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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2010	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (e) of subsection (10) of section 112.0455, Florida Statutes, is repealed.

Section 2. Section 383.325, Florida Statutes, is repealed.

Section 3. Section 395.1046, Florida Statutes, is repealed.

Section 4. Section 395.3037, Florida Statutes, is repealed.

Section 5. Paragraph (g) of subsection (2) of section 400.0239, Florida Statutes, is amended to read:

400.0239 Quality of Long-Term Care Facility Improvement



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13 Trust Fund.—

14 (2) Expenditures from the trust fund shall be allowable for
15 direct support of the following:

16 (g) Other initiatives authorized by the Centers for
17 Medicare and Medicaid Services for the use of federal civil
18 monetary penalties, ~~including projects recommended through the~~
19 ~~Medicaid "Up or Out" Quality of Care Contract Management Program~~
20 ~~pursuant to s. 400.148.~~

21 Section 6. Subsection (10) of section 400.147, Florida
22 Statutes, is repealed.

23 Section 7. Section 400.148, Florida Statutes, is repealed.

24 Section 8. Section 400.195, Florida Statutes, is repealed.

25 Section 9. Section 400.476, Florida Statutes, is amended to
26 read:

27 400.476 Staffing requirements; notifications; limitations
28 on staffing services.—

29 (1) ADMINISTRATOR.—

30 (a) An administrator may manage only one home health
31 agency, except that an administrator may manage up to five home
32 health agencies if all five home health agencies have identical
33 controlling interests as defined in s. 408.803 and are located
34 within one agency geographic service area or within an
35 immediately contiguous county. If the home health agency is
36 licensed under this chapter and is part of a retirement
37 community that provides multiple levels of care, an employee of
38 the retirement community may administer the home health agency
39 and up to a maximum of four entities licensed under this chapter
40 or chapter 429 which all have identical controlling interests as
41 defined in s. 408.803. An administrator shall designate, in



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42 writing, for each licensed entity, a qualified alternate
43 administrator to serve during the administrator's absence. An
44 alternate administrator must meet the requirements in this
45 paragraph and s. 400.462(1).

46 (b) An administrator of a home health agency who is a
47 licensed physician, physician assistant, or registered nurse
48 licensed to practice in this state may also be the director of
49 nursing for a home health agency. An administrator may serve as
50 a director of nursing for up to the number of entities
51 authorized in subsection (2) only if there are 10 or fewer full-
52 time equivalent employees and contracted personnel in each home
53 health agency.

54 (c) The administrator shall organize and direct the
55 agency's ongoing functions, maintain an ongoing liaison with the
56 board members and the staff, employ qualified personnel and
57 ensure adequate staff education and evaluations, ensure the
58 accuracy of public informational materials and activities,
59 implement an effective budgeting and accounting system, and
60 ensure that the home health agency operates in compliance with
61 this part and part II of chapter 408 and rules adopted for these
62 laws.

63 (d) The administrator shall clearly set forth in writing
64 the organizational chart, services furnished, administrative
65 control, and lines of authority for the delegation of
66 responsibilities for patient care. These responsibilities must
67 be readily identifiable. Administrative and supervisory
68 functions may not be delegated to another agency or
69 organization, and the primary home health agency shall monitor
70 and control all services that are not furnished directly,



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71 including services provided through contracts.

72 (2) DIRECTOR OF NURSING.—

73 (a) A director of nursing may be the director of nursing
74 for:

75 1. Up to two licensed home health agencies if the agencies
76 have identical controlling interests as defined in s. 408.803
77 and are located within one agency geographic service area or
78 within an immediately contiguous county; or

79 2. Up to five licensed home health agencies if:

80 a. All of the home health agencies have identical
81 controlling interests as defined in s. 408.803;

82 b. All of the home health agencies are located within one
83 agency geographic service area or within an immediately
84 contiguous county; ~~and~~

85 c. Each home health agency has a registered nurse who meets
86 the qualifications of a director of nursing and who has a
87 written delegation from the director of nursing to serve as the
88 director of nursing for that home health agency when the
89 director of nursing is not present; and—

90 d. This person, or similarly qualified alternate, is
91 available at all times during operating hours and participates
92 in all activities relevant to the professional services
93 furnished, including, but not limited to, the oversight of
94 nursing services, home health aides, and certified nursing
95 assistants, and assignment of personnel.

