

1 A bill to be entitled
2 An act relating to the Agency for Health Care
3 Administration; repealing s. 395.0199, F.S., relating to
4 private utilization review of health care services;
5 amending ss. 395.405 and 400.0712, F.S.; conforming cross-
6 references; amending s. 400.118, F.S.; removing provisions
7 requiring quality-of-care monitors for nursing facilities
8 in agency district offices; amending s. 400.141, F.S.;
9 revising reporting requirements for facility staff-to-
10 resident ratios; deleting a requirement that licensed
11 nursing home facilities provide the agency with a monthly
12 report on the number of vacant beds in the facility;
13 amending s. 400.147, F.S.; revising reporting requirements
14 under facility internal risk management and quality
15 assurance programs; revising the definition of the term
16 "adverse incident" for reporting purposes; requiring
17 abuse, neglect, and exploitation to be reported to the
18 agency and the Department of Children and Family Services;
19 deleting a requirement that the agency submit an annual
20 report on nursing home adverse incidents to the
21 Legislature; amending s. 400.162, F.S.; revising
22 provisions relating to procedures and policies regarding
23 the safekeeping of nursing home residents' property;
24 amending s. 400.195, F.S.; conforming a cross-reference;
25 amending s. 400.23, F.S.; deleting provisions relating to
26 minimum staffing requirements for nursing homes; amending
27 s. 400.474, F.S.; providing that specified provisions
28 relating to remuneration do not apply to or preclude

29 certain payment practices permitted under specified
30 federal laws or regulations; amending s. 400.506, F.S.;
31 exempting nurse registries not participating in the
32 Medicaid or Medicare program from certain disciplinary
33 actions for paying remuneration to certain entities in
34 exchange for patient referrals; amending s. 400.9905,
35 F.S.; revising the definition of the term "clinic" to
36 provide that pt. X of ch. 400, F.S., the Health Care
37 Clinic Act, does not apply to entities that do not seek
38 reimbursement from insurance companies for medical
39 services paid pursuant to personal injury protection
40 coverage; amending s. 400.9935, F.S.; revising
41 accreditation requirements for clinics providing magnetic
42 resonance imaging services; providing for a unique
43 identification number for licensed clinics and entities
44 holding certificates of exemption; requiring the agency to
45 assign unique identification numbers, under certain
46 circumstances, and publish the numbers on its Internet
47 website in a specified format; amending s. 400.995, F.S.;
48 revising agency responsibilities with respect to personnel
49 and operations in certain injunctive proceedings; amending
50 s. 408.803, F.S.; revising definitions applicable to pt.
51 II of ch. 408, F.S., the "Health Care Licensing Procedures
52 Act"; amending s. 408.806, F.S.; revising contents of and
53 procedures relating to health care provider applications
54 for licensure; providing an exception from certain
55 licensure inspections for adult family-care homes;
56 authorizing the agency to provide electronic access to

57 | certain information and documents; amending s. 408.808,
58 | F.S.; providing for a provisional license to be issued to
59 | applicants applying for a change of ownership; providing a
60 | time limit on provisional licenses; amending s. 408.809,
61 | F.S.; revising provisions relating to background screening
62 | of specified employees; exempting certain persons from
63 | rescreening; permitting certain persons to apply for an
64 | exemption from disqualification under certain
65 | circumstances; requiring health care providers to submit
66 | to the agency an affidavit of compliance with background
67 | screening requirements at the time of license renewal;
68 | deleting a provision to conform to changes made by the
69 | act; amending s. 408.810, F.S.; revising provisions
70 | relating to information required for licensure; amending
71 | s. 408.811, F.S.; providing for certain inspections to be
72 | accepted in lieu of complete licensure inspections;
73 | granting agency access to records requested during an
74 | offsite review; providing timeframes for correction of
75 | certain deficiencies and submission of plans to correct
76 | such deficiencies; amending s. 408.813, F.S.; providing
77 | classifications of violations of pt. II of ch. 408, F.S.;
78 | providing for fines; amending s. 408.820, F.S.; revising
79 | applicability of exemptions from specified requirements of
80 | pt. II of ch. 408, F.S.; conforming references; creating
81 | s. 408.821, F.S.; requiring entities regulated or licensed
82 | by the agency to designate a safety liaison for emergency
83 | operations; providing that entities regulated or licensed
84 | by the agency may temporarily exceed their licensed

85 capacity to act as receiving providers under specified
86 circumstances; providing requirements while such entities
87 are in an overcapacity status; providing for issuance of
88 an inactive license to such licensees under specified
89 conditions; providing requirements and procedures with
90 respect to the issuance and reactivation of an inactive
91 license; authorizing the agency to adopt rules; amending
92 s. 408.831, F.S.; deleting provisions relating to
93 authorization for entities regulated or licensed by the
94 agency to exceed their licensed capacity to act as
95 receiving facilities and issuance and reactivation of
96 inactive licenses; amending s. 409.221, F.S.; conforming a
97 cross-reference; amending s. 409.901, F.S.; revising a
98 definition applicable to Medicaid providers; repealing s.
99 429.071, F.S., relating to the intergenerational respite
100 care assisted living facility pilot program; amending s.
101 429.08, F.S.; authorizing the agency to provide
102 information regarding licensed assisted living facilities
103 electronically or on its Internet website; abolishing
104 local coordinating workgroups established by agency field
105 offices; deleting a fine; deleting provisions requiring
106 the agency to provide certain information and notice to
107 service providers; amending s. 429.14, F.S.; conforming a
108 reference; amending s. 429.19, F.S.; revising agency
109 procedures for imposition of fines for violations of pt. I
110 of ch. 429, F.S., the "Assisted Living Facilities Act";
111 providing for the posting of certain information
112 electronically or on the agency's Internet website;

113 amending s. 429.23, F.S.; revising the definition of the
114 term "adverse incident" for reporting purposes; requiring
115 abuse, neglect, and exploitation to be reported to the
116 agency and the Department of Children and Family Services;
117 deleting a requirement that the agency submit an annual
118 report on assisted living facility adverse incidents to
119 the Legislature; amending s. 429.26, F.S.; removing
120 requirement for a resident of an assisted living facility
121 to undergo examinations and evaluations under certain
122 circumstances; amending s. 430.80, F.S.; conforming a
123 cross-reference; amending ss. 435.04 and 435.05, F.S.;
124 requiring employers of certain employees to submit an
125 affidavit of compliance with level 2 screening
126 requirements at the time of license renewal; amending s.
127 483.031, F.S.; conforming a reference; amending s.
128 483.041, F.S.; revising a definition applicable to pt. I
129 of ch. 483, F.S., the "Florida Clinical Laboratory Law";
130 repealing s. 483.106, F.S., relating to applications for
131 certificates of exemption by clinical laboratories that
132 perform certain tests; amending s. 483.172, F.S.;
133 conforming a reference; amending s. 627.4239, F.S.;
134 revising the definition of the term "standard reference
135 compendium" for purposes of regulating the insurance
136 coverage of drugs used in the treatment of cancer;
137 amending s. 627.736, F.S.; providing that personal injury
138 protection insurance carriers are not required to pay
139 claims or charges for service or treatment billed by a
140 provider not holding an identification number issued by

141 the agency; amending s. 651.118, F.S.; conforming a cross-
 142 reference; providing an effective date.

143

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

145

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

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

150 395.405 Rulemaking.--The department shall adopt and
 151 enforce all rules necessary to administer ss. ~~395.0199,~~ 395.401,
 152 395.4015, 395.402, 395.4025, 395.403, 395.404, and 395.4045.

153 Section 3. Subsection (1) of section 400.0712, Florida
 154 Statutes, is amended to read:

155 400.0712 Application for inactive license.--

156 (1) As specified in ~~s. 408.831(4)~~ and this section, the
 157 agency may issue an inactive license to a nursing home facility
 158 for all or a portion of its beds. Any request by a licensee that
 159 a nursing home or portion of a nursing home become inactive must
 160 be submitted to the agency in the approved format. The facility
 161 may not initiate any suspension of services, notify residents,
 162 or initiate inactivity before receiving approval from the
 163 agency; and a licensee that violates this provision may not be
 164 issued an inactive license.

165 Section 4. Subsection (3) of section 400.118, Florida
 166 Statutes, is renumbered as subsection (2), and present
 167 subsection (2) of that section is amended to read:

168 400.118 Quality assurance; early warning system;
169 ~~monitoring;~~ rapid response teams.--

170 ~~(2) (a) The agency shall establish within each district~~
171 ~~office one or more quality of care monitors, based on the number~~
172 ~~of nursing facilities in the district, to monitor all nursing~~
173 ~~facilities in the district on a regular, unannounced, aperiodic~~
174 ~~basis, including nights, evenings, weekends, and holidays.~~
175 ~~Quality of care monitors shall visit each nursing facility at~~
176 ~~least quarterly. Priority for additional monitoring visits shall~~
177 ~~be given to nursing facilities with a history of resident care~~
178 ~~deficiencies. Quality of care monitors shall be registered~~
179 ~~nurses who are trained and experienced in nursing facility~~
180 ~~regulation, standards of practice in long-term care, and~~
181 ~~evaluation of patient care. Individuals in these positions shall~~
182 ~~not be deployed by the agency as a part of the district survey~~
183 ~~team in the conduct of routine, scheduled surveys, but shall~~
184 ~~function solely and independently as quality of care monitors.~~
185 ~~Quality of care monitors shall assess the overall quality of~~
186 ~~life in the nursing facility and shall assess specific~~
187 ~~conditions in the facility directly related to resident care,~~
188 ~~including the operations of internal quality improvement and~~
189 ~~risk management programs and adverse incident reports. The~~
190 ~~quality of care monitor shall include in an assessment visit~~
191 ~~observation of the care and services rendered to residents and~~
192 ~~formal and informal interviews with residents, family members,~~
193 ~~facility staff, resident guests, volunteers, other regulatory~~
194 ~~staff, and representatives of a long-term care ombudsman council~~
195 ~~or Florida advocacy council.~~

196 ~~(b) Findings of a monitoring visit, both positive and~~
197 ~~negative, shall be provided orally and in writing to the~~
198 ~~facility administrator or, in the absence of the facility~~
199 ~~administrator, to the administrator on duty or the director of~~
200 ~~nursing. The quality-of-care monitor may recommend to the~~
201 ~~facility administrator procedural and policy changes and staff~~
202 ~~training, as needed, to improve the care or quality of life of~~
203 ~~facility residents. Conditions observed by the quality-of-care~~
204 ~~monitor which threaten the health or safety of a resident shall~~
205 ~~be reported immediately to the agency area office supervisor for~~
206 ~~appropriate regulatory action and, as appropriate or as required~~
207 ~~by law, to law enforcement, adult protective services, or other~~
208 ~~responsible agencies.~~

