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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (1) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.—

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

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



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13 notwithstanding, a registered pharmacist licensed in Florida,
14 that is under contract with a facility licensed under this
15 chapter ~~or chapter 429~~, shall repackage a nursing facility
16 resident's bulk prescription medication which has been packaged
17 by another pharmacist licensed in any state in the United States
18 into a unit dose system compatible with the system used by the
19 nursing facility, if the pharmacist is requested to offer such
20 service. In order to be eligible for the repackaging, a resident
21 or the resident's spouse must receive prescription medication
22 benefits provided through a former employer as part of his or
23 her retirement benefits, a qualified pension plan as specified
24 in s. 4972 of the Internal Revenue Code, a federal retirement
25 program as specified under 5 C.F.R. s. 831, or a long-term care
26 policy as defined in s. 627.9404(1). A pharmacist who correctly
27 repackages and relabels the medication and the nursing facility
28 which correctly administers such repackaged medication under
29 this paragraph may not be held liable in any civil or
30 administrative action arising from the repackaging. In order to
31 be eligible for the repackaging, a nursing facility resident for
32 whom the medication is to be repackaged shall sign an informed
33 consent form provided by the facility which includes an
34 explanation of the repackaging process and which notifies the
35 resident of the immunities from liability provided in this
36 paragraph. A pharmacist who repackages and relabels prescription
37 medications, as authorized under this paragraph, may charge a
38 reasonable fee for costs resulting from the administration
39 ~~implementation~~ of this provision.

40 Section 2. Subsection (8) of section 408.810, Florida
41 Statutes, is amended to read:



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42 408.810 Minimum licensure requirements.—In addition to the
43 licensure requirements specified in this part, authorizing
44 statutes, and applicable rules, each applicant and licensee must
45 comply with the requirements of this section in order to obtain
46 and maintain a license.

47 (8) Upon application for initial licensure or change of
48 ownership licensure, the applicant shall furnish satisfactory
49 proof of the applicant's financial ability to operate in
50 accordance with the requirements of this part, authorizing
51 statutes, and applicable rules. The agency shall establish
52 standards for this purpose, including information concerning the
53 applicant's controlling interests. The agency shall also
54 establish documentation requirements, to be completed by each
55 applicant, that show anticipated provider revenues and
56 expenditures, the basis for financing the anticipated cash-flow
57 requirements of the provider, and an applicant's access to
58 contingency financing. A current certificate of authority,
59 pursuant to chapter 651, may be provided as proof of financial
60 ability to operate. A facility licensed under part I of chapter
61 429 shall be required to submit only an assisted living facility
62 statement of operation and an assets and liabilities atatement
63 as proof of financial ability to operate. The agency may require
64 a licensee to provide proof of financial ability to operate at
65 any time if there is evidence of financial instability,
66 including, but not limited to, unpaid expenses necessary for the
67 basic operations of the provider.

68 Section 3. Subsection (13) of section 408.820, Florida
69 Statutes, is amended to read:

70 408.820 Exemptions.—Except as prescribed in authorizing



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71 statutes, the following exemptions shall apply to specified
72 requirements of this part:

73 (13) Assisted living facilities, as provided under part I
74 of chapter 429, are exempt from ss. ~~ss.~~ 408.810(10) and
75 408.813(2).

76 Section 4. Subsection (2) of section 429.01, Florida
77 Statutes, is amended to read:

78 429.01 Short title; purpose.—

79 (2) The purpose of this act is to promote the availability
80 of appropriate services for elderly persons and adults with
81 disabilities in the least restrictive and most homelike
82 environment;; to encourage the development of facilities that
83 promote the dignity, individuality, privacy, and decisionmaking
84 ability of such persons;; to provide for the health, safety, and
85 welfare of residents of assisted living facilities in the state,
86 to promote continued improvement of such facilities;; to
87 encourage the development of innovative and affordable
88 facilities particularly for persons with low to moderate
89 incomes;; to ensure that all agencies of the state cooperate in
90 the protection of such residents;; and to ensure that needed
91 economic, social, mental health, health, and leisure services
92 are made available to residents of such facilities through the
93 efforts of the Agency for Health Care Administration, the
94 Department of Elderly Affairs, the Department of Children and
95 Family Services, the Department of Health, assisted living
96 facilities, and other community agencies. To the maximum extent
97 possible, appropriate community-based programs must be available
98 to state-supported residents to augment the services provided in
99 assisted living facilities. The Legislature recognizes that