96
97 If a home health agency licensed under this chapter is part of a
98 retirement community that provides multiple levels of care, an
99 employee of the retirement community may serve as the director



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100 of nursing of the home health agency and up to a maximum of four
101 entities, other than home health agencies, licensed under this
102 chapter or chapter 429 which all have identical controlling
103 interests as defined in s. 408.803.

104 (b) A home health agency that provides skilled nursing care
105 may not operate for more than 30 calendar days without a
106 director of nursing. A home health agency that provides skilled
107 nursing care and the director of nursing of a home health agency
108 must notify the agency within 10 business days after termination
109 of the services of the director of nursing for the home health
110 agency. A home health agency that provides skilled nursing care
111 must notify the agency of the identity and qualifications of the
112 new director of nursing within 10 days after the new director is
113 hired. If a home health agency that provides skilled nursing
114 care operates for more than 30 calendar days without a director
115 of nursing, the home health agency commits a class II
116 deficiency. In addition to the fine for a class II deficiency,
117 the agency may issue a moratorium in accordance with s. 408.814
118 or revoke the license. The agency shall fine a home health
119 agency that fails to notify the agency as required in this
120 paragraph \$1,000 for the first violation and \$2,000 for a repeat
121 violation. The agency may not take administrative action against
122 a home health agency if the director of nursing fails to notify
123 the department upon termination of services as the director of
124 nursing for the home health agency.

125 (c) A home health agency that is not Medicare or Medicaid
126 certified and does not provide skilled care or provides only
127 physical, occupational, or speech therapy is not required to
128 have a director of nursing and is exempt from paragraph (b).



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129 (3) TRAINING.—A home health agency shall ensure that each
130 certified nursing assistant employed by or under contract with
131 the home health agency and each home health aide employed by or
132 under contract with the home health agency is adequately trained
133 to perform the tasks of a home health aide in the home setting.

134 (a) The home health agency may not use as a home health
135 aide on a full-time, temporary, per diem, or other basis, any
136 individual to provide services unless the individual has
137 completed a training and competency evaluation program, or a
138 competency evaluation program, as permitted in s. 400.497, which
139 meets the minimum standards established by the agency in state
140 rules.

141 (b) A home health aide is not competent in any task for
142 which he or she is evaluated as "unsatisfactory." The aide must
143 perform any such task only under direct supervision by a
144 licensed nurse until he or she receives training in the task and
145 satisfactorily passes a subsequent evaluation in performing the
146 task. A home health aide has not successfully passed a
147 competency evaluation if the aide does not have a passing score
148 on the test as specified by agency rule.

149 (4) STAFFING.—Staffing services may be provided anywhere
150 within the state.

151 (5) PERSONNEL.—

152 (a) The home health agency and its staff must comply with
153 accepted professional standards and principles that apply to
154 professionals, including, but not limited to, the state practice
155 acts and the home health agency's policies and procedures.

156 (b) If personnel under hourly or per-visit contracts are
157 used by the home health agency, there must be a written contract



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158 between those personnel and the agency which specifies the
159 following requirements:

160 1. Acceptance for care only of patients by the primary home
161 health agency.

162 2. The services to be furnished.

163 3. The necessity to conform to all applicable agency
164 policies, including personnel qualifications.

165 4. The responsibility for participating in developing plans
166 of care.

167 5. The manner in which services are controlled,
168 coordinated, and evaluated by the primary home health agency.

169 6. The procedures for submitting clinical and progress
170 notes, scheduling of visits, and periodic patient evaluation.

171 7. The procedures for payment for services furnished under
172 the contract.

173 (c) A home health agency shall directly provide at least
174 one of the types of services through home health agency
175 employees, but may provide additional services under
176 arrangements with another agency or organization. Services
177 furnished under such arrangements must have a written contract
178 conforming to the requirements specified in paragraph (b).

