft. ~~The facility shall post notice~~
441 ~~of these policies and procedures, and any revision thereof, in~~
442 ~~places accessible to residents.~~

443 Section 8. Paragraph (d) of subsection (1) of section
444 400.195, Florida Statutes, is amended to read:

445 400.195 Agency reporting requirements.—

446 (1) For the period beginning June 30, 2001, and ending June



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447 30, 2005, the Agency for Health Care Administration shall
448 provide a report to the Governor, the President of the Senate,
449 and the Speaker of the House of Representatives with respect to
450 nursing homes. The first report shall be submitted no later than
451 December 30, 2002, and subsequent reports shall be submitted
452 every 6 months thereafter. The report shall identify facilities
453 based on their ownership characteristics, size, business
454 structure, for-profit or not-for-profit status, and any other
455 characteristics the agency determines useful in analyzing the
456 varied segments of the nursing home industry and shall report:

457 (d) Information regarding deficiencies cited, including
458 information used to develop the Nursing Home Guide WATCH LIST
459 pursuant to s. 400.191, and applicable rules, a summary of data
460 generated on nursing homes by Centers for Medicare and Medicaid
461 Services Nursing Home Quality Information Project, and
462 information collected pursuant to s. 400.147(10) ~~s. 400.147(9)~~,
463 relating to litigation.

464 Section 9. Subsection (3) of section 400.23, Florida
465 Statutes, is amended to read:

466 400.23 Rules; evaluation and deficiencies; licensure
467 status.—

468 (3)(a)1. The agency shall adopt rules providing minimum
469 staffing requirements for nursing homes. These requirements
470 shall include, for each nursing home facility:

471 a. A minimum certified nursing assistant staffing of 2.6
472 hours of direct care per resident per day beginning January 1,
473 2003, and increasing to 2.7 hours of direct care per resident
474 per day beginning January 1, 2007. Beginning January 1, 2002, no
475 facility shall staff below one certified nursing assistant per



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476 20 residents, and a minimum licensed nursing staffing of 1.0
477 hour of direct care per resident per day but never below one
478 licensed nurse per 40 residents.

479 b. Beginning January 1, 2007, a minimum weekly average
480 certified nursing assistant staffing of 2.9 hours of direct care
481 per resident per day. For the purpose of this sub-subparagraph,
482 a week is defined as Sunday through Saturday.

483 2. Nursing assistants employed under s. 400.211(2) may be
484 included in computing the staffing ratio for certified nursing
485 assistants only if their job responsibilities include only
486 nursing-assistant-related duties.

487 3. Each nursing home must document compliance with staffing
488 standards as required under this paragraph and post daily the
489 names of staff on duty for the benefit of facility residents and
490 the public.

491 4. The agency shall recognize the use of licensed nurses
492 for compliance with minimum staffing requirements for certified
493 nursing assistants, provided that the facility otherwise meets
494 the minimum staffing requirements for licensed nurses and that
495 the licensed nurses are performing the duties of a certified
496 nursing assistant. Unless otherwise approved by the agency,
497 licensed nurses counted toward the minimum staffing requirements
498 for certified nursing assistants must exclusively perform the
499 duties of a certified nursing assistant for the entire shift and
500 not also be counted toward the minimum staffing requirements for
501 licensed nurses. If the agency approved a facility's request to
502 use a licensed nurse to perform both licensed nursing and
503 certified nursing assistant duties, the facility must allocate
504 the amount of staff time specifically spent on certified nursing



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505 assistant duties for the purpose of documenting compliance with
506 minimum staffing requirements for certified and licensed nursing
507 staff. In no event may the hours of a licensed nurse with dual
508 job responsibilities be counted twice.

509 ~~(b) The agency shall adopt rules to allow properly trained~~
510 ~~staff of a nursing facility, in addition to certified nursing~~
511 ~~assistants and licensed nurses, to assist residents with eating.~~
512 ~~The rules shall specify the minimum training requirements and~~
513 ~~shall specify the physiological conditions or disorders of~~
514 ~~residents which would necessitate that the eating assistance be~~
515 ~~provided by nursing personnel of the facility. Nonnursing staff~~
516 ~~providing eating assistance to residents under the provisions of~~
517 ~~this subsection shall not count toward compliance with minimum~~
518 ~~staffing standards.~~

519 (c) Licensed practical nurses licensed under chapter 464
520 who are providing nursing services in nursing home facilities
521 under this part may supervise the activities of other licensed
522 practical nurses, certified nursing assistants, and other
523 unlicensed personnel providing services in such facilities in
524 accordance with rules adopted by the Board of Nursing.

525 Section 10. Paragraph (a) of subsection (4) and paragraph
526 (b) of subsection (5) of section 400.464, Florida Statutes, are
527 amended to read:

528 400.464 Home health agencies to be licensed; expiration of
529 license; exemptions; unlawful acts; penalties.-

530 (4) (a) An organization that offers or advertises to the
531 public any service for which licensure ~~or registration~~ is
532 required under this part must include in the advertisement the
533 license number ~~or registration~~ number issued to the organization



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534 by the agency. The agency shall assess a fine of not less than
535 \$100 to any licensee or registrant who fails to include the
536 license ~~or registration~~ number when submitting the advertisement
537 for publication, broadcast, or printing. The fine for a second
538 or subsequent offense is \$500. The holder of a license issued
539 under this part may not advertise or indicate to the public that
540 it holds a home health agency or nurse registry license other
541 than the one it has been issued.

542 (5) The following are exempt from the licensure
543 requirements of this part:

544 (b) Home health services provided by a state agency, either
545 directly or through a contractor with:

546 1. The Department of Elderly Affairs.

547 2. The Department of Health, a community health center, or
548 a rural health network that furnishes home visits for the
549 purpose of providing environmental assessments, case management,
550 health education, personal care services, family planning, or
551 followup treatment, or for the purpose of monitoring and
552 tracking disease.

553 3. Services provided to persons with developmental
554 disabilities, as defined in s. 393.063.

555 ~~4. Companion and sitter organizations that were registered~~
556 ~~under s. 400.509(1) on January 1, 1999, and were authorized to~~
557 ~~provide personal services under a developmental services~~
558 ~~provider certificate on January 1, 1999, may continue to provide~~
559 ~~such services to past, present, and future clients of the~~
560 ~~organization who need such services, notwithstanding the~~
561 ~~provisions of this act.~~

562 4.5. The Department of Children and Family Services.



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563 Section 11. Section 400.497, Florida Statutes, is amended
564 to read:

565 400.497 Rules establishing minimum standards.—The agency
566 shall adopt, publish, and enforce rules to implement part II of
567 chapter 408 and this part, including, as applicable, s. ~~ss.~~
568 400.506 ~~and 400.509~~, which must provide reasonable and fair
569 minimum standards relating to:

570 (1) The home health aide competency test and home health
571 aide training. The agency shall create the home health aide
572 competency test and establish the curriculum and instructor
573 qualifications for home health aide training. Licensed home
574 health agencies may provide this training and shall furnish
575 documentation of such training to other licensed home health
576 agencies upon request. Successful passage of the competency test
577 by home health aides may be substituted for the training
578 required under this section and any rule adopted pursuant
579 thereto.

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

585 (3) The criteria for the frequency of onsite licensure
586 surveys.

587 (4) Licensure application and renewal.

588 (5) Oversight by the director of nursing. The agency shall
589 develop rules related to:

590 (a) Standards that address oversight responsibilities by
591 the director of nursing of skilled nursing and personal care



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592 services provided by the home health agency's staff;

593 (b) Requirements for a director of nursing to provide to
594 the agency, upon request, a certified daily report of the home
595 health services provided by a specified direct employee or
596 contracted staff member on behalf of the home health agency. The
597 agency may request a certified daily report only for a period
598 not to exceed 2 years prior to the date of the request; and

599 (c) A quality assurance program for home health services
600 provided by the home health agency.

601 (6) Conditions for using a recent unannounced licensure
602 inspection for the inspection required in s. 408.806 related to
603 a licensure application associated with a change in ownership of
604 a licensed home health agency.

605 (7) The requirements for onsite and electronic
606 accessibility of supervisory personnel of home health agencies.

607 (8) Information to be included in patients' records.

608 (9) Geographic service areas.

609 (10) Preparation of a comprehensive emergency management
610 plan pursuant to s. 400.492.

611 (a) The Agency for Health Care Administration shall adopt
612 rules establishing minimum criteria for the plan and plan
613 updates, with the concurrence of the Department of Health and in
614 consultation with the Department of Community Affairs.

615 (b) The rules must address the requirements in s. 400.492.
616 In addition, the rules shall provide for the maintenance of
617 patient-specific medication lists that can accompany patients
618 who are transported from their homes.

619 (c) The plan is subject to review and approval by the
620 county health department. During its review, the county health



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621 department shall contact state and local health and medical
622 stakeholders when necessary. The county health department shall
623 complete its review to ensure that the plan is in accordance
624 with the criteria in the Agency for Health Care Administration
625 rules within 90 days after receipt of the plan and shall approve
626 the plan or advise the home health agency of necessary
627 revisions. If the home health agency fails to submit a plan or
628 fails to submit the requested information or revisions to the
629 county health department within 30 days after written
630 notification from the county health department, the county
631 health department shall notify the Agency for Health Care
632 Administration. The agency shall notify the home health agency
633 that its failure constitutes a deficiency, subject to a fine of
634 \$5,000 per occurrence. If the plan is not submitted, information
635 is not provided, or revisions are not made as requested, the
636 agency may impose the fine.