209 ~~(c) Any record, whether written or oral, or any written or~~
210 ~~oral communication generated pursuant to paragraph (a) or~~
211 ~~paragraph (b) shall not be subject to discovery or introduction~~
212 ~~into evidence in any civil or administrative action against a~~
213 ~~nursing facility arising out of matters which are the subject of~~
214 ~~quality-of-care monitoring, and a person who was in attendance~~
215 ~~at a monitoring visit or evaluation may not be permitted or~~
216 ~~required to testify in any such civil or administrative action~~
217 ~~as to any evidence or other matters produced or presented during~~
218 ~~the monitoring visits or evaluations. However, information,~~
219 ~~documents, or records otherwise available from original sources~~
220 ~~are not to be construed as immune from discovery or use in any~~
221 ~~such civil or administrative action merely because they were~~
222 ~~presented during monitoring visits or evaluations, and any~~
223 ~~person who participates in such activities may not be prevented~~

224 ~~from testifying as to matters within his or her knowledge, but~~
 225 ~~such witness may not be asked about his or her participation in~~
 226 ~~such activities. The exclusion from the discovery or~~
 227 ~~introduction of evidence in any civil or administrative action~~
 228 ~~provided for herein shall not apply when the quality-of-care~~
 229 ~~monitor makes a report to the appropriate authorities regarding~~
 230 ~~a threat to the health or safety of a resident.~~

231 Section 5. Section 400.141, Florida Statutes, is amended
 232 to read:

233 400.141 Administration and management of nursing home
 234 facilities.--

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

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

239 (b)~~(2)~~ Appoint a medical director licensed pursuant to
 240 chapter 458 or chapter 459. The agency may establish by rule
 241 more specific criteria for the appointment of a medical
 242 director.

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

245 (d)~~(4)~~ Provide for resident use of a community pharmacy as
 246 specified in s. 400.022(1)(q). Any other law to the contrary
 247 notwithstanding, a registered pharmacist licensed in Florida,
 248 that is under contract with a facility licensed under this
 249 chapter or chapter 429, shall repackage a nursing facility
 250 resident's bulk prescription medication which has been packaged
 251 by another pharmacist licensed in any state in the United States

252 into a unit dose system compatible with the system used by the
 253 nursing facility, if the pharmacist is requested to offer such
 254 service. In order to be eligible for the repackaging, a resident
 255 or the resident's spouse must receive prescription medication
 256 benefits provided through a former employer as part of his or
 257 her retirement benefits, a qualified pension plan as specified
 258 in s. 4972 of the Internal Revenue Code, a federal retirement
 259 program as specified under 5 C.F.R. s. 831, or a long-term care
 260 policy as defined in s. 627.9404(1). A pharmacist who correctly
 261 repackages and relabels the medication and the nursing facility
 262 which correctly administers such repackaged medication under ~~the~~
 263 ~~provisions of this paragraph may subsection~~ shall not be held
 264 liable in any civil or administrative action arising from the
 265 repackaging. In order to be eligible for the repackaging, a
 266 nursing facility resident for whom the medication is to be
 267 repackaged shall sign an informed consent form provided by the
 268 facility which includes an explanation of the repackaging
 269 process and which notifies the resident of the immunities from
 270 liability provided in this paragraph ~~herein~~. A pharmacist who
 271 repackages and relabels prescription medications, as authorized
 272 under this paragraph ~~subsection~~, may charge a reasonable fee for
 273 costs resulting from the implementation of this provision.

274 (e) ~~(5)~~ Provide for the access of the facility residents to
 275 dental and other health-related services, recreational services,
 276 rehabilitative services, and social work services appropriate to
 277 their needs and conditions and not directly furnished by the
 278 licensee. When a geriatric outpatient nurse clinic is conducted
 279 in accordance with rules adopted by the agency, outpatients

280 attending such clinic shall not be counted as part of the
 281 general resident population of the nursing home facility, nor
 282 shall the nursing staff of the geriatric outpatient clinic be
 283 counted as part of the nursing staff of the facility, until the
 284 outpatient clinic load exceeds 15 a day.

285 (f) ~~(6)~~ Be allowed and encouraged by the agency to provide
 286 other needed services under certain conditions. If the facility
 287 has a standard licensure status, and has had no class I or class
 288 II deficiencies during the past 2 years or has been awarded a
 289 Gold Seal under the program established in s. 400.235, it may be
 290 encouraged by the agency to provide services, including, but not
 291 limited to, respite and adult day services, which enable
 292 individuals to move in and out of the facility. A facility is
 293 not subject to any additional licensure requirements for
 294 providing these services. Respite care may be offered to persons
 295 in need of short-term or temporary nursing home services.
 296 Respite care must be provided in accordance with this part and
 297 rules adopted by the agency. However, the agency shall, by rule,
 298 adopt modified requirements for resident assessment, resident
 299 care plans, resident contracts, physician orders, and other
 300 provisions, as appropriate, for short-term or temporary nursing
 301 home services. The agency shall allow for shared programming and
 302 staff in a facility which meets minimum standards and offers
 303 services pursuant to this paragraph ~~subsection~~, but, if the
 304 facility is cited for deficiencies in patient care, may require
 305 additional staff and programs appropriate to the needs of
 306 service recipients. A person who receives respite care may not
 307 be counted as a resident of the facility for purposes of the

308 facility's licensed capacity unless that person receives 24-hour
309 respite care. A person receiving either respite care for 24
310 hours or longer or adult day services must be included when
311 calculating minimum staffing for the facility. Any costs and
312 revenues generated by a nursing home facility from
313 nonresidential programs or services shall be excluded from the
314 calculations of Medicaid per diems for nursing home
315 institutional care reimbursement.

316 (g) ~~(7)~~ If the facility has a standard license or is a Gold
317 Seal facility, exceeds the minimum required hours of licensed
318 nursing and certified nursing assistant direct care per resident
319 per day, and is part of a continuing care facility licensed
320 under chapter 651 or a retirement community that offers other
321 services pursuant to part III of this chapter or part I or part
322 III of chapter 429 on a single campus, be allowed to share
323 programming and staff. At the time of inspection and in the
324 semiannual report required pursuant to paragraph (o) ~~subsection~~
325 ~~(15)~~, a continuing care facility or retirement community that
326 uses this option must demonstrate through staffing records that
327 minimum staffing requirements for the facility were met.

328 Licensed nurses and certified nursing assistants who work in the
329 nursing home facility may be used to provide services elsewhere
330 on campus if the facility exceeds the minimum number of direct
331 care hours required per resident per day and the total number of
332 residents receiving direct care services from a licensed nurse
333 or a certified nursing assistant does not cause the facility to
334 violate the staffing ratios required under s. 400.23(3)(a).
335 Compliance with the minimum staffing ratios shall be based on

336 total number of residents receiving direct care services,
337 regardless of where they reside on campus. If the facility
338 receives a conditional license, it may not share staff until the
339 conditional license status ends. This paragraph ~~subsection~~ does
340 not restrict the agency's authority under federal or state law
341 to require additional staff if a facility is cited for
342 deficiencies in care which are caused by an insufficient number
343 of certified nursing assistants or licensed nurses. The agency
344 may adopt rules for the documentation necessary to determine
345 compliance with this provision.

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

348 (i) ~~(9)~~ If the licensee furnishes food service, provide a
349 wholesome and nourishing diet sufficient to meet generally
350 accepted standards of proper nutrition for its residents and
351 provide such therapeutic diets as may be prescribed by attending
352 physicians. In making rules to implement this paragraph
353 ~~subsection~~, the agency shall be guided by standards recommended
354 by nationally recognized professional groups and associations
355 with knowledge of dietetics.

356 (j) ~~(10)~~ Keep full records of resident admissions and
357 discharges; medical and general health status, including medical
358 records, personal and social history, and identity and address
359 of next of kin or other persons who may have responsibility for
360 the affairs of the residents; and individual resident care plans
361 including, but not limited to, prescribed services, service
362 frequency and duration, and service goals. The records shall be
363 open to inspection by the agency.

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

367 (l) ~~(12)~~ Furnish copies of personnel records for employees
368 affiliated with such facility, to any other facility licensed by
369 this state requesting this information pursuant to this part.
370 Such information contained in the records may include, but is
371 not limited to, disciplinary matters and any reason for
372 termination. Any facility releasing such records pursuant to
373 this part shall be considered to be acting in good faith and may
374 not be held liable for information contained in such records,
375 absent a showing that the facility maliciously falsified such
376 records.

377 (m) ~~(13)~~ Publicly display a poster provided by the agency
378 containing the names, addresses, and telephone numbers for the
379 state's abuse hotline, the State Long-Term Care Ombudsman, the
380 Agency for Health Care Administration consumer hotline, the
381 Advocacy Center for Persons with Disabilities, the Florida
382 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
383 with a clear description of the assistance to be expected from
384 each.

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

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

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

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

398 b.~~(b)~~ Staff turnover must be reported for the most recent
399 12-month period ending on the last workday of the most recent
400 calendar quarter prior to the date the information is submitted.
401 The turnover rate must be computed quarterly, with the annual
402 rate being the cumulative sum of the quarterly rates. The
403 turnover rate is the total number of terminations or separations
404 experienced during the quarter, excluding any employee
405 terminated during a probationary period of 3 months or less,
406 divided by the total number of staff employed at the end of the
407 period for which the rate is computed, and expressed as a
408 percentage.

409 c.~~(c)~~ The formula for determining staff stability is the
410 total number of employees that have been employed for more than
411 12 months, divided by the total number of employees employed at
412 the end of the most recent calendar quarter, and expressed as a
413 percentage.

414 d.~~(d)~~ A nursing facility that has failed to comply with
415 state minimum-staffing requirements for 2 consecutive days is
416 prohibited from accepting new admissions until the facility has
417 achieved the minimum-staffing requirements for a period of 6
418 consecutive days. For the purposes of this sub-subparagraph
419 paragraph, any person who was a resident of the facility and was

420 absent from the facility for the purpose of receiving medical
421 care at a separate location or was on a leave of absence is not
422 considered a new admission. Failure to impose such an admissions
423 moratorium constitutes a class II deficiency.

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

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

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

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

439 (p)~~(17)~~ Notify a licensed physician when a resident
440 exhibits signs of dementia or cognitive impairment or has a
441 change of condition in order to rule out the presence of an
442 underlying physiological condition that may be contributing to
443 such dementia or impairment. The notification must occur within
444 30 days after the acknowledgment of such signs by facility
445 staff. If an underlying condition is determined to exist, the
446 facility shall arrange, with the appropriate health care

447 provider, the necessary care and services to treat the
 448 condition.