179 (d) If home health aide services are provided by an
180 individual who is not employed directly by the home health
181 agency, the services of the home health aide must be provided
182 under arrangements as stated in paragraphs (b) and (c). If the
183 home health agency chooses to provide home health aide services
184 under arrangements with another organization, the
185 responsibilities of the home health agency include, but are not
186 limited to:



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187 1. Ensuring the overall quality of the care provided by the
188 aide;

189 2. Supervising the aide's services as described in s.
190 400.487; and

191 3. Ensuring that each home health aide providing services
192 under arrangements with another organization has met the
193 training requirements or competency evaluation requirements of
194 s. 400.497.

195 (e) The home health agency shall coordinate the efforts of
196 all personnel furnishing services, and the personnel shall
197 maintain communication with the home health agency to ensure
198 that personnel efforts support the objectives outlined in the
199 plan of care. The clinical record or minutes of case conferences
200 shall ensure that effective interchange, reporting, and
201 coordination of patient care occurs.

202 Section 10. Section 400.487, Florida Statutes, is amended
203 to read:

204 400.487 Home health service agreements; physician's,
205 physician assistant's, and advanced registered nurse
206 practitioner's treatment orders; patient assessment;
207 establishment and review of plan of care; provision of services;
208 orders not to resuscitate.—

209 (1) Services provided by a home health agency must be
210 covered by an agreement between the home health agency and the
211 patient or the patient's legal representative specifying the
212 home health services to be provided, the rates or charges for
213 services paid with private funds, and the sources of payment,
214 which may include Medicare, Medicaid, private insurance,
215 personal funds, or a combination thereof. The home health agency



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216 shall provide a copy of the agreement to the patient or the
217 patient's legal representative. A home health agency providing
218 skilled care must make an assessment of the patient's needs
219 within 48 hours after the start of services.

220 (2) When required by the provisions of chapter 464; part I,
221 part III, or part V of chapter 468; or chapter 486, the
222 attending physician, physician assistant, or advanced registered
223 nurse practitioner, acting within his or her respective scope of
224 practice, shall establish treatment orders for a patient who is
225 to receive skilled care. The treatment orders must be signed by
226 the physician, physician assistant, or advanced registered nurse
227 practitioner before a claim for payment for the skilled services
228 is submitted by the home health agency. If the claim is
229 submitted to a managed care organization, the treatment orders
230 must be signed within the time allowed under the provider
231 agreement. The treatment orders shall be reviewed, as frequently
232 as the patient's illness requires, by the physician, physician
233 assistant, or advanced registered nurse practitioner in
234 consultation with the home health agency.

235 (3) A home health agency shall arrange for supervisory
236 visits by a registered nurse to the home of a patient receiving
237 home health aide services as specified in subsection (9) ~~in~~
238 ~~accordance with the patient's direction, approval, and agreement~~
239 ~~to pay the charge for the visits.~~

240 (4) The home health agency shall protect and promote the
241 rights of each individual under its care, including each of the
242 following rights:

243 (a) Notice of rights.—The home health agency shall provide
244 the patient with a written notice of the patient's rights in



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245 advance of furnishing care to the patient or during the initial
246 evaluation visit before the initiation of treatment. The home
247 health agency must maintain documentation showing that it has
248 complied with the requirements of this section.

249 (b) Exercise of rights and respect for property and
250 person.—

251 1. The patient has the right to exercise his or her rights
252 as a patient of the home health agency.

253 2. The patient has the right to have his or her property
254 treated with respect.

255 3. The patient has the right to voice grievances regarding
256 treatment or care that is or fails to be furnished, or regarding
257 the lack of respect for property by anyone who is furnishing
258 services on behalf of the home health agency, and not be
259 subjected to discrimination or reprisal for doing so.

260 4. The home health agency must investigate complaints made
261 by a patient or the patient's family or guardian regarding
262 treatment or care that is or fails to be furnished, or regarding
263 the lack of respect for the patient's property by anyone
264 furnishing services on behalf of the home health agency. The
265 home health agency shall document the existence of the complaint
266 and its resolution.