637 (d) For any home health agency that operates in more than
638 one county, the Department of Health shall review the plan,
639 after consulting with state and local health and medical
640 stakeholders when necessary. The department shall complete its
641 review within 90 days after receipt of the plan and shall
642 approve the plan or advise the home health agency of necessary
643 revisions. The department shall make every effort to avoid
644 imposing differing requirements on a home health agency that
645 operates in more than one county as a result of differing or
646 conflicting comprehensive plan requirements of the counties in
647 which the home health agency operates.

648 (e) The requirements in this subsection do not apply to:

649 1. A facility that is certified under chapter 651 and has a



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650 licensed home health agency used exclusively by residents of the
651 facility; or

652 2. A retirement community that consists of residential
653 units for independent living and either a licensed nursing home
654 or an assisted living facility, and has a licensed home health
655 agency used exclusively by the residents of the retirement
656 community, provided the comprehensive emergency management plan
657 for the facility or retirement community provides for continuous
658 care of all residents with special needs during an emergency.

659 Section 12. Paragraph (a) of subsection (6) and paragraph
660 (a) of subsection (15) of section 400.506, Florida Statutes, are
661 amended to read:

662 400.506 Licensure of nurse registries; requirements;
663 penalties.—

664 (6) (a) A nurse registry may refer for contract in private
665 residences registered nurses and licensed practical nurses
666 registered and licensed under part I of chapter 464, certified
667 nursing assistants certified under part II of chapter 464, and
668 home health aides who present documented proof of successful
669 completion of the training required by rule of the agency, ~~and~~
670 ~~companions or homemakers for the purposes of providing those~~
671 ~~services authorized under s. 400.509(1)~~. A licensed nurse
672 registry shall ensure that each certified nursing assistant
673 referred for contract by the nurse registry and each home health
674 aide referred for contract by the nurse registry is adequately
675 trained to perform the tasks of a home health aide in the home
676 setting. Each person referred by a nurse registry must provide
677 current documentation that he or she is free from communicable
678 diseases.



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679 (15) (a) The agency may deny, suspend, or revoke the license
680 of a nurse registry and shall impose a fine of \$5,000 against a
681 nurse registry that:

682 1. Provides services to residents in an assisted living
683 facility for which the nurse registry does not receive fair
684 market value remuneration.

685 2. Provides staffing to an assisted living facility for
686 which the nurse registry does not receive fair market value
687 remuneration.

688 3. Fails to provide the agency, upon request, with copies
689 of all contracts with assisted living facilities which were
690 executed within the last 5 years.

691 4. Gives remuneration to a case manager, discharge planner,
692 facility-based staff member, or third-party vendor who is
693 involved in the discharge planning process of a facility
694 licensed under chapter 395 or this chapter and from whom the
695 nurse registry receives referrals, except that this subparagraph
696 does not apply to a nurse registry that does not participate in
697 the Medicaid or Medicare program.

698 5. Gives remuneration to a physician, a member of the
699 physician's office staff, or an immediate family member of the
700 physician, and the nurse registry received a patient referral in
701 the last 12 months from that physician or the physician's office
702 staff, except that this subparagraph does not apply to a nurse
703 registry that does not participate in the Medicaid or Medicare
704 program.

705 Section 13. Section 400.509, Florida Statutes, is repealed.

706 Section 14. Section 400.512, Florida Statutes, is amended
707 to read:



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708 400.512 Screening of home health agency personnel and
709 nurse registry personnel; ~~and companions and homemakers.~~ The
710 agency shall require employment or contractor screening as
711 provided in chapter 435, using the level 1 standards for
712 screening set forth in that chapter, for home health agency
713 personnel and persons referred for employment by nurse
714 registries; ~~and persons employed by companion or homemaker~~
715 ~~services registered under s. 400.509.~~

716 (1) (a) The Agency for Health Care Administration may, upon
717 request, grant exemptions from disqualification from employment
718 or contracting under this section as provided in s. 435.07,
719 except for health care practitioners licensed by the Department
720 of Health or a regulatory board within that department.

721 (b) The appropriate regulatory board within the Department
722 of Health, or that department itself when there is no board,
723 may, upon request of the licensed health care practitioner,
724 grant exemptions from disqualification from employment or
725 contracting under this section as provided in s. 435.07.

726 (2) The administrator of each home health agency and the
727 managing employee of each nurse registry; ~~and the managing~~
728 ~~employee of each companion or homemaker service registered under~~
729 ~~s. 400.509~~ must sign an affidavit annually, under penalty of
730 perjury, stating that all personnel hired or contracted with or
731 registered on or after October 1, 2000, who enter the home of a
732 patient or client in their service capacity have been screened.

733 (3) As a prerequisite to operating as a home health agency
734 or nurse registry; ~~or companion or homemaker service under s.~~
735 ~~400.509~~, the administrator or managing employee, respectively,
736 must submit to the agency his or her name and any other



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737 information necessary to conduct a complete screening according
738 to this section. The agency shall submit the information to the
739 Department of Law Enforcement for state processing. The agency
740 shall review the record of the administrator or manager with
741 respect to the offenses specified in this section and shall
742 notify the owner of its findings. If disposition information is
743 missing on a criminal record, the administrator or manager, upon
744 request of the agency, must obtain and supply within 30 days the
745 missing disposition information to the agency. Failure to supply
746 missing information within 30 days or to show reasonable efforts
747 to obtain such information will result in automatic
748 disqualification.

749 (4) Proof of compliance with the screening requirements of
750 chapter 435 shall be accepted in lieu of the requirements of
751 this section if the person has been continuously employed or
752 registered without a breach in service that exceeds 180 days,
753 the proof of compliance is not more than 2 years old, and the
754 person has been screened by the Department of Law Enforcement. A
755 home health agency or nurse registry, ~~or companion or homemaker~~
756 ~~service registered under s. 400.509~~ shall directly provide proof
757 of compliance to another home health agency or nurse registry,
758 ~~or companion or homemaker service registered under s. 400.509.~~
759 The recipient home health agency or nurse registry, ~~or~~
760 ~~companion or homemaker service registered under s. 400.509~~ may
761 not accept any proof of compliance directly from the person who
762 requires screening. Proof of compliance with the screening
763 requirements of this section shall be provided upon request to
764 the person screened by the home health agencies or nurse
765 registries; ~~or companion or homemaker services registered under~~



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766 ~~s. 400.509.~~

767 (5) There is no monetary liability on the part of, and no
768 cause of action for damages arises against, a licensed home
769 health agency or, licensed nurse registry, ~~or companion or~~
770 ~~homemaker service registered under s. 400.509,~~ that, upon notice
771 that the employee or contractor has been found guilty of,
772 regardless of adjudication, or entered a plea of nolo contendere
773 or guilty to, any offense prohibited under s. 435.03 or under
774 any similar statute of another jurisdiction, terminates the
775 employee or contractor, whether or not the employee or
776 contractor has filed for an exemption with the agency in
777 accordance with chapter 435 and whether or not the time for
778 filing has expired.

779 (6) The costs of processing the statewide correspondence
780 criminal records checks must be borne by the home health agency
781 or, the nurse registry, ~~or the companion or homemaker service~~
782 ~~registered under s. 400.509,~~ or by the person being screened, at
783 the discretion of the home health agency or, nurse registry, ~~or~~
784 ~~s. 400.509 registrant.~~

785 Section 15. Paragraph (a) of subsection (7) of section
786 400.9935, Florida Statutes, is amended to read:

787 400.9935 Clinic responsibilities.—

788 (7) (a) Each clinic engaged in magnetic resonance imaging
789 services must be accredited by the Joint Commission on
790 Accreditation of Healthcare Organizations, the American College
791 of Radiology, or the Accreditation Association for Ambulatory
792 Health Care, within 1 year after licensure. A clinic that is
793 accredited by the American College of Radiology or is within the
794 original 1-year period after licensure and replaces its core



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795 magnetic resonance imaging equipment shall be given 1 year after
796 the date on which the equipment is replaced to attain
797 accreditation. However, a clinic may request a single, 6-month
798 extension if it provides evidence to the agency establishing
799 that, for good cause shown, such clinic cannot ~~can not~~ be
800 accredited within 1 year after licensure, and that such
801 accreditation will be completed within the 6-month extension.
802 After obtaining accreditation as required by this subsection,
803 each such clinic must maintain accreditation as a condition of
804 renewal of its license. A clinic that files a change of
805 ownership application must comply with the original
806 accreditation timeframe requirements of the transferor. The
807 agency shall deny a change of ownership application if the
808 clinic is not in compliance with the accreditation requirements.
809 When a clinic adds, replaces, or modifies magnetic resonance
810 imaging equipment and the accreditation agency requires new
811 accreditation, the clinic must be accredited within 1 year after
812 the date of the addition, replacement, or modification but may
813 request a single, 6-month extension if the clinic provides
814 evidence of good cause to the agency.