449 (q)~~(18)~~ If the facility implements a dining and
 450 hospitality attendant program, ensure that the program is
 451 developed and implemented under the supervision of the facility
 452 director of nursing. A licensed nurse, licensed speech or
 453 occupational therapist, or a registered dietitian must conduct
 454 training of dining and hospitality attendants. A person employed
 455 by a facility as a dining and hospitality attendant must perform
 456 tasks under the direct supervision of a licensed nurse.

457 (r)~~(19)~~ Report to the agency any filing for bankruptcy
 458 protection by the facility or its parent corporation,
 459 divestiture or spin-off of its assets, or corporate
 460 reorganization within 30 days after the completion of such
 461 activity.

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

468 (t)~~(21)~~ Maintain in the medical record for each resident a
 469 daily chart of certified nursing assistant services provided to
 470 the resident. The certified nursing assistant who is caring for
 471 the resident must complete this record by the end of his or her
 472 shift. This record must indicate assistance with activities of
 473 daily living, assistance with eating, and assistance with
 474 drinking, and must record each offering of nutrition and

475 hydration for those residents whose plan of care or assessment
476 indicates a risk for malnutrition or dehydration.

477 (u)~~(22)~~ Before November 30 of each year, subject to the
478 availability of an adequate supply of the necessary vaccine,
479 provide for immunizations against influenza viruses to all its
480 consenting residents in accordance with the recommendations of
481 the United States Centers for Disease Control and Prevention,
482 subject to exemptions for medical contraindications and
483 religious or personal beliefs. Subject to these exemptions, any
484 consenting person who becomes a resident of the facility after
485 November 30 but before March 31 of the following year must be
486 immunized within 5 working days after becoming a resident.
487 Immunization shall not be provided to any resident who provides
488 documentation that he or she has been immunized as required by
489 this paragraph ~~subsection~~. This paragraph ~~subsection~~ does not
490 prohibit a resident from receiving the immunization from his or
491 her personal physician if he or she so chooses. A resident who
492 chooses to receive the immunization from his or her personal
493 physician shall provide proof of immunization to the facility.
494 The agency may adopt and enforce any rules necessary to comply
495 with or implement this paragraph ~~subsection~~.

496 (v)~~(23)~~ Assess all residents for eligibility for
497 pneumococcal polysaccharide vaccination (PPV) and vaccinate
498 residents when indicated within 60 days after the effective date
499 of this act in accordance with the recommendations of the United
500 States Centers for Disease Control and Prevention, subject to
501 exemptions for medical contraindications and religious or
502 personal beliefs. Residents admitted after the effective date of

503 | this act shall be assessed within 5 working days of admission
504 | and, when indicated, vaccinated within 60 days in accordance
505 | with the recommendations of the United States Centers for
506 | Disease Control and Prevention, subject to exemptions for
507 | medical contraindications and religious or personal beliefs.
508 | Immunization shall not be provided to any resident who provides
509 | documentation that he or she has been immunized as required by
510 | this paragraph ~~subsection~~. This paragraph ~~subsection~~ does not
511 | prohibit a resident from receiving the immunization from his or
512 | her personal physician if he or she so chooses. A resident who
513 | chooses to receive the immunization from his or her personal
514 | physician shall provide proof of immunization to the facility.
515 | The agency may adopt and enforce any rules necessary to comply
516 | with or implement this paragraph ~~subsection~~.

517 | (w) ~~(24)~~ Annually encourage and promote to its employees
518 | the benefits associated with immunizations against influenza
519 | viruses in accordance with the recommendations of the United
520 | States Centers for Disease Control and Prevention. The agency
521 | may adopt and enforce any rules necessary to comply with or
522 | implement this paragraph ~~subsection~~.

523 | (2) Facilities that have been awarded a Gold Seal under
524 | the program established in s. 400.235 may develop a plan to
525 | provide certified nursing assistant training as prescribed by
526 | federal regulations and state rules and may apply to the agency
527 | for approval of their program.

528 | Section 6. Present subsections (9) through (13) of section
529 | 400.147, Florida Statutes, are renumbered as subsections (10)
530 | through (14), respectively, subsection (5) and present

CS/CS/HB 651

2009

531 subsection (14) are amended, and a new subsection (9) is added
 532 to that section, to read:

533 400.147 Internal risk management and quality assurance
 534 program.--

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

537 (a) An event over which facility personnel could exercise
 538 control and which is associated in whole or in part with the
 539 facility's intervention, rather than the condition for which
 540 such intervention occurred, and which results in one of the
 541 following:

- 542 1. Death;
- 543 2. Brain or spinal damage;
- 544 3. Permanent disfigurement;
- 545 4. Fracture or dislocation of bones or joints;
- 546 5. A limitation of neurological, physical, or sensory
 547 function;
- 548 6. Any condition that required medical attention to which
 549 the resident has not given his or her informed consent,
 550 including failure to honor advanced directives; ~~or~~
- 551 7. Any condition that required the transfer of the
 552 resident, within or outside the facility, to a unit providing a
 553 more acute level of care due to the adverse incident, rather
 554 than the resident's condition prior to the adverse incident; or
- 555 8. An event that is reported to law enforcement or its
 556 personnel for investigation; or
- 557 ~~(b) Abuse, neglect, or exploitation as defined in s.~~
 558 ~~415.102;~~

- 559 ~~(c) Abuse, neglect and harm as defined in s. 39.01;~~
 560 (b) Resident elopement, if the elopement places the
 561 resident at risk of harm or injury.; ~~or~~
 562 ~~(e) An event that is reported to law enforcement.~~
 563 (9) Abuse, neglect, or exploitation must be reported to
 564 the agency as required by 42 C.F.R. s. 483.13(c) and to the
 565 department as required by chapters 39 and 415.
 566 ~~(14) The agency shall annually submit to the Legislature a~~
 567 ~~report on nursing home adverse incidents. The report must~~
 568 ~~include the following information arranged by county:~~
 569 ~~(a) The total number of adverse incidents.~~
 570 ~~(b) A listing, by category, of the types of adverse~~
 571 ~~incidents, the number of incidents occurring within each~~
 572 ~~category, and the type of staff involved.~~
 573 ~~(c) A listing, by category, of the types of injury caused~~
 574 ~~and the number of injuries occurring within each category.~~
 575 ~~(d) Types of liability claims filed based on an adverse~~
 576 ~~incident or reportable injury.~~
 577 ~~(e) Disciplinary action taken against staff, categorized~~
 578 ~~by type of staff involved.~~

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

581 400.162 Property and personal affairs of residents.--

582 (3) A licensee shall provide for the safekeeping of
 583 personal effects, funds, and other property of the resident in
 584 the facility. Whenever necessary for the protection of
 585 valuables, or in order to avoid unreasonable responsibility
 586 therefor, the licensee may require that such valuables be

587 | excluded or removed from the facility and kept at some place not
 588 | subject to the control of the licensee. At the request of a
 589 | resident, the facility shall mark the resident's personal
 590 | property with the resident's name or another type of
 591 | identification, without defacing the property. Any theft or loss
 592 | of a resident's personal property shall be documented by the
 593 | facility. The facility shall develop policies and procedures to
 594 | minimize the risk of theft or loss of the personal property of
 595 | residents. A copy of the policy shall be provided to every
 596 | employee and to each resident and resident's representative, if
 597 | appropriate, at admission and when revised. Facility policies
 598 | must include provisions related to reporting theft or loss of a
 599 | resident's property to law enforcement and any facility waiver
 600 | of liability for loss or theft. ~~The facility shall post notice~~
 601 | ~~of these policies and procedures, and any revision thereof, in~~
 602 | ~~places accessible to residents.~~

603 | Section 8. Paragraph (d) of subsection (1) of section
 604 | 400.195, Florida Statutes, is amended to read:

605 | 400.195 Agency reporting requirements.--

606 | (1) For the period beginning June 30, 2001, and ending
 607 | June 30, 2005, the Agency for Health Care Administration shall
 608 | provide a report to the Governor, the President of the Senate,
 609 | and the Speaker of the House of Representatives with respect to
 610 | nursing homes. The first report shall be submitted no later than
 611 | December 30, 2002, and subsequent reports shall be submitted
 612 | every 6 months thereafter. The report shall identify facilities
 613 | based on their ownership characteristics, size, business
 614 | structure, for-profit or not-for-profit status, and any other

615 characteristics the agency determines useful in analyzing the
 616 varied segments of the nursing home industry and shall report:

617 (d) Information regarding deficiencies cited, including
 618 information used to develop the Nursing Home Guide WATCH LIST
 619 pursuant to s. 400.191, and applicable rules, a summary of data
 620 generated on nursing homes by Centers for Medicare and Medicaid
 621 Services Nursing Home Quality Information Project, and
 622 information collected pursuant to s. 400.147 (10) ~~(9)~~, relating to
 623 litigation.

624 Section 9. Paragraph (b) of subsection (3) of section
 625 400.23, Florida Statutes, is amended to read:

626 400.23 Rules; evaluation and deficiencies; licensure
 627 status.--

628 (3)

629 ~~(b) The agency shall adopt rules to allow properly trained~~
 630 ~~staff of a nursing facility, in addition to certified nursing~~
 631 ~~assistants and licensed nurses, to assist residents with eating.~~
 632 ~~The rules shall specify the minimum training requirements and~~
 633 ~~shall specify the physiological conditions or disorders of~~
 634 ~~residents which would necessitate that the eating assistance be~~
 635 ~~provided by nursing personnel of the facility. Nonnursing staff~~
 636 ~~providing eating assistance to residents under the provisions of~~
 637 ~~this subsection shall not count toward compliance with minimum~~
 638 staffing standards.

639 Section 10. Subsection (6) of section 400.474, Florida
 640 Statutes, is amended to read:

641 400.474 Administrative penalties.--

642 (6) The agency may deny, revoke, or suspend the license of
 643 a home health agency and shall impose a fine of \$5,000 against a
 644 home health agency that:

645 (a) Gives remuneration for staffing services to:

646 1. Another home health agency with which it has formal or
 647 informal patient-referral transactions or arrangements; or

648 2. A health services pool with which it has formal or
 649 informal patient-referral transactions or arrangements,

650
 651 unless the home health agency has activated its comprehensive
 652 emergency management plan in accordance with s. 400.492. This
 653 paragraph does not apply to a Medicare-certified home health
 654 agency that provides fair market value remuneration for staffing
 655 services to a non-Medicare-certified home health agency that is
 656 part of a continuing care facility licensed under chapter 651
 657 for providing services to its own residents if each resident
 658 receiving home health services pursuant to this arrangement
 659 attests in writing that he or she made a decision without
 660 influence from staff of the facility to select, from a list of
 661 Medicare-certified home health agencies provided by the
 662 facility, that Medicare-certified home health agency to provide
 663 the services.