267 5. The patient and his or her immediate family or
268 representative must be informed of the right to report
269 complaints via the statewide toll-free telephone number to the
270 agency as required in s. 408.810.

271 (c) Right to be informed and to participate in planning
272 care and treatment.—

273 1. The patient has the right to be informed, in advance,



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274 about the care to be furnished and of any changes in the care to
275 be furnished. The home health agency shall advise the patient in
276 advance of which disciplines will furnish care and the frequency
277 of visits proposed to be furnished. The home health agency must
278 advise the patient in advance of any change in the plan of care
279 before the change is made.

280 2. The patient has the right to participate in the planning
281 of the care. The home health agency must advise the patient in
282 advance of the right to participate in planning the care or
283 treatment and in planning changes in the care or treatment. Each
284 ~~patient has the right to be informed of and to participate in~~
285 ~~the planning of his or her care.~~ Each patient must be provided,
286 upon request, a copy of the plan of care established and
287 maintained for that patient by the home health agency.

288 (5) When nursing services are ordered, the home health
289 agency to which a patient has been admitted for care must
290 provide the initial admission visit, all service evaluation
291 visits, and the discharge visit by a direct employee. Services
292 provided by others under contractual arrangements to a home
293 health agency must be monitored and managed by the admitting
294 home health agency. The admitting home health agency is fully
295 responsible for ensuring that all care provided through its
296 employees or contract staff is delivered in accordance with this
297 part and applicable rules.

298 (6) The skilled care services provided by a home health
299 agency, directly or under contract, must be supervised and
300 coordinated in accordance with the plan of care. The home health
301 agency shall furnish skilled nursing services by or under the
302 supervision of a registered nurse and in accordance with the



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303 plan of care. Any therapy services offered directly or under
304 arrangement by the home health agency must be provided by a
305 qualified therapist or by a qualified therapy assistant under
306 the supervision of a qualified therapist and in accordance with
307 the plan of care.

308 (a) Duties and qualifications.—A qualified therapist shall
309 assist the physician in evaluating the level of function, help
310 develop or revise the plan of care, prepare clinical and
311 progress notes, advise and consult with the family and other
312 agency personnel, and participate in in-service programs. The
313 therapist or therapy assistant must meet the qualifications in
314 the state practice acts and related applicable rules.

315 (b) Physical therapy assistants and occupational therapy
316 assistants.—Services provided by a physical therapy assistant or
317 occupational therapy assistant must be under the supervision of
318 a qualified physical therapist or occupational therapist as
319 required in chapter 486 and part III of chapter 468,
320 respectively, and related applicable rules. A physical therapy
321 assistant or occupational therapy assistant shall perform
322 services planned, delegated, and supervised by the therapist,
323 assist in preparing clinical notes and progress reports,
324 participate in educating the patient and his or her family, and
325 participate in in-service programs.

326 (c) Speech therapy services.—Speech therapy services shall
327 be furnished only by or under supervision of a qualified speech
328 pathologist or audiologist as required in part I of chapter 468
329 and related applicable rules.

330 (d) Care follows a written plan of care.—The plan of care
331 shall be reviewed by the physician or health professional who



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332 provided the treatment orders pursuant to subsection (2) and
333 home health agency personnel as often as the severity of the
334 patient's condition requires, but at least once every 60 days or
335 more when there is a patient-elected transfer, a significant
336 change in condition, or a discharge and return to the same home
337 health agency during the 60-day episode. Professional staff of a
338 home health agency shall promptly alert the physician or other
339 health professional who provided the treatment orders of any
340 change that suggests a need to alter the plan of care.