815 Section 16. Subsection (6) of section 400.995, Florida
816 Statutes, is amended to read:

817 400.995 Agency administrative penalties.—

818 (6) The agency, ~~as an alternative to or in conjunction with~~
819 ~~an administrative action against a clinic for violations of this~~
820 ~~part and adopted rules,~~ shall make a reasonable attempt to
821 discuss each violation and ~~recommended corrective action~~ with
822 the owner, medical director, or clinic director of the clinic,
823 prior to written notification. ~~The agency, instead of fixing a~~



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824 ~~period within which the clinic shall enter into compliance with~~
825 ~~standards, may request a plan of corrective action from the~~
826 ~~clinic which demonstrates a good faith effort to remedy each~~
827 ~~violation by a specific date, subject to the approval of the~~
828 ~~agency.~~

829 Section 17. Subsections (5) and (9) of section 408.803,
830 Florida Statutes, are amended to read:

831 408.803 Definitions.—As used in this part, the term:

832 (5) "Change of ownership" means:

833 (a) An event in which the licensee sells or otherwise
834 transfers its ownership changes to a different individual or
835 legal entity as evidenced by a change in federal employer
836 identification number or taxpayer identification number; or

837 (b) An event in which 51 45 percent or more of the
838 ownership, voting shares, membership, or controlling interest of
839 a licensee is in any manner transferred or otherwise assigned.

840 This paragraph does not apply to a licensee that is publicly
841 traded on a recognized stock exchange in a corporation whose
842 shares are not publicly traded on a recognized stock exchange is
843 transferred or assigned, including the final transfer or
844 assignment of multiple transfers or assignments over a 2-year
845 period that cumulatively total 45 percent or greater.

846
847 A change solely in the management company or board of directors
848 is not a change of ownership.

849 (9) "Licensee" means an individual, corporation,
850 partnership, firm, association, ~~or~~ governmental entity, or other
851 entity that is issued a permit, registration, certificate, or
852 license by the agency. The licensee is legally responsible for



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853 all aspects of the provider operation.

854 Section 18. Paragraph (a) of subsection (1), subsection
855 (2), paragraph (c) of subsection (7), and subsection (8) of
856 section 408.806, Florida Statutes, are amended to read:

857 408.806 License application process.—

858 (1) An application for licensure must be made to the agency
859 on forms furnished by the agency, submitted under oath, and
860 accompanied by the appropriate fee in order to be accepted and
861 considered timely. The application must contain information
862 required by authorizing statutes and applicable rules and must
863 include:

864 (a) The name, address, and social security number of:

865 1. The applicant;

866 2. The administrator or a similarly titled person who is
867 responsible for the day-to-day operation of the provider;

868 3. The financial officer or similarly titled person who is
869 responsible for the financial operation of the licensee or
870 provider; and

871 4. Each controlling interest if the applicant or
872 controlling interest is an individual.

873 (2) (a) The applicant for a renewal license must submit an
874 application that must be received by the agency at least 60 days
875 but no more than 120 days before ~~prior to~~ the expiration of the
876 current license. An application received more than 120 days
877 before the expiration of the current license shall be returned
878 to the applicant. If the renewal application and fee are
879 received prior to the license expiration date, the license shall
880 not be deemed to have expired if the license expiration date
881 occurs during the agency's review of the renewal application.



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882 (b) The applicant for initial licensure due to a change of
883 ownership must submit an application that must be received by
884 the agency at least 60 days prior to the date of change of
885 ownership.

886 (c) For any other application or request, the applicant
887 must submit an application or request that must be received by
888 the agency at least 60 days but no more than 120 days before
889 ~~prior to~~ the requested effective date, unless otherwise
890 specified in authorizing statutes or applicable rules. An
891 application received more than 120 days before the requested
892 effective date shall be returned to the applicant.

893 (d) The agency shall notify the licensee by mail or
894 electronically at least 90 days prior to the expiration of a
895 license that a renewal license is necessary to continue
896 operation. The failure to timely submit a renewal application
897 and license fee shall result in a \$50 per day late fee charged
898 to the licensee by the agency; however, the aggregate amount of
899 the late fee may not exceed 50 percent of the licensure fee or
900 \$500, whichever is less. If an application is received after the
901 required filing date and exhibits a hand-canceled postmark
902 obtained from a United States post office dated on or before the
903 required filing date, no fine will be levied.

904 (7)

905 (c) If an inspection is required by the authorizing statute
906 for a license application other than an initial application, the
907 inspection must be unannounced. This paragraph does not apply to
908 inspections required pursuant to ss. 383.324, 395.0161(4),
909 429.67(6), and 483.061(2).

910 (8) The agency may establish procedures for the electronic



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911 notification and submission of required information, including,
912 but not limited to:

- 913 (a) Licensure applications.
- 914 (b) Required signatures.
- 915 (c) Payment of fees.
- 916 (d) Notarization of applications.

917
918 Requirements for electronic submission of any documents required
919 by this part or authorizing statutes may be established by rule.
920 As an alternative to sending documents as required by
921 authorizing statutes, the agency may provide electronic access
922 to information or documents.

923 Section 19. Subsection (2) of section 408.808, Florida
924 Statutes, is amended to read:

925 408.808 License categories.—

926 (2) PROVISIONAL LICENSE.—A provisional license may be
927 issued to an applicant pursuant to s. 408.809(3). An applicant
928 against whom a proceeding denying or revoking a license is
929 pending at the time of license renewal may be issued a
930 provisional license effective until final action not subject to
931 further appeal. A provisional license may also be issued to an
932 applicant applying for a change of ownership. A provisional
933 license shall be limited in duration to a specific period of
934 time, not to exceed 12 months, as determined by the agency.

935 Section 20. Subsection (5) of section 408.809, Florida
936 Statutes, is amended, and subsection (6) is added to that
937 section, to read:

938 408.809 Background screening; prohibited offenses.—

939 (5) Effective October 1, 2009, in addition to the offenses



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940 listed in ss. 435.03 and 435.04, all persons required to undergo
941 background screening pursuant to this part or authorizing
942 statutes must not have been found guilty of, regardless of
943 adjudication, or entered a plea of nolo contendere or guilty to,
944 any of the following offenses or any similar offense of another
945 jurisdiction:

946 (a) Any authorizing statutes, if the offense was a felony.

947 (b) This chapter, if the offense was a felony.

948 (c) Section 409.920, relating to Medicaid provider fraud,
949 if the offense was a felony.

950 (d) Section 409.9201, relating to Medicaid fraud, if the
951 offense was a felony.

952 (e) Section 741.28, relating to domestic violence.

953 (f) Chapter 784, relating to assault, battery, and culpable
954 negligence, if the offense was a felony.

955 (g) Section 810.02, relating to burglary.

956 (h) Section 817.034, relating to fraudulent acts through
957 mail, wire, radio, electromagnetic, photoelectronic, or
958 photooptical systems.

959 (i) Section 817.234, relating to false and fraudulent
960 insurance claims.

961 (j) Section 817.505, relating to patient brokering.

962 (k) Section 817.568, relating to criminal use of personal
963 identification information.

964 (l) Section 817.60, relating to obtaining a credit card
965 through fraudulent means.

966 (m) Section 817.61, relating to fraudulent use of credit
967 cards, if the offense was a felony.

968 (n) Section 831.01, relating to forgery.



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969 (o) Section 831.02, relating to uttering forged
970 instruments.

971 (p) Section 831.07, relating to forging bank bills, checks,
972 drafts, or promissory notes.

973 (q) Section 831.09, relating to uttering forged bank bills,
974 checks, drafts, or promissory notes.

975 (r) Section 831.30, relating to fraud in obtaining
976 medicinal drugs.

977 (s) Section 831.31, relating to the sale, manufacture,
978 delivery, or possession with the intent to sell, manufacture, or
979 deliver any counterfeit controlled substance, if the offense was
980 a felony.

981
982 A person who serves as a controlling interest of or is employed
983 by a licensee on September 30, 2009, is not required by law to
984 submit to rescreening if that licensee has in its possession
985 written evidence that the person has been screened and qualified
986 according to the standards specified in s. 435.03 or s. 435.04.
987 However, if such person has a disqualifying offense listed in
988 this section, he or she may apply for an exemption from the
989 appropriate licensing agency before September 30, 2009, and if
990 agreed to by the employer, may continue to perform his or her
991 duties until the licensing agency renders a decision on the
992 application for exemption for offenses listed in this section.
993 Exemptions from disqualification may be granted pursuant to s.
994 435.07 ~~Background screening is not required to obtain a~~
995 ~~certificate of exemption issued under s. 483.106.~~

996 (6) The attestations required under ss. 435.04(5) and
997 435.05(3) must be submitted at the time of license renewal,



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998 notwithstanding the provisions of ss. 435.04(5) and 435.05(3)
999 which require annual submission of an affidavit of compliance
1000 with background screening requirements.

1001 Section 21. Subsection (3) of section 408.810, Florida
1002 Statutes, is amended to read:

1003 408.810 Minimum licensure requirements.—In addition to the
1004 licensure requirements specified in this part, authorizing
1005 statutes, and applicable rules, each applicant and licensee must
1006 comply with the requirements of this section in order to obtain
1007 and maintain a license.

1008 (3) Unless otherwise specified in this part, authorizing
1009 statutes, or applicable rules, any information required to be
1010 reported to the agency must be submitted within 21 calendar days
1011 after the report period or effective date of the information,
1012 whichever is earlier, including, but not limited to, any change
1013 of:

1014 (a) Information contained in the most recent application
1015 for licensure.

1016 (b) Required insurance or bonds.