664 (b) Provides services to residents in an assisted living
 665 facility for which the home health agency does not receive fair
 666 market value remuneration.

667 (c) Provides staffing to an assisted living facility for
 668 which the home health agency does not receive fair market value
 669 remuneration.

670 (d) Fails to provide the agency, upon request, with copies
671 of all contracts with assisted living facilities which were
672 executed within 5 years before the request.

673 (e) Gives remuneration to a case manager, discharge
674 planner, facility-based staff member, or third-party vendor who
675 is involved in the discharge planning process of a facility
676 licensed under chapter 395 or this chapter from whom the home
677 health agency receives referrals.

678 (f) Fails to submit to the agency, within 15 days after
679 the end of each calendar quarter, a written report that includes
680 the following data based on data as it existed on the last day
681 of the quarter:

682 1. The number of insulin-dependent diabetic patients
683 receiving insulin-injection services from the home health
684 agency;

685 2. The number of patients receiving both home health
686 services from the home health agency and hospice services;

687 3. The number of patients receiving home health services
688 from that home health agency; and

689 4. The names and license numbers of nurses whose primary
690 job responsibility is to provide home health services to
691 patients and who received remuneration from the home health
692 agency in excess of \$25,000 during the calendar quarter.

693 (g) Gives cash, or its equivalent, to a Medicare or
694 Medicaid beneficiary.

695 (h) Has more than one medical director contract in effect
696 at one time or more than one medical director contract and one
697 contract with a physician-specialist whose services are mandated

698 for the home health agency in order to qualify to participate in
 699 a federal or state health care program at one time.

700 (i) Gives remuneration to a physician without a medical
 701 director contract being in effect. The contract must:

- 702 1. Be in writing and signed by both parties;
- 703 2. Provide for remuneration that is at fair market value
 704 for an hourly rate, which must be supported by invoices
 705 submitted by the medical director describing the work performed,
 706 the dates on which that work was performed, and the duration of
 707 that work; and
- 708 3. Be for a term of at least 1 year.

709
 710 The hourly rate specified in the contract may not be increased
 711 during the term of the contract. The home health agency may not
 712 execute a subsequent contract with that physician which has an
 713 increased hourly rate and covers any portion of the term that
 714 was in the original contract.

715 (j) Gives remuneration to:

- 716 1. A physician, and the home health agency is in violation
 717 of paragraph (h) or paragraph (i);
- 718 2. A member of the physician's office staff; or
- 719 3. An immediate family member of the physician,

720
 721 if the home health agency has received a patient referral in the
 722 preceding 12 months from that physician or physician's office
 723 staff.

724 (k) Fails to provide to the agency, upon request, copies
725 of all contracts with a medical director which were executed
726 within 5 years before the request.

727
728 Nothing in paragraph (e) or paragraph (j) shall be interpreted
729 as applying to or precluding any discount, compensation, waiver
730 of payment, or payment practice permitted by 42 U.S.C. s. 1320a-
731 7b(b) or regulations adopted thereunder, including 42 C.F.R. s.
732 1001.952, or by 42 U.S.C. s. 1395nn or regulations adopted
733 thereunder.

734 Section 11. Paragraph (a) of subsection (15) of section
735 400.506, Florida Statutes, is amended to read:

736 400.506 Licensure of nurse registries; requirements;
737 penalties.--

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

741 1. Provides services to residents in an assisted living
742 facility for which the nurse registry does not receive fair
743 market value remuneration.

744 2. Provides staffing to an assisted living facility for
745 which the nurse registry does not receive fair market value
746 remuneration.

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

750 4. Gives remuneration to a case manager, discharge
751 planner, facility-based staff member, or third-party vendor who

CS/CS/HB 651

2009

752 is involved in the discharge planning process of a facility
753 licensed under chapter 395 or this chapter and from whom the
754 nurse registry receives referrals. This subparagraph does not
755 apply to a nurse registry that does not participate in the
756 Medicaid or Medicare program.

757 5. Gives remuneration to a physician, a member of the
758 physician's office staff, or an immediate family member of the
759 physician, and the nurse registry received a patient referral in
760 the last 12 months from that physician or the physician's office
761 staff. This subparagraph does not apply to a nurse registry that
762 does not participate in the Medicaid or Medicare program.

763 Section 12. Paragraph (m) is added to subsection (4) of
764 section 400.9905, Florida Statutes, to read:

765 400.9905 Definitions.--

766 (4) "Clinic" means an entity at which health care services
767 are provided to individuals and which tenders charges for
768 reimbursement for such services, including a mobile clinic and a
769 portable equipment provider. For purposes of this part, the term
770 does not include and the licensure requirements of this part do
771 not apply to:

772 (m) Entities that do not seek reimbursement from insurance
773 companies for medical services paid pursuant to personal injury
774 protection coverage required by s. 627.736.

775 Section 13. Paragraph (a) of subsection (7) of section
776 400.9935, Florida Statutes, is amended, and subsection (10) is
777 added to that section, to read:

778 400.9935 Clinic responsibilities.--

779 (7) (a) Each clinic engaged in magnetic resonance imaging
780 services must be accredited by the Joint Commission on
781 Accreditation of Healthcare Organizations, the American College
782 of Radiology, or the Accreditation Association for Ambulatory
783 Health Care, within 1 year after licensure. A clinic that is
784 accredited by the American College of Radiology or is within the
785 original 1-year period after licensure and replaces its core
786 magnetic resonance imaging equipment shall be given 1 year after
787 the date upon which the equipment is replaced to attain
788 accreditation. However, a clinic may request a single, 6-month
789 extension if it provides evidence to the agency establishing
790 that, for good cause shown, such clinic cannot ~~can not~~ be
791 accredited within 1 year after licensure, and that such
792 accreditation will be completed within the 6-month extension.
793 After obtaining accreditation as required by this subsection,
794 each such clinic must maintain accreditation as a condition of
795 renewal of its license. A clinic that files a change of
796 ownership application must comply with the original
797 accreditation timeframe requirements of the transferor. The
798 agency shall deny a change of ownership application if the
799 clinic is not in compliance with the accreditation requirements.
800 When a clinic adds, replaces, or modifies magnetic resonance
801 imaging equipment and the accrediting organization requires new
802 accreditation, the clinic must be accredited within 1 year after
803 the date of the addition, replacement, or modification but may
804 request a single, 6-month extension if the clinic provides
805 evidence of good cause to the agency.

CS/CS/HB 651

2009

806 (10) Any clinic holding an active license and any entity
807 holding a current certificate of exemption may request a unique
808 identification number from the agency for the purposes of
809 submitting claims to personal injury protection insurance
810 carriers for services or treatment pursuant to part XI of
811 chapter 627. Upon request, the agency shall assign a unique
812 identification number to a clinic holding an active license or
813 an entity holding a current certificate of exemption. The agency
814 shall publish the identification number of each clinic and
815 entity on its Internet website in a searchable format that is
816 readily accessible to personal injury protection insurance
817 carriers for the purposes of s. 627.736(5)(b)1.g.

818 Section 14. Subsection (6) of section 400.995, Florida
819 Statutes, is amended to read:

820 400.995 Agency administrative penalties.--

821 (6) During an inspection, ~~the agency, as an alternative to~~
822 ~~or in conjunction with an administrative action against a clinic~~
823 ~~for violations of this part and adopted rules,~~ shall make a
824 reasonable attempt to discuss each violation and ~~recommended~~
825 ~~corrective action~~ with the owner, medical director, or clinic
826 director of the clinic, prior to written notification. ~~The~~
827 ~~agency, instead of fixing a period within which the clinic shall~~
828 ~~enter into compliance with standards,~~ may request a plan of
829 ~~corrective action from the clinic which demonstrates a good~~
830 ~~faith effort to remedy each violation by a specific date,~~
831 ~~subject to the approval of the agency.~~

832 Section 15. Subsections (5) and (9) of section 408.803,
833 Florida Statutes, are amended to read:

834 408.803 Definitions.--As used in this part, the term:

835 (5) "Change of ownership" means:

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

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

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

849
 850 A change solely in the management company or board of directors
 851 is not a change of ownership.

852 (9) "Licensee" means an individual, corporation,
 853 partnership, firm, association, ~~or~~ governmental entity, or other
 854 entity that is issued a permit, registration, certificate, or
 855 license by the agency. The licensee is legally responsible for
 856 all aspects of the provider operation.

857 Section 16. Paragraph (a) of subsection (1), subsection
 858 (2), paragraph (c) of subsection (7), and subsection (8) of
 859 section 408.806, Florida Statutes, are amended to read:

860 408.806 License application process.--

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

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

868 1. The applicant;

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

871 3. The financial officer or similarly titled person who is
872 responsible for the financial operation of the licensee or
873 provider; and

874 4. Each controlling interest if the applicant or
875 controlling interest is an individual.

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

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

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

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

907 (7)

908 (c) If an inspection is required by the authorizing
909 statute for a license application other than an initial
910 application, the inspection must be unannounced. This paragraph
911 does not apply to inspections required pursuant to ss. 383.324,
912 395.0161(4), 429.67(6), and 483.061(2).

913 (8) The agency may establish procedures for the electronic
914 notification and submission of required information, including,
915 but not limited to:

916 (a) Licensure applications.

- 917 (b) Required signatures.
- 918 (c) Payment of fees.
- 919 (d) Notarization of applications.

920

921 Requirements for electronic submission of any documents required

922 by this part or authorizing statutes may be established by rule.

923 As an alternative to sending documents as required by

924 authorizing statutes, the agency may provide electronic access

925 to information or documents.

926 Section 17. Subsection (2) of section 408.808, Florida

927 Statutes, is amended to read:

928 408.808 License categories.--

929 (2) PROVISIONAL LICENSE.--A provisional license may be

930 issued to an applicant pursuant to s. 408.809(3). An applicant

931 against whom a proceeding denying or revoking a license is

932 pending at the time of license renewal may be issued a

933 provisional license effective until final action not subject to

934 further appeal. A provisional license may also be issued to an

935 applicant applying for a change of ownership. A provisional

936 license shall be limited in duration to a specific period of

937 time, not to exceed 12 months, as determined by the agency.

938 Section 18. Subsection (5) of section 408.809, Florida

939 Statutes, is amended, and new subsections (5) and (6) are added

940 to that section, to read:

941 408.809 Background screening; prohibited offenses.--

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

943 listed in ss. 435.03 and 435.04, all persons required to undergo

944 background screening pursuant to this part or authorizing

945 statutes must not have been found guilty of, regardless of
946 adjudication, or entered a plea of nolo contendere or guilty to,
947 any of the following offenses or any similar offense of another
948 jurisdiction:

949 (a) A violation of any authorizing statutes, if the
950 offense was a felony.

951 (b) A violation of this chapter, if the offense was a
952 felony.