341 (e) Administration of drugs and treatment.—Only
342 professional staff of a home health agency may administer drugs
343 and treatments as ordered by the physician or health
344 professional pursuant to subsection (2), with the exception of
345 influenza and pneumococcal polysaccharide vaccines, which may be
346 administered according to the policy of the home health agency
347 developed in consultation with a physician and after an
348 assessment for contraindications. Verbal orders shall be in
349 writing and signed and dated with the date of receipt by the
350 registered nurse or qualified therapist who is responsible for
351 furnishing or supervising the ordered service. A verbal order
352 may be accepted only by personnel who are authorized to do so by
353 applicable state laws, rules, and internal policies of the home
354 health agency.

355 (7) A registered nurse shall conduct the initial evaluation
356 visit, regularly reevaluate the patient's nursing needs,
357 initiate the plan of care and necessary revisions, furnish those
358 services requiring substantial and specialized nursing skill,
359 initiate appropriate preventive and rehabilitative nursing
360 procedures, prepare clinical and progress notes, coordinate



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361 services, inform the physician and other personnel of changes in
362 the patient's condition and needs, counsel the patient and his
363 or her family in meeting nursing and related needs, participate
364 in in-service programs, and supervise and teach other nursing
365 personnel.

366 (8) A licensed practical nurse shall furnish services in
367 accordance with agency policies, prepare clinical and progress
368 notes, assist the physician and registered nurse in performing
369 specialized procedures, prepare equipment and materials for
370 treatments observing aseptic technique as required, and assist
371 the patient in learning appropriate self-care techniques.

372 (9) A home health aide and certified nursing assistant
373 shall provide services that are ordered by the physician in the
374 plan of care and that the aide or assistant is permitted to
375 perform under state law. The duties of a home health aide or
376 certified nursing assistant include the provision of hands-on
377 personal care, performance of simple procedures as an extension
378 of therapy or nursing services, assistance in ambulation or
379 exercises, and assistance in administering medications that are
380 ordinarily self-administered and are specified in agency rules.
381 Any services by a home health aide which are offered by a home
382 health agency must be provided by a qualified home health aide
383 or certified nursing assistant.

384 (a) *Assignment and duties.*—A home health aide or certified
385 nursing assistant shall be assigned to a specific patient by a
386 registered nurse. Written patient care instructions for the home
387 health aide and certified nursing assistant must be prepared by
388 the registered nurse or other appropriate professional who is
389 responsible for the supervision of the home health aide and



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390 certified nursing assistant as stated in this section.

391 (b) Supervision.—If a patient receives skilled nursing
392 care, the registered nurse shall perform the supervisory visit.
393 If the patient is not receiving skilled nursing care but is
394 receiving physical therapy, occupational therapy, or speech-
395 language pathology services, the appropriate therapist may
396 provide the supervision. A registered nurse or other
397 professional must make an onsite visit to the patient's home at
398 least once every 2 weeks. The visit is not required while the
399 aide is providing care.

400 (c) Supervising visits.—If home health aide services are
401 provided to a patient who is not receiving skilled nursing care,
402 physical or occupational therapy, or speech-language pathology
403 services, a registered nurse must make a supervisory visit to
404 the patient's home at least once every 60 days. The registered
405 nurse shall ensure that the aide is properly caring for the
406 patient and each supervisory visit must occur while the home
407 health aide is providing patient care.

408 (10) ~~(7)~~ Home health agency personnel may withhold or
409 withdraw cardiopulmonary resuscitation if presented with an
410 order not to resuscitate executed pursuant to s. 401.45. The
411 agency shall adopt rules providing for the implementation of
412 such orders. Home health personnel and agencies shall not be
413 subject to criminal prosecution or civil liability, nor be
414 considered to have engaged in negligent or unprofessional
415 conduct, for withholding or withdrawing cardiopulmonary
416 resuscitation pursuant to such an order and rules adopted by the
417 agency.

418 Section 11. Subsection (11) of section 408.802, Florida



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419 Statutes, is repealed.