1017 Section 22. Section 408.811, Florida Statutes, is amended
1018 to read:

1019 408.811 Right of inspection; copies; inspection reports;
1020 plan for correction of deficiencies.—

1021 (1) An authorized officer or employee of the agency may
1022 make or cause to be made any inspection or investigation deemed
1023 necessary by the agency to determine the state of compliance
1024 with this part, authorizing statutes, and applicable rules. The
1025 right of inspection extends to any business that the agency has
1026 reason to believe is being operated as a provider without a



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1027 license, but inspection of any business suspected of being
1028 operated without the appropriate license may not be made without
1029 the permission of the owner or person in charge unless a warrant
1030 is first obtained from a circuit court. Any application for a
1031 license issued under this part, authorizing statutes, or
1032 applicable rules constitutes permission for an appropriate
1033 inspection to verify the information submitted on or in
1034 connection with the application.

1035 (a) All inspections shall be unannounced, except as
1036 specified in s. 408.806.

1037 (b) Inspections for relicensure shall be conducted
1038 biennially unless otherwise specified by authorizing statutes or
1039 applicable rules.

1040 (2) Inspections conducted in conjunction with
1041 certification, comparable licensure requirements, or a
1042 recognized or approved accreditation organization may be
1043 accepted in lieu of a complete licensure inspection. However, a
1044 licensure inspection may also be conducted to review any
1045 licensure requirements that are not also requirements for
1046 certification.

1047 (3) The agency shall have access to and the licensee shall
1048 provide, or if requested send, copies of all provider records
1049 required during an inspection or other review at no cost to the
1050 agency, including records requested during an offsite review.

1051 (4) A deficiency must be corrected within 30 calendar days
1052 after the provider is notified of inspection results unless an
1053 alternative timeframe is required or approved by the agency.

1054 (5) The agency may require an applicant or licensee to
1055 submit a plan of correction for deficiencies. If required, the



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1056 plan of correction must be filed with the agency within 10
1057 calendar days after notification unless an alternative timeframe
1058 is required.

1059 (6) (a) (4) (a) Each licensee shall maintain as public
1060 information, available upon request, records of all inspection
1061 reports pertaining to that provider that have been filed by the
1062 agency unless those reports are exempt from or contain
1063 information that is exempt from s. 119.07(1) and s. 24(a), Art.
1064 I of the State Constitution or is otherwise made confidential by
1065 law. Effective October 1, 2006, copies of such reports shall be
1066 retained in the records of the provider for at least 3 years
1067 following the date the reports are filed and issued, regardless
1068 of a change of ownership.

1069 (b) A licensee shall, upon the request of any person who
1070 has completed a written application with intent to be admitted
1071 by such provider, any person who is a client of such provider,
1072 or any relative, spouse, or guardian of any such person, furnish
1073 to the requester a copy of the last inspection report pertaining
1074 to the licensed provider that was issued by the agency or by an
1075 accrediting organization if such report is used in lieu of a
1076 licensure inspection.

1077 Section 23. Section 408.813, Florida Statutes, is amended
1078 to read:

1079 408.813 Administrative fines; violations.—As a penalty for
1080 any violation of this part, authorizing statutes, or applicable
1081 rules, the agency may impose an administrative fine.

1082 (1) Unless the amount or aggregate limitation of the fine
1083 is prescribed by authorizing statutes or applicable rules, the
1084 agency may establish criteria by rule for the amount or



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1085 aggregate limitation of administrative fines applicable to this
1086 part, authorizing statutes, and applicable rules. Each day of
1087 violation constitutes a separate violation and is subject to a
1088 separate fine. For fines imposed by final order of the agency
1089 and not subject to further appeal, the violator shall pay the
1090 fine plus interest at the rate specified in s. 55.03 for each
1091 day beyond the date set by the agency for payment of the fine.

1092 (2) Violations of this part, authorizing statutes, or
1093 applicable rules shall be classified according to the nature of
1094 the violation and the gravity of its probable effect on clients.
1095 The scope of a violation may be cited as an isolated, patterned,
1096 or widespread deficiency. An isolated deficiency is a deficiency
1097 affecting one or a very limited number of clients, or involving
1098 one or a very limited number of staff, or a situation that
1099 occurred only occasionally or in a very limited number of
1100 locations. A patterned deficiency is a deficiency in which more
1101 than a very limited number of clients are affected, or more than
1102 a very limited number of staff are involved, or the situation
1103 has occurred in several locations, or the same client or clients
1104 have been affected by repeated occurrences of the same deficient
1105 practice but the effect of the deficient practice is not found
1106 to be pervasive throughout the provider. A widespread deficiency
1107 is a deficiency in which the problems causing the deficiency are
1108 pervasive in the provider or represent systemic failure that has
1109 affected or has the potential to affect a large portion of the
1110 provider's clients. This subsection does not affect the
1111 legislative determination of the amount of a fine imposed under
1112 authorizing statutes. Violations shall be classified on the
1113 written notice as follows:



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1114 (a) Class "I" violations are those conditions or
1115 occurrences related to the operation and maintenance of a
1116 provider or to the care of clients which the agency determines
1117 present an imminent danger to the clients of the provider or a
1118 substantial probability that death or serious physical or
1119 emotional harm would result therefrom. The condition or practice
1120 constituting a class I violation shall be abated or eliminated
1121 within 24 hours, unless a fixed period, as determined by the
1122 agency, is required for correction. The agency shall impose an
1123 administrative fine as provided by law for a cited class I
1124 violation. A fine shall be levied notwithstanding the correction
1125 of the violation.

1126 (b) Class "II" violations are those conditions or
1127 occurrences related to the operation and maintenance of a
1128 provider or to the care of clients which the agency determines
1129 directly threaten the physical or emotional health, safety, or
1130 security of the clients, other than class I violations. The
1131 agency shall impose an administrative fine as provided by law
1132 for a cited class II violation. A fine shall be levied
1133 notwithstanding the correction of the violation.

1134 (c) Class "III" violations are those conditions or
1135 occurrences related to the operation and maintenance of a
1136 provider or to the care of clients which the agency determines
1137 indirectly or potentially threaten the physical or emotional
1138 health, safety, or security of clients, other than class I or
1139 class II violations. The agency shall impose an administrative
1140 fine as provided in this section for a cited class III
1141 violation. A citation for a class III violation must specify the
1142 time within which the violation is required to be corrected. If



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1143 a class III violation is corrected within the time specified, a
1144 fine may not be imposed.

1145 (d) Class "IV" violations are those conditions or
1146 occurrences related to the operation and maintenance of a
1147 provider or to required reports, forms, or documents that do not
1148 have the potential of negatively affecting clients. These
1149 violations are of a type that the agency determines do not
1150 threaten the health, safety, or security of clients. The agency
1151 shall impose an administrative fine as provided in this section
1152 for a cited class IV violation. A citation for a class IV
1153 violation must specify the time within which the violation is
1154 required to be corrected. If a class IV violation is corrected
1155 within the time specified, a fine may not be imposed.

1156 Section 24. Subsections (11), (12), (13), (14), (15), (16),
1157 (17), (18), (19), (20), (21), (22), (23), (24), (25), (26),
1158 (27), (28), and (29) of section 408.820, Florida Statutes, are
1159 amended to read:

1160 408.820 Exemptions.—Except as prescribed in authorizing
1161 statutes, the following exemptions shall apply to specified
1162 requirements of this part:

1163 ~~(11) Private review agents, as provided under part I of~~
1164 ~~chapter 395, are exempt from ss. 408.806(7), 408.810, and~~
1165 ~~408.811.~~

1166 ~~(11)~~(12) Health care risk managers, as provided under part
1167 I of chapter 395, are exempt from ss. 408.806(7), 408.810(4)-
1168 (10) ~~408.810~~, and 408.811.

1169 ~~(12)~~(13) Nursing homes, as provided under part II of
1170 chapter 400, are exempt from s. 408.810(7).

1171 ~~(13)~~(14) Assisted living facilities, as provided under part



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1172 I of chapter 429, are exempt from s. 408.810(10).
1173 ~~(14)-(15)~~ Home health agencies, as provided under part III
1174 of chapter 400, are exempt from s. 408.810(10).
1175 ~~(15)-(16)~~ Nurse registries, as provided under part III of
1176 chapter 400, are exempt from s. 408.810(6) and (10).
1177 ~~(17)~~ ~~Companion services or homemaker services providers, as~~
1178 ~~provided under part III of chapter 400, are exempt from s.~~
1179 ~~408.810(6)-(10).~~
1180 ~~(16)-(18)~~ Adult day care centers, as provided under part III
1181 of chapter 429, are exempt from s. 408.810(10).
1182 ~~(17)-(19)~~ Adult family-care homes, as provided under part II
1183 of chapter 429, are exempt from s. 408.810(7)-(10).
1184 ~~(18)-(20)~~ Homes for special services, as provided under part
1185 V of chapter 400, are exempt from s. 408.810(7)-(10).
1186 ~~(19)-(21)~~ Transitional living facilities, as provided under
1187 part V of chapter 400, are exempt from s. 408.810(10) ~~s.~~
1188 ~~408.810(7)-(10).~~
1189 ~~(20)-(22)~~ Prescribed pediatric extended care centers, as
1190 provided under part VI of chapter 400, are exempt from s.
1191 408.810(10).
1192 ~~(21)-(23)~~ Home medical equipment providers, as provided
1193 under part VII of chapter 400, are exempt from s. 408.810(10).
1194 ~~(22)-(24)~~ Intermediate care facilities for persons with
1195 developmental disabilities, as provided under part VIII of
1196 chapter 400, are exempt from s. 408.810(7).
1197 ~~(23)-(25)~~ Health care services pools, as provided under part
1198 IX of chapter 400, are exempt from s. 408.810(6)-(10).
1199 ~~(24)-(26)~~ Health care clinics, as provided under part X of
1200 chapter 400, are exempt from s. 408.810(6), (7), (10) ~~ss.~~



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1201 ~~408.809 and 408.810(1), (6), (7), and (10).~~

1202 ~~(27) Clinical laboratories, as provided under part I of~~
1203 ~~chapter 483, are exempt from s. 408.810(5)-(10).~~

1204 ~~(25)-(28)~~ Multiphasic health testing centers, as provided
1205 under part II of chapter 483, are exempt from s. 408.810(5)-
1206 (10).