953 (c) A violation of s. 409.920, relating to Medicaid
954 provider fraud, if the offense was a felony.

955 (d) A violation of s. 409.9201, relating to Medicaid
956 fraud, if the offense was a felony.

957 (e) A violation of s. 741.28, relating to domestic
958 violence.

959 (f) A violation of chapter 784, relating to assault,
960 battery, and culpable negligence, if the offense was a felony.

961 (g) A violation of s. 810.02, relating to burglary.

962 (h) A violation of s. 817.034, relating to fraudulent acts
963 through mail, wire, radio, electromagnetic, photoelectronic, or
964 photooptical systems.

965 (i) A violation of s. 817.234, relating to false and
966 fraudulent insurance claims.

967 (j) A violation of s. 817.505, relating to patient
968 brokering.

969 (k) A violation of s. 817.568, relating to criminal use of
970 personal identification information.

971 (l) A violation of s. 817.60, relating to obtaining a
972 credit card through fraudulent means.

973 (m) A violation of s. 817.61, relating to fraudulent use
 974 of credit cards, if the offense was a felony.

975 (n) A violation of s. 831.01, relating to forgery.

976 (o) A violation of s. 831.02, relating to uttering forged
 977 instruments.

978 (p) A violation of s. 831.07, relating to forging bank
 979 bills, checks, drafts, or promissory notes.

980 (q) A violation of s. 831.09, relating to uttering forged
 981 bank bills, checks, drafts, or promissory notes.

982 (r) A violation of s. 831.30, relating to fraud in
 983 obtaining medicinal drugs.

984 (s) A violation of s. 831.31, relating to the sale,
 985 manufacture, delivery, or possession with the intent to sell,
 986 manufacture, or deliver any counterfeit controlled substance, if
 987 the offense was a felony.

988
 989 A person who serves as a controlling interest of or is employed
 990 by a licensee on September 30, 2009, shall not be required by
 991 law to submit to rescreening if that licensee has in its
 992 possession written evidence that the person has been screened
 993 and qualified according to the standards specified in s. 435.03
 994 or s. 435.04. However, if such person has been convicted of a
 995 disqualifying offense listed in this subsection, he or she may
 996 apply for an exemption from the appropriate licensing agency
 997 before September 30, 2009, and if agreed to by the employer, may
 998 continue to perform his or her duties until the licensing agency
 999 renders a decision on the application for exemption for an

1000 offense listed in this subsection. Exemptions from
 1001 disqualification may be granted pursuant to s. 435.07.

1002 (6) The attestations required under ss. 435.04(5) and
 1003 435.05(3) must be submitted at the time of license renewal,
 1004 notwithstanding the provisions of ss. 435.04(5) and 435.05(3)
 1005 which require annual submission of an affidavit of compliance
 1006 with background screening requirements.

1007 ~~(5) Background screening is not required to obtain a~~
 1008 ~~certificate of exemption issued under s. 483.106.~~

1009 Section 19. Subsection (3) of section 408.810, Florida
 1010 Statutes, is amended to read:

1011 408.810 Minimum licensure requirements.--In addition to
 1012 the licensure requirements specified in this part, authorizing
 1013 statutes, and applicable rules, each applicant and licensee must
 1014 comply with the requirements of this section in order to obtain
 1015 and maintain a license.

1016 (3) Unless otherwise specified in this part, authorizing
 1017 statutes, or applicable rules, any information required to be
 1018 reported to the agency must be submitted within 21 calendar days
 1019 after the report period or effective date of the information,
 1020 whichever is earlier, including, but not limited to, any change
 1021 of:

1022 (a) Information contained in the most recent application
 1023 for licensure.

1024 (b) Required insurance or bonds.

1025 Section 20. Present subsection (4) of section 408.811,
 1026 Florida Statutes, is renumbered as subsection (6), subsections

1027 (2) and (3) are amended, and new subsections (4) and (5) are
 1028 added to that section, to read:

1029 408.811 Right of inspection; copies; inspection reports;
 1030 plan for correction of deficiencies.--

1031 (2) Inspections conducted in conjunction with
 1032 certification, comparable licensure requirements, or a
 1033 recognized or approved accreditation organization may be
 1034 accepted in lieu of a complete licensure inspection. However, a
 1035 licensure inspection may also be conducted to review any
 1036 licensure requirements that are not also requirements for
 1037 certification.

1038 (3) The agency shall have access to and the licensee shall
 1039 provide, or if requested send, copies of all provider records
 1040 required during an inspection or other review at no cost to the
 1041 agency, including records requested during an offsite review.

1042 (4) Deficiencies must be corrected within 30 calendar days
 1043 after the provider is notified of inspection results unless an
 1044 alternative timeframe is required or approved by the agency.

1045 (5) The agency may require an applicant or licensee to
 1046 submit a plan of correction for deficiencies. If required, the
 1047 plan of correction must be filed with the agency within 10
 1048 calendar days after notification unless an alternative timeframe
 1049 is required.

1050 Section 21. Section 408.813, Florida Statutes, is amended
 1051 to read:

1052 408.813 Administrative fines; violations.--As a penalty
 1053 for any violation of this part, authorizing statutes, or
 1054 applicable rules, the agency may impose an administrative fine.

1055 (1) Unless the amount or aggregate limitation of the fine
 1056 is prescribed by authorizing statutes or applicable rules, the
 1057 agency may establish criteria by rule for the amount or
 1058 aggregate limitation of administrative fines applicable to this
 1059 part, authorizing statutes, and applicable rules. Each day of
 1060 violation constitutes a separate violation and is subject to a
 1061 separate fine, unless a per-violation fine is prescribed by law.
 1062 For fines imposed by final order of the agency and not subject
 1063 to further appeal, the violator shall pay the fine plus interest
 1064 at the rate specified in s. 55.03 for each day beyond the date
 1065 set by the agency for payment of the fine.

1066 (2) Violations of this part, authorizing statutes, or
 1067 applicable rules shall be classified according to the nature of
 1068 the violation and the gravity of its probable effect on clients.
 1069 The scope of a violation may be cited as an isolated, patterned,
 1070 or widespread deficiency. An isolated deficiency is a deficiency
 1071 affecting one or a very limited number of clients, or involving
 1072 one or a very limited number of staff, or a situation that
 1073 occurred only occasionally or in a very limited number of
 1074 locations. A patterned deficiency is a deficiency in which more
 1075 than a very limited number of clients are affected, or more than
 1076 a very limited number of staff are involved, or the situation
 1077 has occurred in several locations, or the same client or clients
 1078 have been affected by repeated occurrences of the same deficient
 1079 practice but the effect of the deficient practice is not found
 1080 to be pervasive throughout the provider. A widespread deficiency
 1081 is a deficiency in which the problems causing the deficiency are
 1082 pervasive in the provider or represent systemic failure that has

1083 affected or has the potential to affect a large portion of the
 1084 provider's clients. This subsection does not affect the
 1085 legislative determination of the amount of a fine imposed under
 1086 authorizing statutes. Violations shall be classified on the
 1087 written notice as follows:

1088 (a) Class "I" violations are those conditions or
 1089 occurrences related to the operation and maintenance of a
 1090 provider or to the care of clients which the agency determines
 1091 present an imminent danger to the clients of the provider or a
 1092 substantial probability that death or serious physical or
 1093 emotional harm would result therefrom. The condition or practice
 1094 constituting a class I violation shall be abated or eliminated
 1095 within 24 hours, unless a fixed period, as determined by the
 1096 agency, is required for correction. The agency shall impose an
 1097 administrative fine as provided by law for a cited class I
 1098 violation. A fine shall be levied notwithstanding the correction
 1099 of the violation.

1100 (b) Class "II" violations are those conditions or
 1101 occurrences related to the operation and maintenance of a
 1102 provider or to the care of clients which the agency determines
 1103 directly threaten the physical or emotional health, safety, or
 1104 security of the clients, other than class I violations. The
 1105 agency shall impose an administrative fine as provided by law
 1106 for a cited class II violation. A fine shall be levied
 1107 notwithstanding the correction of the violation.

1108 (c) Class "III" violations are those conditions or
 1109 occurrences related to the operation and maintenance of a
 1110 provider or to the care of clients which the agency determines

1111 indirectly or potentially threaten the physical or emotional
1112 health, safety, or security of clients, other than class I or
1113 class II violations. The agency shall impose an administrative
1114 fine as provided by law for a cited class III violation. A
1115 citation for a class III violation must specify the time within
1116 which the violation is required to be corrected. If a class III
1117 violation is corrected within the time specified, a fine may not
1118 be imposed.

1119 (d) Class "IV" violations are those conditions or
1120 occurrences related to the operation and maintenance of a
1121 provider or to required reports, forms, or documents that do not
1122 have the potential of negatively affecting clients. These
1123 violations are of a type that the agency determines do not
1124 threaten the health, safety, or security of clients. The agency
1125 shall impose an administrative fine as provided by law for a
1126 cited class IV violation. A citation for a class IV violation
1127 must specify the time within which the violation is required to
1128 be corrected. If a class IV violation is corrected within the
1129 time specified, a fine may not be imposed.

1130 Section 22. Subsections (12) through (16) of section
1131 408.820, Florida Statutes, are renumbered as subsections (11)
1132 through (15), respectively, subsections (18) through (26) are
1133 renumbered as subsections (16) through (24), respectively,
1134 subsections (28) and (29) are renumbered as subsections (25) and
1135 (26), respectively, and present subsections (11), (12), (17),
1136 (21), (26), and (27) of that section are amended to read:

1137 408.820 Exemptions.--Except as prescribed in authorizing
 1138 statutes, the following exemptions shall apply to specified
 1139 requirements of this part:

1140 ~~(11) Private review agents, as provided under part I of~~
 1141 ~~chapter 395, are exempt from ss. 408.806(7), 408.810, and~~
 1142 ~~408.811.~~

1143 (11)~~(12)~~ Health care risk managers, as provided under part
 1144 I of chapter 395, are exempt from ss. 408.806(7), 408.810(4)-
 1145 (10), and 408.811.

1146 ~~(17) Companion services or homemaker services providers,~~
 1147 ~~as provided under part III of chapter 400, are exempt from s.~~
 1148 ~~408.810(6)-(10).~~

1149 (19)~~(21)~~ Transitional living facilities, as provided under
 1150 part V of chapter 400, are exempt from s. 408.810~~(7)~~(10).

1151 (24)~~(26)~~ Health care clinics, as provided under part X of
 1152 chapter 400, are exempt from s. ss. 408.809 and 408.810(1), (6),
 1153 (7), and (10).