420 Section 12. Paragraphs (e), (f), and (g) of subsection (15)
421 of section 409.912, Florida Statutes, are repealed.

422 Section 13. Subsection (2) of section 429.12, Florida
423 Statutes, is repealed.

424 Section 14. Subsection (5) of section 429.23, Florida
425 Statutes, is repealed.

426 Section 15. Section 429.911(2)(b), Florida Statutes, is
427 repealed.

428 Section 16. This act shall take effect July 1, 2010.

429

430 ===== T I T L E A M E N D M E N T =====

431 And the title is amended as follows:

432 Delete everything before the enacting clause
433 and insert:

434 A bill to be entitled

435 An act relating to health care; repealing s.

436 112.0455(10)(e), F.S., relating to a prohibition

437 against applying the Drug-Free Workplace Act

438 retroactively; repealing s. 383.325, F.S., relating to

439 the requirement of a licensed facility under s.

440 383.305, F.S., to maintain inspection reports;

441 repealing s. 395.1046, F.S., relating to the

442 investigation of complaints regarding hospitals;

443 repealing s. 395.3037, F.S.; deleting definitions

444 relating to obsolete provisions governing primary and

445 comprehensive stroke centers; amending s. 400.0239,

446 F.S.; deleting an obsolete provision; repealing s.

447 400.147(10), F.S., relating to a requirement that a



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448 nursing home facility report any notice of a filing of
449 a claim for a violation of a resident's rights or a
450 claim of negligence; repealing s. 400.148, F.S.,
451 relating to the Medicaid "Up-or-Out" Quality of Care
452 Contract Management Program; repealing s. 400.195,
453 F.S., relating to agency reporting requirements;
454 amending s. 400.476, F.S.; providing requirements for
455 an alternative administrator of a home health agency;
456 revising the duties of the administrator; revising the
457 requirements for a director of nursing for a specified
458 number of home health agencies; prohibiting a home
459 health agency from using an individual as a home
460 health aide unless the person has completed training
461 and an evaluation program; requiring a home health
462 aide to meet certain standards in order to be
463 competent in performing certain tasks; requiring a
464 home health agency and staff to comply with accepted
465 professional standards; providing certain requirements
466 for a written contract between certain personnel and
467 the agency; requiring a home health agency to provide
468 certain services through its employees; authorizing a
469 home health agency to provide additional services with
470 another organization; providing responsibilities of a
471 home health agency when it provides home health aide
472 services through another organization; requiring the
473 home health agency to coordinate personnel that
474 provide home health services; requiring personnel to
475 communicate with the home health agency; amending s.
476 400.487, F.S.; requiring a home health agency to



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477 provide a copy of the agreement between the agency and
478 a patient which specifies the home health services to
479 be provided; providing the rights that are protected
480 by the home health agency; requiring the home health
481 agency to furnish nursing services by or under the
482 supervision of a registered nurse; requiring the home
483 health agency to provide therapy services through a
484 qualified therapist or therapy assistant; providing
485 the duties and qualifications of a therapist and
486 therapy assistant; requiring supervision by a physical
487 therapist or occupational therapist of a physical
488 therapist assistant or occupational therapist
489 assistant; providing duties of a physical therapist
490 assistant or occupational therapist assistant;
491 providing for speech therapy services to be provided
492 by a qualified speech pathologist or audiologist;
493 providing for a plan of care; providing that only the
494 staff of a home health agency may administer drugs and
495 treatments as ordered by certain health professionals;
496 providing requirements for verbal orders; providing
497 duties of a registered nurse, licensed practical
498 nurse, home health aide, and certified nursing
499 assistant who work for a home health agency; repealing
500 s. 408.802(11), F.S., relating to the applicability of
501 the Health Care Licensing Procedures Act to private
502 review agents; repealing s. 409.912(15)(e), (f), and
503 (g), F.S., relating to a requirement for the Agency
504 for Health Care Administration to submit a report to
505 the Legislature regarding the operations of the CARE



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506 program; repealing s. 429.12(2), F.S., relating to the
507 sale or transfer of ownership of an assisted living
508 facility; repealing s. 429.23(5), F.S., relating to
509 each assisted living facility's requirement to submit
510 a report to the agency regarding liability claims
511 filed against it; repealing s. 429.911, F.S., relating
512 to grounds for which the agency may take action
513 against the owner of an adult day care center or its
514 operator or employee; providing an effective date.