1207 ~~(26)-(29)~~ Organ and tissue procurement agencies, as provided
1208 under chapter 765, are exempt from s. 408.810(5)-(10).

1209 Section 25. Section 408.821, Florida Statutes, is created
1210 to read:

1211 408.821 Emergency management planning; emergency
1212 operations; inactive license.-

1213 (1) A licensee required by authorizing statutes to have an
1214 emergency operations plan must designate a safety liaison to
1215 serve as the primary contact for emergency operations.

1216 (2) An entity subject to this part may temporarily exceed
1217 its licensed capacity to act as a receiving provider in
1218 accordance with an approved emergency operations plan for up to
1219 15 days. While in an overcapacity status, each provider must
1220 furnish or arrange for appropriate care and services to all
1221 clients. In addition, the agency may approve requests for
1222 overcapacity in excess of 15 days, which approvals may be based
1223 upon satisfactory justification and need as provided by the
1224 receiving and sending providers.

1225 (3) (a) An inactive license may be issued to a licensee
1226 subject to this section when the provider is located in a
1227 geographic area in which a state of emergency was declared by
1228 the Governor if the provider:

1229 1. Suffered damage to its operation during the state of



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1230 emergency.

1231 2. Is currently licensed.

1232 3. Does not have a provisional license.

1233 4. Will be temporarily unable to provide services but is
1234 reasonably expected to resume services within 12 months.

1235 (b) An inactive license may be issued for a period not to
1236 exceed 12 months but may be renewed by the agency for up to 12
1237 additional months upon demonstration to the agency of progress
1238 toward reopening. A request by a licensee for an inactive
1239 license or to extend the previously approved inactive period
1240 must be submitted in writing to the agency, accompanied by
1241 written justification for the inactive license, which states the
1242 beginning and ending dates of inactivity and includes a plan for
1243 the transfer of any clients to other providers and appropriate
1244 licensure fees. Upon agency approval, the licensee shall notify
1245 clients of any necessary discharge or transfer as required by
1246 authorizing statutes or applicable rules. The beginning of the
1247 inactive licensure period shall be the date the provider ceases
1248 operations. The end of the inactive period shall become the
1249 license expiration date, and all licensure fees must be current,
1250 must be paid in full, and may be prorated. Reactivation of an
1251 inactive license requires the prior approval by the agency of a
1252 renewal application, including payment of licensure fees and
1253 agency inspections indicating compliance with all requirements
1254 of this part and applicable rules and statutes.

1255 (4) The agency may adopt rules relating to emergency
1256 management planning, communications, and operations. Licensees
1257 providing residential or inpatient services must utilize an
1258 online database approved by the agency to report information to



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1259 the agency regarding the provider's emergency status, planning,
1260 or operations.

1261 Section 26. Section 408.831, Florida Statutes, is amended
1262 to read:

1263 408.831 Denial, suspension, or revocation of a license,
1264 registration, certificate, or application.-

1265 (1) In addition to any other remedies provided by law, the
1266 agency may deny each application or suspend or revoke each
1267 license, registration, or certificate of entities regulated or
1268 licensed by it:

1269 (a) If the applicant, licensee, or a licensee subject to
1270 this part which shares a common controlling interest with the
1271 applicant has failed to pay all outstanding fines, liens, or
1272 overpayments assessed by final order of the agency or final
1273 order of the Centers for Medicare and Medicaid Services, not
1274 subject to further appeal, unless a repayment plan is approved
1275 by the agency; or

1276 (b) For failure to comply with any repayment plan.

1277 (2) In reviewing any application requesting a change of
1278 ownership or change of the licensee, registrant, or
1279 certificateholder, the transferor shall, prior to agency
1280 approval of the change, repay or make arrangements to repay any
1281 amounts owed to the agency. Should the transferor fail to repay
1282 or make arrangements to repay the amounts owed to the agency,
1283 the issuance of a license, registration, or certificate to the
1284 transferee shall be delayed until repayment or until
1285 arrangements for repayment are made.

1286 ~~(3) An entity subject to this section may exceed its~~
1287 ~~licensed capacity to act as a receiving facility in accordance~~



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1288 ~~with an emergency operations plan for clients of evacuating~~
1289 ~~providers from a geographic area where an evacuation order has~~
1290 ~~been issued by a local authority having jurisdiction. While in~~
1291 ~~an overcapacity status, each provider must furnish or arrange~~
1292 ~~for appropriate care and services to all clients. In addition,~~
1293 ~~the agency may approve requests for overcapacity beyond 15 days,~~
1294 ~~which approvals may be based upon satisfactory justification and~~
1295 ~~need as provided by the receiving and sending facilities.~~

1296 ~~(4)(a) An inactive license may be issued to a licensee~~
1297 ~~subject to this section when the provider is located in a~~
1298 ~~geographic area where a state of emergency was declared by the~~
1299 ~~Governor if the provider:~~

1300 ~~1. Suffered damage to its operation during that state of~~
1301 ~~emergency.~~

1302 ~~2. Is currently licensed.~~

1303 ~~3. Does not have a provisional license.~~

1304 ~~4. Will be temporarily unable to provide services but is~~
1305 ~~reasonably expected to resume services within 12 months.~~

1306 ~~(b) An inactive license may be issued for a period not to~~
1307 ~~exceed 12 months but may be renewed by the agency for up to 12~~
1308 ~~additional months upon demonstration to the agency of progress~~
1309 ~~toward reopening. A request by a licensee for an inactive~~
1310 ~~license or to extend the previously approved inactive period~~
1311 ~~must be submitted in writing to the agency, accompanied by~~
1312 ~~written justification for the inactive license, which states the~~
1313 ~~beginning and ending dates of inactivity and includes a plan for~~
1314 ~~the transfer of any clients to other providers and appropriate~~
1315 ~~licensure fees. Upon agency approval, the licensee shall notify~~
1316 ~~clients of any necessary discharge or transfer as required by~~



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1317 ~~authorizing statutes or applicable rules. The beginning of the~~
1318 ~~inactive licensure period shall be the date the provider ceases~~
1319 ~~operations. The end of the inactive period shall become the~~
1320 ~~licensee expiration date, and all licensure fees must be~~
1321 ~~current, paid in full, and may be prorated. Reactivation of an~~
1322 ~~inactive license requires the prior approval by the agency of a~~
1323 ~~renewal application, including payment of licensure fees and~~
1324 ~~agency inspections indicating compliance with all requirements~~
1325 ~~of this part and applicable rules and statutes.~~

1326 (3)~~(5)~~ This section provides standards of enforcement
1327 applicable to all entities licensed or regulated by the Agency
1328 for Health Care Administration. This section controls over any
1329 conflicting provisions of chapters 39, 383, 390, 391, 394, 395,
1330 400, 408, 429, 468, 483, and 765 or rules adopted pursuant to
1331 those chapters.

1332 Section 27. Paragraph (e) of subsection (4) of section
1333 409.221, Florida Statutes, is amended to read:

1334 409.221 Consumer-directed care program.—

1335 (4) CONSUMER-DIRECTED CARE.—

1336 (e) *Services*.—Consumers shall use the budget allowance only
1337 to pay for home and community-based services that meet the
1338 consumer's long-term care needs and are a cost-efficient use of
1339 funds. Such services may include, but are not limited to, the
1340 following:

1341 1. Personal care.

1342 2. Homemaking and chores, including housework, meals,
1343 shopping, and transportation.

1344 3. Home modifications and assistive devices which may
1345 increase the consumer's independence or make it possible to



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1346 avoid institutional placement.

1347 4. Assistance in taking self-administered medication.

1348 5. Day care and respite care services, including those
1349 provided by nursing home facilities pursuant to s. 400.141(1)(f)
1350 ~~s. 400.141(6)~~ or by adult day care facilities licensed pursuant
1351 to s. 429.907.

1352 6. Personal care and support services provided in an
1353 assisted living facility.