1154 ~~(27) Clinical laboratories, as provided under part I of~~
 1155 ~~chapter 483, are exempt from s. 408.810(5)-(10).~~

1156 Section 23. Section 408.821, Florida Statutes, is created
 1157 to read:

1158 408.821 Emergency management planning; emergency
 1159 operations; inactive license.--

1160 (1) Licensees required by authorizing statutes to have an
 1161 emergency operations plan must designate a safety liaison to
 1162 serve as the primary contact for emergency operations.

1163 (2) An entity subject to this part may temporarily exceed
 1164 its licensed capacity to act as a receiving provider in

1165 accordance with an approved emergency operations plan for up to
1166 15 days. While in an overcapacity status, each provider must
1167 furnish or arrange for appropriate care and services to all
1168 clients. In addition, the agency may approve requests for
1169 overcapacity in excess of 15 days, which approvals may be based
1170 upon satisfactory justification and need as provided by the
1171 receiving and sending providers.

1172 (3) (a) An inactive license may be issued to a licensee
1173 subject to this section when the provider is located in a
1174 geographic area in which a state of emergency was declared by
1175 the Governor if the provider:

1176 1. Suffered damage to its operation during the state of
1177 emergency.

1178 2. Is currently licensed.

1179 3. Does not have a provisional license.

1180 4. Will be temporarily unable to provide services but is
1181 reasonably expected to resume services within 12 months.

1182 (b) An inactive license may be issued for a period not to
1183 exceed 12 months but may be renewed by the agency for up to 12
1184 additional months upon demonstration to the agency of progress
1185 toward reopening. A request by a licensee for an inactive
1186 license or to extend the previously approved inactive period
1187 must be submitted in writing to the agency, accompanied by
1188 written justification for the inactive license, which states the
1189 beginning and ending dates of inactivity and includes a plan for
1190 the transfer of any clients to other providers and appropriate
1191 licensure fees. Upon agency approval, the licensee shall notify
1192 clients of any necessary discharge or transfer as required by

1193 authorizing statutes or applicable rules. The beginning of the
 1194 inactive licensure period shall be the date the provider ceases
 1195 operations. The end of the inactive period shall become the
 1196 license expiration date, and all licensure fees must be current,
 1197 must be paid in full, and may be prorated. Reactivation of an
 1198 inactive license requires the prior approval by the agency of a
 1199 renewal application, including payment of licensure fees and
 1200 agency inspections indicating compliance with all requirements
 1201 of this part and applicable rules and statutes.

1202 (4) The agency may adopt rules relating to emergency
 1203 management planning, communications, and operations. Licensees
 1204 providing residential or inpatient services must utilize an
 1205 online database approved by the agency to report information to
 1206 the agency regarding the provider's emergency status, planning,
 1207 or operations.

1208 Section 24. Subsections (3), (4), and (5) of section
 1209 408.831, Florida Statutes, are amended to read:

1210 408.831 Denial, suspension, or revocation of a license,
 1211 registration, certificate, or application.--

1212 ~~(3) An entity subject to this section may exceed its~~
 1213 ~~licensed capacity to act as a receiving facility in accordance~~
 1214 ~~with an emergency operations plan for clients of evacuating~~
 1215 ~~providers from a geographic area where an evacuation order has~~
 1216 ~~been issued by a local authority having jurisdiction. While in~~
 1217 ~~an overcapacity status, each provider must furnish or arrange~~
 1218 ~~for appropriate care and services to all clients. In addition,~~
 1219 ~~the agency may approve requests for overcapacity beyond 15 days,~~

1220 ~~which approvals may be based upon satisfactory justification and~~
 1221 ~~need as provided by the receiving and sending facilities.~~

1222 ~~(4) (a) An inactive license may be issued to a licensee~~
 1223 ~~subject to this section when the provider is located in a~~
 1224 ~~geographic area where a state of emergency was declared by the~~
 1225 ~~Governor if the provider:~~

1226 ~~1. Suffered damage to its operation during that state of~~
 1227 ~~emergency.~~

1228 ~~2. Is currently licensed.~~

1229 ~~3. Does not have a provisional license.~~

1230 ~~4. Will be temporarily unable to provide services but is~~
 1231 ~~reasonably expected to resume services within 12 months.~~

1232 ~~(b) An inactive license may be issued for a period not to~~
 1233 ~~exceed 12 months but may be renewed by the agency for up to 12~~
 1234 ~~additional months upon demonstration to the agency of progress~~
 1235 ~~toward reopening. A request by a licensee for an inactive~~
 1236 ~~license or to extend the previously approved inactive period~~
 1237 ~~must be submitted in writing to the agency, accompanied by~~
 1238 ~~written justification for the inactive license, which states the~~
 1239 ~~beginning and ending dates of inactivity and includes a plan for~~
 1240 ~~the transfer of any clients to other providers and appropriate~~
 1241 ~~licensure fees. Upon agency approval, the licensee shall notify~~
 1242 ~~clients of any necessary discharge or transfer as required by~~
 1243 ~~authorizing statutes or applicable rules. The beginning of the~~
 1244 ~~inactive licensure period shall be the date the provider ceases~~
 1245 ~~operations. The end of the inactive period shall become the~~
 1246 ~~licensee expiration date, and all licensure fees must be~~
 1247 ~~current, paid in full, and may be prorated. Reactivation of an~~

1248 ~~inactive license requires the prior approval by the agency of a~~
 1249 ~~renewal application, including payment of licensure fees and~~
 1250 ~~agency inspections indicating compliance with all requirements~~
 1251 ~~of this part and applicable rules and statutes.~~

1252 (3)~~(5)~~ This section provides standards of enforcement
 1253 applicable to all entities licensed or regulated by the Agency
 1254 for Health Care Administration. This section controls over any
 1255 conflicting provisions of chapters 39, 383, 390, 391, 394, 395,
 1256 400, 408, 429, 468, 483, and 765 or rules adopted pursuant to
 1257 those chapters.

1258 Section 25. Paragraph (e) of subsection (4) of section
 1259 409.221, Florida Statutes, is amended to read:

1260 409.221 Consumer-directed care program.--

1261 (4) CONSUMER-DIRECTED CARE.--

1262 (e) Services.--Consumers shall use the budget allowance
 1263 only to pay for home and community-based services that meet the
 1264 consumer's long-term care needs and are a cost-efficient use of
 1265 funds. Such services may include, but are not limited to, the
 1266 following:

- 1267 1. Personal care.
- 1268 2. Homemaking and chores, including housework, meals,
 1269 shopping, and transportation.
- 1270 3. Home modifications and assistive devices which may
 1271 increase the consumer's independence or make it possible to
 1272 avoid institutional placement.
- 1273 4. Assistance in taking self-administered medication.
- 1274 5. Day care and respite care services, including those
 1275 provided by nursing home facilities pursuant to s.

1276 400.141(1)(f)~~(6)~~ or by adult day care facilities licensed
 1277 pursuant to s. 429.907.

1278 6. Personal care and support services provided in an
 1279 assisted living facility.

1280 Section 26. Subsection (5) of section 409.901, Florida
 1281 Statutes, is amended to read:

1282 409.901 Definitions; ss. 409.901-409.920.--As used in ss.
 1283 409.901-409.920, except as otherwise specifically provided, the
 1284 term:

1285 (5) "Change of ownership" means:

1286 (a) An event in which the provider ownership changes to a
 1287 different individual legal entity, as evidenced by a change in
 1288 federal employer identification number or taxpayer
 1289 identification number; ~~or~~

1290 (b) An event in which 51 45 percent or more of the
 1291 ownership, voting shares, membership, or controlling interest of
 1292 a provider is in any manner transferred or otherwise assigned.

1293 This paragraph does not apply to a licensee that is publicly
 1294 traded on a recognized stock exchange; or

1295 (c) When the provider is licensed or registered by the
 1296 agency, an event considered a change of ownership for licensure
 1297 as defined in s. 408.803 in a corporation whose shares are not
 1298 publicly traded on a recognized stock exchange is transferred or
 1299 assigned, including the final transfer or assignment of multiple
 1300 transfers or assignments over a 2-year period that cumulatively
 1301 total 45 percent or more.

1302

CS/CS/HB 651

2009

1303 A change solely in the management company or board of directors
 1304 is not a change of ownership.

1305 Section 27. Section 429.071, Florida Statutes, is
 1306 repealed.

1307 Section 28. Paragraph (e) of subsection (1) and
 1308 subsections (2) and (3) of section 429.08, Florida Statutes, are
 1309 amended to read:

1310 429.08 Unlicensed facilities; referral of person for
 1311 residency to unlicensed facility; penalties; verification of
 1312 licensure status.--

1313 (1)

1314 (e) The agency shall publish ~~provide to the department's~~
 1315 ~~elder information and referral providers a list, by county, of~~
 1316 ~~licensed assisted living facilities, to assist persons who are~~
 1317 ~~considering an assisted living facility placement in locating a~~
 1318 ~~licensed facility. This information may be provided~~
 1319 electronically or on the agency's Internet website.

1320 ~~(2) Each field office of the Agency for Health Care~~
 1321 ~~Administration shall establish a local coordinating workgroup~~
 1322 ~~which includes representatives of local law enforcement~~
 1323 ~~agencies, state attorneys, the Medicaid Fraud Control Unit of~~
 1324 ~~the Department of Legal Affairs, local fire authorities, the~~
 1325 ~~Department of Children and Family Services, the district long-~~
 1326 ~~term care ombudsman council, and the district human rights~~
 1327 ~~advocacy committee to assist in identifying the operation of~~
 1328 ~~unlicensed facilities and to develop and implement a plan to~~
 1329 ~~ensure effective enforcement of state laws relating to such~~
 1330 ~~facilities. The workgroup shall report its findings, actions,~~

CS/CS/HB 651

2009

1331 ~~and recommendations semiannually to the Director of Health~~
1332 ~~Quality Assurance of the agency.~~

1333 (2)~~(3)~~ It is unlawful to knowingly refer a person for
1334 residency to an unlicensed assisted living facility; to an
1335 assisted living facility the license of which is under denial or
1336 has been suspended or revoked; or to an assisted living facility
1337 that has a moratorium pursuant to part II of chapter 408. ~~Any~~
1338 ~~person who violates this subsection commits a noncriminal~~
1339 ~~violation, punishable by a fine not exceeding \$500 as provided~~
1340 ~~in s. 775.083.~~

1341 (a) Any health care practitioner, as defined in s.
1342 456.001, who is aware of the operation of an unlicensed facility
1343 shall report that facility to the agency. Failure to report a
1344 facility that the practitioner knows or has reasonable cause to
1345 suspect is unlicensed shall be reported to the practitioner's
1346 licensing board.

1347 (b) Any provider as defined in s. 408.803 that ~~hospital or~~
1348 ~~community mental health center licensed under chapter 395 or~~
1349 ~~chapter 394 which~~ knowingly discharges a patient or client to an
1350 unlicensed facility is subject to sanction by the agency.