1354 Section 28. Subsection (5) of section 409.901, Florida
1355 Statutes, is amended to read:

1356 409.901 Definitions; ss. 409.901-409.920.—As used in ss.
1357 409.901-409.920, except as otherwise specifically provided, the
1358 term:

1359 (5) "Change of ownership" means:

1360 (a) An event in which the provider ownership changes to a
1361 different individual legal entity as evidenced by a change in
1362 federal employer identification number or taxpayer
1363 identification number; or

1364 (b) An event in which 51 ~~45~~ percent or more of the
1365 ownership, ~~voting~~ shares, membership, or controlling interest of
1366 a provider is in any manner transferred or otherwise assigned.
1367 This paragraph does not apply to a licensee that is publicly
1368 traded on a recognized stock exchange; or

1369 (c) When the provider is licensed or registered by the
1370 agency, an event considered a change of ownership for licensure
1371 as defined in s. 408.803 in a corporation whose shares are not
1372 publicly traded on a recognized stock exchange is transferred or
1373 assigned, including the final transfer or assignment of multiple
1374 transfers or assignments over a 2-year period that cumulatively



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1375 ~~total 45 percent or more.~~

1376

1377 A change solely in the management company or board of directors
1378 is not a change of ownership.

1379 Section 29. Section 429.071, Florida Statutes, is repealed.

1380 Section 30. Paragraph (e) of subsection (1) and subsections
1381 (2) and (3) of section 429.08, Florida Statutes, are amended to
1382 read:

1383 429.08 Unlicensed facilities; referral of person for
1384 residency to unlicensed facility; penalties; verification of
1385 licensure status.-

1386 (1)

1387 (e) The agency shall publish ~~provide to the department's~~
1388 ~~elder information and referral providers a list, by county, of~~
1389 ~~licensed assisted living facilities, to assist persons who are~~
1390 ~~considering an assisted living facility placement in locating a~~
1391 ~~licensed facility. This information may be provided~~
1392 electronically or through the agency's Internet site.

1393 ~~(2) Each field office of the Agency for Health Care~~
1394 ~~Administration shall establish a local coordinating workgroup~~
1395 ~~which includes representatives of local law enforcement~~
1396 ~~agencies, state attorneys, the Medicaid Fraud Control Unit of~~
1397 ~~the Department of Legal Affairs, local fire authorities, the~~
1398 ~~Department of Children and Family Services, the district long-~~
1399 ~~term care ombudsman council, and the district human rights~~
1400 ~~advocacy committee to assist in identifying the operation of~~
1401 ~~unlicensed facilities and to develop and implement a plan to~~
1402 ~~ensure effective enforcement of state laws relating to such~~
1403 ~~facilities. The workgroup shall report its findings, actions,~~



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1404 ~~and recommendations semiannually to the Director of Health~~
1405 ~~Quality Assurance of the agency.~~

1406 (2)~~(3)~~ It is unlawful to knowingly refer a person for
1407 residency to an unlicensed assisted living facility; to an
1408 assisted living facility the license of which is under denial or
1409 has been suspended or revoked; or to an assisted living facility
1410 that has a moratorium pursuant to part II of chapter 408. ~~Any~~
1411 ~~person who violates this subsection commits a noncriminal~~
1412 ~~violation, punishable by a fine not exceeding \$500 as provided~~
1413 ~~in s. 775.083.~~

1414 (a) Any health care practitioner, as defined in s. 456.001,
1415 who is aware of the operation of an unlicensed facility shall
1416 report that facility to the agency. Failure to report a facility
1417 that the practitioner knows or has reasonable cause to suspect
1418 is unlicensed shall be reported to the practitioner's licensing
1419 board.

1420 (b) Any provider as defined in s. 408.803 ~~hospital or~~
1421 ~~community mental health center licensed under chapter 395 or~~
1422 ~~chapter 394~~ which knowingly discharges a patient or client to an
1423 unlicensed facility is subject to sanction by the agency.

1424 (c) Any employee of the agency or department, or the
1425 Department of Children and Family Services, who knowingly refers
1426 a person for residency to an unlicensed facility; to a facility
1427 the license of which is under denial or has been suspended or
1428 revoked; or to a facility that has a moratorium pursuant to part
1429 II of chapter 408 is subject to disciplinary action by the
1430 agency or department, or the Department of Children and Family
1431 Services.

1432 (d) The employer of any person who is under contract with



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1433 the agency or department, or the Department of Children and
1434 Family Services, and who knowingly refers a person for residency
1435 to an unlicensed facility; to a facility the license of which is
1436 under denial or has been suspended or revoked; or to a facility
1437 that has a moratorium pursuant to part II of chapter 408 shall
1438 be fined and required to prepare a corrective action plan
1439 designed to prevent such referrals.

1440 ~~(e) The agency shall provide the department and the~~
1441 ~~Department of Children and Family Services with a list of~~
1442 ~~licensed facilities within each county and shall update the list~~
1443 ~~at least quarterly.~~

1444 ~~(f) At least annually, the agency shall notify, in~~
1445 ~~appropriate trade publications, physicians licensed under~~
1446 ~~chapter 458 or chapter 459, hospitals licensed under chapter~~
1447 ~~395, nursing home facilities licensed under part II of chapter~~
1448 ~~400, and employees of the agency or the department, or the~~
1449 ~~Department of Children and Family Services, who are responsible~~
1450 ~~for referring persons for residency, that it is unlawful to~~
1451 ~~knowingly refer a person for residency to an unlicensed assisted~~
1452 ~~living facility and shall notify them of the penalty for~~
1453 ~~violating such prohibition. The department and the Department of~~
1454 ~~Children and Family Services shall, in turn, notify service~~
1455 ~~providers under contract to the respective departments who have~~
1456 ~~responsibility for resident referrals to facilities. Further,~~
1457 ~~the notice must direct each noticed facility and individual to~~
1458 ~~contact the appropriate agency office in order to verify the~~
1459 ~~licensure status of any facility prior to referring any person~~
1460 ~~for residency. Each notice must include the name, telephone~~
1461 ~~number, and mailing address of the appropriate office to~~



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1462 ~~contact.~~

1463 Section 31. Paragraph (e) of subsection (1) of section
1464 429.14, Florida Statutes, is amended to read:

1465 429.14 Administrative penalties.—

1466 (1) In addition to the requirements of part II of chapter
1467 408, the agency may deny, revoke, and suspend any license issued
1468 under this part and impose an administrative fine in the manner
1469 provided in chapter 120 against a licensee of an assisted living
1470 facility for a violation of any provision of this part, part II
1471 of chapter 408, or applicable rules, or for any of the following
1472 actions by a licensee of an assisted living facility, for the
1473 actions of any person subject to level 2 background screening
1474 under s. 408.809, or for the actions of any facility employee:

1475 (e) A citation of any of the following deficiencies as
1476 specified ~~defined~~ in s. 429.19:

1477 1. One or more cited class I deficiencies.

1478 2. Three or more cited class II deficiencies.

1479 3. Five or more cited class III deficiencies that have been
1480 cited on a single survey and have not been corrected within the
1481 times specified.

1482 Section 32. Section 429.19, Florida Statutes, is amended to
1483 read:

1484 429.19 Violations; imposition of administrative fines;
1485 grounds.—

1486 (1) In addition to the requirements of part II of chapter
1487 408, the agency shall impose an administrative fine in the
1488 manner provided in chapter 120 for the violation of any
1489 provision of this part, part II of chapter 408, and applicable
1490 rules by an assisted living facility, for the actions of any



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1491 person subject to level 2 background screening under s. 408.809,
1492 for the actions of any facility employee, or for an intentional
1493 or negligent act seriously affecting the health, safety, or
1494 welfare of a resident of the facility.

1495 (2) Each violation of this part and adopted rules shall be
1496 classified according to the nature of the violation and the
1497 gravity of its probable effect on facility residents. The agency
1498 shall indicate the classification on the written notice of the
1499 violation as follows:

1500 (a) Class "I" violations are defined in s. 408.813 ~~those~~
1501 ~~conditions or occurrences related to the operation and~~
1502 ~~maintenance of a facility or to the personal care of residents~~
1503 ~~which the agency determines present an imminent danger to the~~
1504 ~~residents or guests of the facility or a substantial probability~~
1505 ~~that death or serious physical or emotional harm would result~~
1506 ~~therefrom. The condition or practice constituting a class I~~
1507 ~~violation shall be abated or eliminated within 24 hours, unless~~
1508 ~~a fixed period, as determined by the agency, is required for~~
1509 ~~correction.~~ The agency shall impose an administrative fine for a
1510 cited class I violation in an amount not less than \$5,000 and
1511 not exceeding \$10,000 for each violation. ~~A fine may be levied~~
1512 ~~notwithstanding the correction of the violation.~~

1513 (b) Class "II" violations are defined in s. 408.813 ~~those~~
1514 ~~conditions or occurrences related to the operation and~~
1515 ~~maintenance of a facility or to the personal care of residents~~
1516 ~~which the agency determines directly threaten the physical or~~
1517 ~~emotional health, safety, or security of the facility residents,~~
1518 ~~other than class I violations.~~ The agency shall impose an
1519 administrative fine for a cited class II violation in an amount



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1520 not less than \$1,000 and not exceeding \$5,000 for each
1521 violation. ~~A fine shall be levied notwithstanding the correction~~
1522 ~~of the violation.~~

1523 (c) Class "III" violations are defined in s. 408.813 ~~those~~
1524 ~~conditions or occurrences related to the operation and~~
1525 ~~maintenance of a facility or to the personal care of residents~~
1526 ~~which the agency determines indirectly or potentially threaten~~
1527 ~~the physical or emotional health, safety, or security of~~
1528 ~~facility residents, other than class I or class II violations.~~
1529 The agency shall impose an administrative fine for a cited class
1530 III violation in an amount not less than \$500 and not exceeding
1531 \$1,000 for each violation. ~~A citation for a class III violation~~
1532 ~~must specify the time within which the violation is required to~~
1533 ~~be corrected. If a class III violation is corrected within the~~
1534 ~~time specified, no fine may be imposed, unless it is a repeated~~
1535 ~~offense.~~

1536 (d) Class "IV" violations are defined in s. 408.813 ~~those~~
1537 ~~conditions or occurrences related to the operation and~~
1538 ~~maintenance of a building or to required reports, forms, or~~
1539 ~~documents that do not have the potential of negatively affecting~~
1540 ~~residents. These violations are of a type that the agency~~
1541 ~~determines do not threaten the health, safety, or security of~~
1542 ~~residents of the facility.~~ The agency shall impose an
1543 administrative fine for a cited class IV violation in an amount
1544 not less than \$100 and not exceeding \$200 for each violation. ~~A~~
1545 ~~citation for a class IV violation must specify the time within~~
1546 ~~which the violation is required to be corrected. If a class IV~~
1547 ~~violation is corrected within the time specified, no fine shall~~
1548 ~~be imposed. Any class IV violation that is corrected during the~~



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1549 ~~time an agency survey is being conducted will be identified as~~
1550 ~~an agency finding and not as a violation.~~

1551 ~~(3) For purposes of this section, in determining if a~~
1552 ~~penalty is to be imposed and in fixing the amount of the fine,~~
1553 ~~the agency shall consider the following factors:~~

1554 ~~(a) The gravity of the violation, including the probability~~
1555 ~~that death or serious physical or emotional harm to a resident~~
1556 ~~will result or has resulted, the severity of the action or~~
1557 ~~potential harm, and the extent to which the provisions of the~~
1558 ~~applicable laws or rules were violated.~~

1559 ~~(b) Actions taken by the owner or administrator to correct~~
1560 ~~violations.~~

1561 ~~(c) Any previous violations.~~

1562 ~~(d) The financial benefit to the facility of committing or~~
1563 ~~continuing the violation.~~

1564 ~~(e) The licensed capacity of the facility.~~

1565 ~~(3)(4)~~ Each day of continuing violation after the date
1566 fixed for termination of the violation, as ordered by the
1567 agency, constitutes an additional, separate, and distinct
1568 violation.

1569 ~~(4)(5)~~ Any action taken to correct a violation shall be
1570 documented in writing by the owner or administrator of the
1571 facility and verified through followup visits by agency
1572 personnel. The agency may impose a fine and, in the case of an
1573 owner-operated facility, revoke or deny a facility's license
1574 when a facility administrator fraudulently misrepresents action
1575 taken to correct a violation.

1576 ~~(5)(6)~~ Any facility whose owner fails to apply for a
1577 change-of-ownership license in accordance with part II of



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1578 chapter 408 and operates the facility under the new ownership is
1579 subject to a fine of \$5,000.

1580 (6)~~(7)~~ In addition to any administrative fines imposed, the
1581 agency may assess a survey fee, equal to the lesser of one half
1582 of the facility's biennial license and bed fee or \$500, to cover
1583 the cost of conducting initial complaint investigations that
1584 result in the finding of a violation that was the subject of the
1585 complaint or monitoring visits conducted under s. 429.28(3)(c)
1586 to verify the correction of the violations.

1587 (7)~~(8)~~ The agency, ~~as an alternative to or in conjunction~~
1588 ~~with an administrative action against a facility for violations~~
1589 ~~of this part and adopted rules,~~ shall make a reasonable attempt
1590 to discuss each violation and ~~recommended corrective action~~ with
1591 the owner or administrator of the facility, prior to written
1592 notification. ~~The agency, instead of fixing a period within~~
1593 ~~which the facility shall enter into compliance with standards,~~
1594 ~~may request a plan of corrective action from the facility which~~
1595 ~~demonstrates a good faith effort to remedy each violation by a~~
1596 ~~specific date, subject to the approval of the agency.~~

1597 (8)~~(9)~~ The agency shall develop and disseminate an annual
1598 list of all facilities sanctioned or fined \$5,000 or more for
1599 violations of state standards, the number and class of
1600 violations involved, the penalties imposed, and the current
1601 status of cases. The list shall be disseminated, at no charge,
1602 to the Department of Elderly Affairs, the Department of Health,
1603 the Department of Children and Family Services, the Agency for
1604 Persons with Disabilities, the area agencies on aging, the
1605 Florida Statewide Advocacy Council, and the state and local
1606 ombudsman councils. The Department of Children and Family



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1607 Services shall disseminate the list to service providers under
1608 contract to the department who are responsible for referring
1609 persons to a facility for residency. The agency may charge a fee
1610 commensurate with the cost of printing and postage to other
1611 interested parties requesting a copy of this list. This
1612 information may be provided electronically or through the
1613 agency's Internet site.

1614 Section 33. Subsections (2) and (6) of section 429.23,
1615 Florida Statutes, are amended to read:

1616 429.23 Internal risk management and quality assurance
1617 program; adverse incidents and reporting requirements.—

1618 (2) Every facility licensed under this part is required to
1619 maintain adverse incident reports. For purposes of this section,
1620 the term, "adverse incident" means:

1621 (a) An event over which facility personnel could exercise
1622 control rather than as a result of the resident's condition and
1623 results in:

- 1624 1. Death;
- 1625 2. Brain or spinal damage;
- 1626 3. Permanent disfigurement;
- 1627 4. Fracture or dislocation of bones or joints;
- 1628 5. Any condition that required medical attention to which
1629 the resident has not given his or her consent, including failure
1630 to honor advanced directives;

1631 6. Any condition that requires the transfer of the resident
1632 from the facility to a unit providing more acute care due to the
1633 incident rather than the resident's condition before the
1634 incident; or—

1635 7. An event that is reported to law enforcement or its



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1636 personnel for investigation; or
1637 ~~(b) Abuse, neglect, or exploitation as defined in s.~~
1638 ~~415.102;~~
1639 ~~(c) Events reported to law enforcement; or~~
1640 ~~(b)(d) Resident elopement, if the elopement places the~~
1641 ~~resident at risk of harm or injury.~~
1642 ~~(6) Abuse, neglect, or exploitation must be reported to the~~
1643 ~~Department of Children and Family Services as required under~~
1644 ~~chapter 415 The agency shall annually submit to the Legislature~~
1645 ~~a report on assisted living facility adverse incident reports.~~
1646 ~~The report must include the following information arranged by~~
1647 ~~county:~~
1648 ~~(a) A total number of adverse incidents;~~
1649 ~~(b) A listing, by category, of the type of adverse~~
1650 ~~incidents occurring within each category and the type of staff~~
1651 ~~involved;~~
1652 ~~(c) A listing, by category, of the types of injuries, if~~
1653 ~~any, and the number of injuries occurring within each category;~~
1654 ~~(d) Types of liability claims filed based on an adverse~~
1655 ~~incident report or reportable injury; and~~
1656 ~~(e) Disciplinary action taken against staff, categorized by~~
1657 ~~the type of staff involved.~~
1658 Section 34. Subsection (9) of section 429.26, Florida
1659 Statutes, is repealed.
1660 Section 35. Subsection (3) of section 430.80, Florida
1661 Statutes, is amended to read:
1662 430.80 Implementation of a teaching nursing home pilot
1663 project.-
1664 (3) To be designated as a teaching nursing home, a nursing



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1665 home licensee must, at a minimum:

1666 (a) Provide a comprehensive program of integrated senior
1667 services that include institutional services and community-based
1668 services;

1669 (b) Participate in a nationally recognized accreditation
1670 program and hold a valid accreditation, such as the
1671 accreditation awarded by the Joint Commission on Accreditation
1672 of Healthcare Organizations;

1673 (c) Have been in business in this state for a minimum of 10
1674 consecutive years;

1675 (d) Demonstrate an active program in multidisciplinary
1676 education and research that relates to gerontology;

1677 (e) Have a formalized contractual relationship with at
1678 least one accredited health profession education program located
1679 in this state;

1680 (f) Have a formalized contractual relationship with an
1681 accredited hospital that is designated by law as a teaching
1682 hospital; and

1683 (g) Have senior staff members who hold formal faculty
1684 appointments at universities, which must include at least one
1685 accredited health profession education program.

1686 (h) Maintain insurance coverage pursuant to s.
1687 400.141(1)(s) ~~s. 400.141(20)~~ or proof of financial
1688 responsibility in a minimum amount of \$750,000. Such proof of
1689 financial responsibility may include:

1690 1. Maintaining an escrow account consisting of cash or
1691 assets eligible for deposit in accordance with s. 625.52; or

1692 2. Obtaining and maintaining pursuant to chapter 675 an
1693 unexpired, irrevocable, nontransferable and nonassignable letter



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1694 of credit issued by any bank or savings association organized
1695 and existing under the laws of this state or any bank or savings
1696 association organized under the laws of the United States that
1697 has its principal place of business in this state or has a
1698 branch office which is authorized to receive deposits in this
1699 state. The letter of credit shall be used to satisfy the
1700 obligation of the facility to the claimant upon presentment of a
1701 final judgment indicating liability and awarding damages to be
1702 paid by the facility or upon presentment of a settlement
1703 agreement signed by all parties to the agreement when such final
1704 judgment or settlement is a result of a liability claim against
1705 the facility.