1351 (c) Any employee of the agency or department, or the
1352 Department of Children and Family Services, who knowingly refers
1353 a person for residency to an unlicensed facility; to a facility
1354 the license of which is under denial or has been suspended or
1355 revoked; or to a facility that has a moratorium pursuant to part
1356 II of chapter 408 is subject to disciplinary action by the
1357 agency or department, or the Department of Children and Family
1358 Services.

1359 (d) The employer of any person who is under contract with
 1360 the agency or department, or the Department of Children and
 1361 Family Services, and who knowingly refers a person for residency
 1362 to an unlicensed facility; to a facility the license of which is
 1363 under denial or has been suspended or revoked; or to a facility
 1364 that has a moratorium pursuant to part II of chapter 408 shall
 1365 be fined and required to prepare a corrective action plan
 1366 designed to prevent such referrals.

1367 ~~(e) The agency shall provide the department and the~~
 1368 ~~Department of Children and Family Services with a list of~~
 1369 ~~licensed facilities within each county and shall update the list~~
 1370 ~~at least quarterly.~~

1371 ~~(f) At least annually, the agency shall notify, in~~
 1372 ~~appropriate trade publications, physicians licensed under~~
 1373 ~~chapter 458 or chapter 459, hospitals licensed under chapter~~
 1374 ~~395, nursing home facilities licensed under part II of chapter~~
 1375 ~~400, and employees of the agency or the department, or the~~
 1376 ~~Department of Children and Family Services, who are responsible~~
 1377 ~~for referring persons for residency, that it is unlawful to~~
 1378 ~~knowingly refer a person for residency to an unlicensed assisted~~
 1379 ~~living facility and shall notify them of the penalty for~~
 1380 ~~violating such prohibition. The department and the Department of~~
 1381 ~~Children and Family Services shall, in turn, notify service~~
 1382 ~~providers under contract to the respective departments who have~~
 1383 ~~responsibility for resident referrals to facilities. Further,~~
 1384 ~~the notice must direct each noticed facility and individual to~~
 1385 ~~contact the appropriate agency office in order to verify the~~
 1386 ~~licensure status of any facility prior to referring any person~~

1387 ~~for residency. Each notice must include the name, telephone~~
 1388 ~~number, and mailing address of the appropriate office to~~
 1389 ~~contact.~~

1390 Section 29. Paragraph (e) of subsection (1) of section
 1391 429.14, Florida Statutes, is amended to read:

1392 429.14 Administrative penalties.--

1393 (1) In addition to the requirements of part II of chapter
 1394 408, the agency may deny, revoke, and suspend any license issued
 1395 under this part and impose an administrative fine in the manner
 1396 provided in chapter 120 against a licensee of an assisted living
 1397 facility for a violation of any provision of this part, part II
 1398 of chapter 408, or applicable rules, or for any of the following
 1399 actions by a licensee of an assisted living facility, for the
 1400 actions of any person subject to level 2 background screening
 1401 under s. 408.809, or for the actions of any facility employee:

1402 (e) A citation of any of the following deficiencies as
 1403 specified ~~defined~~ in s. 429.19:

- 1404 1. One or more cited class I deficiencies.
- 1405 2. Three or more cited class II deficiencies.
- 1406 3. Five or more cited class III deficiencies that have
 1407 been cited on a single survey and have not been corrected within
 1408 the times specified.

1409 Section 30. Subsections (2), (8), and (9) of section
 1410 429.19, Florida Statutes, are amended to read:

1411 429.19 Violations; imposition of administrative fines;
 1412 grounds.--

1413 (2) Each violation of this part and adopted rules shall be
 1414 classified according to the nature of the violation and the

CS/CS/HB 651

2009

1415 gravity of its probable effect on facility residents. The agency
1416 shall indicate the classification on the written notice of the
1417 violation as follows:

1418 (a) Class "I" violations are defined in s. 408.813 ~~those~~
1419 ~~conditions or occurrences related to the operation and~~
1420 ~~maintenance of a facility or to the personal care of residents~~
1421 ~~which the agency determines present an imminent danger to the~~
1422 ~~residents or guests of the facility or a substantial probability~~
1423 ~~that death or serious physical or emotional harm would result~~
1424 ~~therefrom. The condition or practice constituting a class I~~
1425 ~~violation shall be abated or eliminated within 24 hours, unless~~
1426 ~~a fixed period, as determined by the agency, is required for~~
1427 ~~correction.~~ The agency shall impose an administrative fine for a
1428 cited class I violation in an amount not less than \$5,000 and
1429 not exceeding \$10,000 for each violation. ~~A fine may be levied~~
1430 ~~notwithstanding the correction of the violation.~~

1431 (b) Class "II" violations are defined in s. 408.813 ~~those~~
1432 ~~conditions or occurrences related to the operation and~~
1433 ~~maintenance of a facility or to the personal care of residents~~
1434 ~~which the agency determines directly threaten the physical or~~
1435 ~~emotional health, safety, or security of the facility residents,~~
1436 ~~other than class I violations.~~ The agency shall impose an
1437 administrative fine for a cited class II violation in an amount
1438 not less than \$1,000 and not exceeding \$5,000 for each
1439 violation. ~~A fine shall be levied notwithstanding the correction~~
1440 ~~of the violation.~~

1441 (c) Class "III" violations are defined in s. 408.813 ~~those~~
1442 ~~conditions or occurrences related to the operation and~~

CS/CS/HB 651

2009

1443 ~~maintenance of a facility or to the personal care of residents~~
1444 ~~which the agency determines indirectly or potentially threaten~~
1445 ~~the physical or emotional health, safety, or security of~~
1446 ~~facility residents, other than class I or class II violations.~~
1447 The agency shall impose an administrative fine for a cited class
1448 III violation in an amount not less than \$500 and not exceeding
1449 \$1,000 for each violation. ~~A citation for a class III violation~~
1450 ~~must specify the time within which the violation is required to~~
1451 ~~be corrected. If a class III violation is corrected within the~~
1452 ~~time specified, no fine may be imposed, unless it is a repeated~~
1453 ~~offense.~~

1454 (d) Class "IV" violations are defined in s. 408.813 ~~those~~
1455 ~~conditions or occurrences related to the operation and~~
1456 ~~maintenance of a building or to required reports, forms, or~~
1457 ~~documents that do not have the potential of negatively affecting~~
1458 ~~residents. These violations are of a type that the agency~~
1459 ~~determines do not threaten the health, safety, or security of~~
1460 ~~residents of the facility.~~ The agency shall impose an
1461 administrative fine for a cited class IV violation in an amount
1462 not less than \$100 and not exceeding \$200 for each violation. A
1463 ~~citation for a class IV violation must specify the time within~~
1464 ~~which the violation is required to be corrected. If a class IV~~
1465 ~~violation is corrected within the time specified, no fine shall~~
1466 ~~be imposed. Any class IV violation that is corrected during the~~
1467 ~~time an agency survey is being conducted will be identified as~~
1468 ~~an agency finding and not as a violation.~~

1469 (8) During an inspection, ~~the agency, as an alternative to~~
1470 ~~or in conjunction with an administrative action against a~~

CS/CS/HB 651

2009

1471 ~~facility for violations of this part and adopted rules, shall~~
1472 ~~make a reasonable attempt to discuss each violation and~~
1473 ~~recommended corrective action with the owner or administrator of~~
1474 ~~the facility, prior to written notification. The agency, instead~~
1475 ~~of fixing a period within which the facility shall enter into~~
1476 ~~compliance with standards, may request a plan of corrective~~
1477 ~~action from the facility which demonstrates a good faith effort~~
1478 ~~to remedy each violation by a specific date, subject to the~~
1479 ~~approval of the agency.~~

1480 (9) The agency shall develop and disseminate an annual
1481 list of all facilities sanctioned or fined ~~\$5,000 or more~~ for
1482 violations of state standards, the number and class of
1483 violations involved, the penalties imposed, and the current
1484 status of cases. The list shall be disseminated, at no charge,
1485 to the Department of Elderly Affairs, the Department of Health,
1486 the Department of Children and Family Services, the Agency for
1487 Persons with Disabilities, the area agencies on aging, the
1488 Florida Statewide Advocacy Council, and the state and local
1489 ombudsman councils. The Department of Children and Family
1490 Services shall disseminate the list to service providers under
1491 contract to the department who are responsible for referring
1492 persons to a facility for residency. The agency may charge a fee
1493 commensurate with the cost of printing and postage to other
1494 interested parties requesting a copy of this list. This
1495 information may be provided electronically or on the agency's
1496 Internet website.

1497 Section 31. Subsections (2) and (6) of section 429.23,
1498 Florida Statutes, are amended to read:

1499 429.23 Internal risk management and quality assurance
 1500 program; adverse incidents and reporting requirements.--
 1501 (2) Every facility licensed under this part is required to
 1502 maintain adverse incident reports. For purposes of this section,
 1503 the term, "adverse incident" means:
 1504 (a) An event over which facility personnel could exercise
 1505 control rather than as a result of the resident's condition and
 1506 results in:
 1507 1. Death;
 1508 2. Brain or spinal damage;
 1509 3. Permanent disfigurement;
 1510 4. Fracture or dislocation of bones or joints;
 1511 5. Any condition that required medical attention to which
 1512 the resident has not given his or her consent, including failure
 1513 to honor advanced directives;
 1514 6. Any condition that requires the transfer of the
 1515 resident from the facility to a unit providing more acute care
 1516 due to the incident rather than the resident's condition before
 1517 the incident; or-
 1518 7. An event that is reported to law enforcement or its
 1519 personnel for investigation; or
 1520 ~~(b) Abuse, neglect, or exploitation as defined in s.~~
 1521 ~~415.102;~~
 1522 ~~(c) Events reported to law enforcement; or~~
 1523 (b)(d) Resident elopement, if the elopement places the
 1524 resident at risk of harm or injury.
 1525 (6) Abuse, neglect, or exploitation must be reported to
 1526 the Department of Children and Family Services as required under

1527 chapter 415. ~~The agency shall annually submit to the Legislature~~
 1528 ~~a report on assisted living facility adverse incident reports.~~
 1529 ~~The report must include the following information arranged by~~
 1530 ~~county:~~

1531 ~~(a) A total number of adverse incidents;~~

1532 ~~(b) A listing, by category, of the type of adverse~~
 1533 ~~incidents occurring within each category and the type of staff~~
 1534 ~~involved;~~

1535 ~~(c) A listing, by category, of the types of injuries, if~~
 1536 ~~any, and the number of injuries occurring within each category;~~

1537 ~~(d) Types of liability claims filed based on an adverse~~
 1538 ~~incident report or reportable injury; and~~

1539 ~~(e) Disciplinary action taken against staff, categorized~~
 1540 ~~by the type of staff involved.~~

1541 Section 32. Subsections (10) through (12) of section
 1542 429.26, Florida Statutes, are renumbered as subsections (9)
 1543 through (11), respectively, and present subsection (9) of that
 1544 section is amended to read:

1545 429.26 Appropriateness of placements; examinations of
 1546 residents.--

1547 ~~(9) If, at any time after admission to a facility, a~~
 1548 ~~resident appears to need care beyond that which the facility is~~
 1549 ~~licensed to provide, the agency shall require the resident to be~~
 1550 ~~physically examined by a licensed physician, physician~~
 1551 ~~assistant, or licensed nurse practitioner. This examination~~
 1552 ~~shall, to the extent possible, be performed by the resident's~~
 1553 ~~preferred physician or nurse practitioner and shall be paid for~~
 1554 ~~by the resident with personal funds, except as provided in s.~~

CS/CS/HB 651

2009

1555 ~~429.18(2). Following this examination, the examining physician,~~
1556 ~~physician assistant, or licensed nurse practitioner shall~~
1557 ~~complete and sign a medical form provided by the agency. The~~
1558 ~~completed medical form shall be submitted to the agency within~~
1559 ~~30 days after the date the facility owner or administrator is~~
1560 ~~notified by the agency that the physical examination is~~
1561 ~~required. After consultation with the physician, physician~~
1562 ~~assistant, or licensed nurse practitioner who performed the~~
1563 ~~examination, a medical review team designated by the agency~~
1564 ~~shall then determine whether the resident is appropriately~~
1565 ~~residing in the facility. The medical review team shall base its~~
1566 ~~decision on a comprehensive review of the resident's physical~~
1567 ~~and functional status, including the resident's preferences, and~~
1568 ~~not on an isolated health-related problem. In the case of a~~
1569 ~~mental health resident, if the resident appears to have needs in~~
1570 ~~addition to those identified in the community living support~~
1571 ~~plan, the agency may require an evaluation by a mental health~~
1572 ~~professional, as determined by the Department of Children and~~
1573 ~~Family Services. A facility may not be required to retain a~~
1574 ~~resident who requires more services or care than the facility is~~
1575 ~~able to provide in accordance with its policies and criteria for~~
1576 ~~admission and continued residency. Members of the medical review~~
1577 ~~team making the final determination may not include the agency~~
1578 ~~personnel who initially questioned the appropriateness of a~~
1579 ~~resident's placement. Such determination is final and binding~~
1580 ~~upon the facility and the resident. Any resident who is~~
1581 ~~determined by the medical review team to be inappropriately~~
1582 ~~residing in a facility shall be given 30 days' written notice to~~

1583 ~~relocate by the owner or administrator, unless the resident's~~
 1584 ~~continued residence in the facility presents an imminent danger~~
 1585 ~~to the health, safety, or welfare of the resident or a~~
 1586 ~~substantial probability exists that death or serious physical~~
 1587 ~~harm would result to the resident if allowed to remain in the~~
 1588 ~~facility.~~

1589 Section 33. Paragraph (h) of subsection (3) of section
 1590 430.80, Florida Statutes, is amended to read:

1591 430.80 Implementation of a teaching nursing home pilot
 1592 project.--

1593 (3) To be designated as a teaching nursing home, a nursing
 1594 home licensee must, at a minimum:

1595 (h) Maintain insurance coverage pursuant to s.
 1596 400.141(1)(s) ~~(20)~~ or proof of financial responsibility in a
 1597 minimum amount of \$750,000. Such proof of financial
 1598 responsibility may include:

1599 1. Maintaining an escrow account consisting of cash or
 1600 assets eligible for deposit in accordance with s. 625.52; or

1601 2. Obtaining and maintaining pursuant to chapter 675 an
 1602 unexpired, irrevocable, nontransferable and nonassignable letter
 1603 of credit issued by any bank or savings association organized
 1604 and existing under the laws of this state or any bank or savings
 1605 association organized under the laws of the United States that
 1606 has its principal place of business in this state or has a
 1607 branch office which is authorized to receive deposits in this
 1608 state. The letter of credit shall be used to satisfy the
 1609 obligation of the facility to the claimant upon presentment of a
 1610 final judgment indicating liability and awarding damages to be

CS/CS/HB 651

2009

1611 paid by the facility or upon presentment of a settlement
1612 agreement signed by all parties to the agreement when such final
1613 judgment or settlement is a result of a liability claim against
1614 the facility.

1615 Section 34. Subsection (5) of section 435.04, Florida
1616 Statutes, is amended to read:

1617 435.04 Level 2 screening standards.--

1618 (5) Under penalty of perjury, all employees in such
1619 positions of trust or responsibility shall attest to meeting the
1620 requirements for qualifying for employment and agreeing to
1621 inform the employer immediately if convicted of any of the
1622 disqualifying offenses while employed by the employer. Each
1623 employer of employees in such positions of trust or
1624 responsibilities which is licensed or registered by a state
1625 agency shall submit to the licensing agency annually or at the
1626 time of license renewal, under penalty of perjury, an affidavit
1627 of compliance with the provisions of this section.

1628 Section 35. Subsection (3) of section 435.05, Florida
1629 Statutes, is amended to read:

1630 435.05 Requirements for covered employees.--Except as
1631 otherwise provided by law, the following requirements shall
1632 apply to covered employees:

1633 (3) Each employer required to conduct level 2 background
1634 screening must sign an affidavit annually or at the time of
1635 license renewal, under penalty of perjury, stating that all
1636 covered employees have been screened or are newly hired and are
1637 awaiting the results of the required screening checks.

1638 Section 36. Subsection (2) of section 483.031, Florida
 1639 Statutes, is amended to read:

1640 483.031 Application of part; exemptions.--This part
 1641 applies to all clinical laboratories within this state, except:

1642 (2) A clinical laboratory that performs only waived tests
 1643 ~~and has received a certificate of exemption from the agency~~
 1644 ~~under s. 483.106.~~

1645 Section 37. Subsection (10) of section 483.041, Florida
 1646 Statutes, is amended to read:

1647 483.041 Definitions.--As used in this part, the term:

1648 (10) "Waived test" means a test that the federal Centers
 1649 for Medicare and Medicaid Services Health Care Financing
 1650 ~~Administration~~ has determined qualifies for a certificate of
 1651 waiver under the federal Clinical Laboratory Improvement
 1652 Amendments of 1988, and the federal rules adopted thereunder.

1653 Section 38. Section 483.106, Florida Statutes, is
 1654 repealed.

1655 Section 39. Subsection (3) of section 483.172, Florida
 1656 Statutes, is amended to read:

1657 483.172 License fees.--

1658 (3) The agency shall assess ~~a biennial fee of \$100 for a~~
 1659 ~~certificate of exemption and a \$100~~ biennial license fee under
 1660 this section for facilities surveyed by an approved accrediting
 1661 organization.

1662 Section 40. Paragraph (b) of subsection (1) of section
 1663 627.4239, Florida Statutes, is amended to read:

1664 627.4239 Coverage for use of drugs in treatment of
 1665 cancer.--

1666 (1) DEFINITIONS.--As used in this section, the term:

1667 (b) "Standard reference compendium" means authoritative
 1668 compendia identified by the Secretary of the United States
 1669 Department of Health and Human Services and recognized by the
 1670 federal Centers for Medicare and Medicaid Services;

1671 ~~1. The United States Pharmacopeia Drug Information;~~
 1672 ~~2. The American Medical Association Drug Evaluations; or~~
 1673 ~~3. The American Hospital Formulary Service Drug~~
 1674 ~~Information.~~

1675 Section 41. Paragraph (b) of subsection (5) of section
 1676 627.736, Florida Statutes, is amended to read:

1677 627.736 Required personal injury protection benefits;
 1678 exclusions; priority; claims.--

1679 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

1680 (b)1. An insurer or insured is not required to pay a claim
 1681 or charges:

1682 a. Made by a broker or by a person making a claim on
 1683 behalf of a broker;

1684 b. For any service or treatment that was not lawful at the
 1685 time rendered;

1686 c. To any person who knowingly submits a false or
 1687 misleading statement relating to the claim or charges;

1688 d. With respect to a bill or statement that does not
 1689 substantially meet the applicable requirements of paragraph (d);

1690 e. For any treatment or service that is upcoded, or that
 1691 is unbundled when such treatment or services should be bundled,
 1692 in accordance with paragraph (d). To facilitate prompt payment
 1693 of lawful services, an insurer may change codes that it

1694 determines to have been improperly or incorrectly upcoded or
 1695 unbundled, and may make payment based on the changed codes,
 1696 without affecting the right of the provider to dispute the
 1697 change by the insurer, provided that before doing so, the
 1698 insurer must contact the health care provider and discuss the
 1699 reasons for the insurer's change and the health care provider's
 1700 reason for the coding, or make a reasonable good faith effort to
 1701 do so, as documented in the insurer's file; ~~and~~

1702 f. For medical services or treatment billed by a physician
 1703 and not provided in a hospital unless such services are rendered
 1704 by the physician or are incident to his or her professional
 1705 services and are included on the physician's bill, including
 1706 documentation verifying that the physician is responsible for
 1707 the medical services that were rendered and billed; and

1708 g. For any service or treatment billed by a provider not
 1709 holding an identification number issued by the agency pursuant
 1710 to s. 400.9935(10).

1711 2. The Department of Health, in consultation with the
 1712 appropriate professional licensing boards, shall adopt, by rule,
 1713 a list of diagnostic tests deemed not to be medically necessary
 1714 for use in the treatment of persons sustaining bodily injury
 1715 covered by personal injury protection benefits under this
 1716 section. The initial list shall be adopted by January 1, 2004,
 1717 and shall be revised from time to time as determined by the
 1718 Department of Health, in consultation with the respective
 1719 professional licensing boards. Inclusion of a test on the list
 1720 of invalid diagnostic tests shall be based on lack of
 1721 demonstrated medical value and a level of general acceptance by

CS/CS/HB 651

2009

1722 the relevant provider community and shall not be dependent for
 1723 results entirely upon subjective patient response.
 1724 Notwithstanding its inclusion on a fee schedule in this
 1725 subsection, an insurer or insured is not required to pay any
 1726 charges or reimburse claims for any invalid diagnostic test as
 1727 determined by the Department of Health.

1728 Section 42. Subsection (13) of section 651.118, Florida
 1729 Statutes, is amended to read:

1730 651.118 Agency for Health Care Administration;
 1731 certificates of need; sheltered beds; community beds.--

1732 (13) Residents, as defined in this chapter, are not
 1733 considered new admissions for the purpose of s.

1734 400.141(1)(o)1.d.~~(15)(d).~~

1735 Section 43. This act shall take effect upon becoming a
 1736 law.