1706 Section 36. Subsection (5) of section 435.04, Florida
1707 Statutes, is amended to read:

1708 435.04 Level 2 screening standards.—

1709 (5) Under penalty of perjury, all employees in such
1710 positions of trust or responsibility shall attest to meeting the
1711 requirements for qualifying for employment and agreeing to
1712 inform the employer immediately if convicted of any of the
1713 disqualifying offenses while employed by the employer. Each
1714 employer of employees in such positions of trust or
1715 responsibilities which is licensed or registered by a state
1716 agency shall submit to the licensing agency annually or at the
1717 time of license renewal, under penalty of perjury, an affidavit
1718 of compliance with the provisions of this section.

1719 Section 37. Subsection (3) of section 435.05, Florida
1720 Statutes, is amended to read:

1721 435.05 Requirements for covered employees.—Except as
1722 otherwise provided by law, the following requirements shall



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1723 apply to covered employees:

1724 (3) Each employer required to conduct level 2 background
1725 screening must sign an affidavit annually or at the time of
1726 license renewal, under penalty of perjury, stating that all
1727 covered employees have been screened or are newly hired and are
1728 awaiting the results of the required screening checks.

1729 Section 38. Subsection (2) of section 483.031, Florida
1730 Statutes, is amended to read:

1731 483.031 Application of part; exemptions.—This part applies
1732 to all clinical laboratories within this state, except:

1733 (2) A clinical laboratory that performs only waived tests
1734 ~~and has received a certificate of exemption from the agency~~
1735 ~~under s. 483.106.~~

1736 Section 39. Subsection (10) of section 483.041, Florida
1737 Statutes, is amended to read:

1738 483.041 Definitions.—As used in this part, the term:

1739 (10) "Waived test" means a test that the federal Centers
1740 for Medicare and Medicaid Services Health Care Financing
1741 ~~Administration~~ has determined qualifies for a certificate of
1742 waiver under the federal Clinical Laboratory Improvement
1743 Amendments of 1988, and the federal rules adopted thereunder.

1744 Section 40. Section 483.106, Florida Statutes, is repealed.

1745 Section 41. Subsection (3) of section 483.172, Florida
1746 Statutes, is amended to read:

1747 483.172 License fees.—

1748 (3) The agency shall assess ~~a biennial fee of \$100 for a~~
1749 ~~certificate of exemption and a \$100 biennial~~ license fee under
1750 this section for facilities surveyed by an approved accrediting
1751 organization.



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1752 Section 42. Subsection (13) of section 651.118, Florida
1753 Statutes, is amended to read:

1754 651.118 Agency for Health Care Administration; certificates
1755 of need; sheltered beds; community beds.—

1756 (13) Residents, as defined in this chapter, are not
1757 considered new admissions for the purpose of s. 400.141
1758 (1) (o) 1.d. s. ~~400.141(15)(d)~~.

1759 Section 43. This act shall take effect upon becoming a law.

1760
1761 ===== T I T L E A M E N D M E N T =====

1762 And the title is amended as follows:

1763 Delete everything before the enacting clause
1764 and insert:

1765 A bill to be entitled
1766 An act relating to the Agency for Health Care
1767 Administration; repealing s. 395.0199, F.S., relating
1768 to private utilization review of health care services;
1769 amending ss. 395.405 and 400.0712, F.S.; conforming
1770 cross-references; repealing s. 400.118(2), F.S.;
1771 removing provisions requiring quality-of-care monitors
1772 for nursing facilities in agency district offices;
1773 amending s. 400.141, F.S.; deleting a requirement that
1774 licensed nursing home facilities provide the agency
1775 with a monthly report on the number of vacant beds in
1776 the facility; amending s. 400.147, F.S.; revising the
1777 definition of the term "adverse incident" for
1778 reporting purposes; requiring abuse, neglect, and
1779 exploitation to be reported to the agency and the
1780 Department of Children and Family Services; deleting a



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1781 requirement that the agency submit an annual report on
1782 nursing home adverse incidents to the Legislature;
1783 amending s. 400.162, F.S.; revising requirements for
1784 policies and procedures regarding the safekeeping of a
1785 resident's personal effects and property; amending s.
1786 400.195, F.S.; conforming a cross-reference; amending
1787 s. 400.23, F.S.; deleting the requirement of the
1788 agency to adopt rules regarding the eating assistance
1789 provided to residents; amending s. 400.464, F.S.;
1790 revising provisions relating to the licensure of home
1791 health agencies to conform to changes made by the act;
1792 conforming a cross-reference; amending s. 400.497,
1793 F.S.; conforming a cross-reference; repealing s.
1794 400.509, F.S., relating to the registration and
1795 regulation of providers that offer companion or
1796 homemaker services and are exempt from licensure;
1797 amending ss. 400.506 and 400.512, F.S.; deleting
1798 references to companion and homemaker services to
1799 conform to changes made by the act; amending s.
1800 400.9935, F.S.; revising accreditation requirements
1801 for clinics providing magnetic resonance imaging
1802 services; amending s. 400.995, F.S.; revising agency
1803 responsibilities with respect to agency administrative
1804 penalties; amending s. 408.803, F.S.; revising
1805 definitions applicable to part II of ch. 408, F.S.,
1806 the "Health Care Licensing Procedures Act"; amending
1807 s. 408.806, F.S.; revising contents of and procedures
1808 relating to health care provider applications for
1809 licensure; providing an exception from certain



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1810 licensure inspections for adult family-care homes;
1811 authorizing the agency to provide electronic access to
1812 certain information and documents; amending s.
1813 408.808, F.S.; providing for a provisional license to
1814 be issued to applicants applying for a change of
1815 ownership; providing a time limit on provisional
1816 licenses; amending s. 408.809, F.S.; revising
1817 provisions relating to background screening of
1818 specified employees; requiring health care providers
1819 to submit to the agency an affidavit of compliance
1820 with background screening requirements at the time of
1821 license renewal; deleting a provision to conform to
1822 changes made by the act; amending s. 408.810, F.S.;
1823 revising provisions relating to information required
1824 for licensure; amending s. 408.811, F.S.; providing
1825 for certain inspections to be accepted in lieu of
1826 complete licensure inspections; granting agency access
1827 to records requested during an offsite review;
1828 providing timeframes for correction of certain
1829 deficiencies and submission of plans to correct the
1830 deficiencies; amending s. 408.813, F.S.; providing
1831 classifications of violations of part II of ch. 408,
1832 F.S.; providing for fines; amending s. 408.820, F.S.;
1833 revising applicability of certain exemptions from
1834 specified requirements of part II of ch. 408, F.S.;
1835 creating s. 408.821, F.S.; requiring entities
1836 regulated or licensed by the agency to designate a
1837 liaison officer for emergency operations; authorizing
1838 entities regulated or licensed by the agency to



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1839 temporarily exceed their licensed capacity to act as
1840 receiving providers under specified circumstances;
1841 providing requirements that apply while such entities
1842 are in an overcapacity status; providing for issuance
1843 of an inactive license to such licensees under
1844 specified conditions; providing requirements and
1845 procedures with respect to the issuance and
1846 reactivation of an inactive license; authorizing the
1847 agency to adopt rules; amending s. 408.831, F.S.;

1848 deleting provisions relating to the authorization for
1849 entities regulated or licensed by the agency to exceed
1850 their licensed capacity to act as receiving facilities
1851 and issuance and reactivation of inactive licenses;
1852 amending s. 409.221, F.S.; conforming a cross-
1853 reference; amending s. 409.901, F.S.; redefining the
1854 term "change of ownership" as it relates to Medicaid
1855 providers; repealing s. 429.071, F.S., relating to the
1856 intergenerational respite care assisted living
1857 facility pilot program; amending s. 429.08, F.S.;

1858 authorizing the agency to provide information
1859 regarding licensed assisted living facilities on its
1860 Internet website; abolishing local coordinating
1861 workgroups established by agency field offices;
1862 amending s. 429.14, F.S.; conforming a reference;
1863 amending s. 429.19, F.S.; revising agency procedures
1864 for imposition of fines for violations of part I of
1865 ch. 429, F.S., the "Assisted Living Facilities Act";
1866 amending s. 429.23, F.S.; redefining the term "adverse
1867 incident" for reporting purposes; requiring abuse,



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1868 neglect, and exploitation to be reported to the agency
1869 and the Department of Children and Family Services;
1870 deleting a requirement that the agency submit an
1871 annual report on assisted living facility adverse
1872 incidents to the Legislature; repealing s. 429.26(9),
1873 F.S., relating to the removal of the requirement for a
1874 resident of an assisted living facility to undergo
1875 examinations and evaluations under certain
1876 circumstances; amending s. 430.80, F.S.; conforming a
1877 cross-reference; amending ss. 435.04 and 435.05, F.S.;
1878 requiring employers of certain employees to submit an
1879 affidavit of compliance with level 2 screening
1880 requirements at the time of license renewal; amending
1881 s. 483.031, F.S.; revising a provision relating to the
1882 exemption of certain clinical laboratories, to conform
1883 to changes made by the act; amending s. 483.041, F.S.;
1884 redefining the term "waived test" as it is used in
1885 part I of ch. 483, F.S., the "Florida Clinical
1886 Laboratory Law"; repealing s. 483.106, F.S., relating
1887 to applications for certificates of exemption by
1888 clinical laboratories that perform certain tests;
1889 amending ss. 483.172 and 651.118, F.S.; conforming
1890 provisions and a cross-reference; providing an
1891 effective date.