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100 assisted living facilities are an important part of the
101 continuum of long-term care in the state as community-based
102 social models with a health component and not as medical or
103 nursing facilities. In support of the goal of aging in place,
104 the Legislature further recognizes that assisted living
105 facilities should be operated ~~and regulated~~ as residential
106 environments with supportive services and not as medical or
107 nursing facilities and, as such, should not be subject to the
108 same regulations as medical or nursing facilities but instead be
109 regulated in a less restrictive manner that is appropriate for a
110 residential, nonmedical setting. The services available in these
111 facilities, either directly or through contract or agreement,
112 are intended to help residents remain as independent as
113 possible. Regulations governing these facilities must be
114 sufficiently flexible to allow facilities to adopt policies that
115 enable residents to age in place when resources are available to
116 meet their needs and accommodate their preferences.

117 Section 5. Section 429.02, Florida Statutes, is amended to
118 read:

119 429.02 Definitions.—When used in this part, the term:

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

123 (2) "Administrator" means an individual at least 21 years
124 of age who is responsible for the operation and maintenance of
125 an assisted living facility; for promoting the resident's
126 dignity, autonomy, independence, and privacy in the least
127 restrictive and most homelike setting consistent with the
128 resident's preferences and physical and mental status; and for



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129 ensuring the appropriateness of continued placement of a
130 resident, in consultation with the resident, resident's
131 representative or designee, if applicable, and the resident's
132 physician.

133 (3) "Agency" means the Agency for Health Care
134 Administration.

135 (4) "Aging in place" or "age in place" means the process of
136 providing increased or adjusted services to a person to
137 compensate for the physical or mental decline that may occur
138 with the aging process, in order to maximize the person's
139 dignity and independence and permit them to remain in a
140 familiar, noninstitutional, residential environment for as long
141 as possible, as determined by the individual, his or her
142 physician and the administrator. Such services may be provided
143 by facility staff, volunteers, family, or friends, or through
144 contractual arrangements with a third party.

145 (5) "Arbitration" means a process whereby a neutral third
146 person or panel, called an arbitrator or arbitration panel,
147 considers the facts and arguments presented by parties and
148 renders a decision which may be binding or nonbinding as provided
149 for in chapter 44.

150 ~~(6)~~(5) "Assisted living facility" means any residential
151 setting that provides, directly or indirectly by means of
152 contracts or arrangements, for a period exceeding 24 hours,
153 ~~building or buildings, section or distinct part of a building,~~
154 ~~private home, boarding home, home for the aged, or other~~
155 ~~residential facility, whether operated for profit or not, which~~
156 ~~undertakes through its ownership or management to provide~~
157 housing, meals, and one or more personal services that meet the



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158 resident's changing needs and preferences for a period exceeding
159 24 hours to one or more adults who are not relatives of the
160 owner or administrator. As used in this subsection, the term
161 "residential setting" includes, but is not limited to, a
162 building or buildings, section or distinct part of a building,
163 private home, or other residence.

164 (7)-(6) "Chemical restraint" means a pharmacologic drug that
165 physically limits, restricts, or deprives an individual of
166 movement or mobility, and is used for discipline or convenience
167 and not required for the treatment of medical symptoms.

168 (8)-(7) "Community living support plan" means a written
169 document prepared by a mental health resident and the resident's
170 mental health case manager in consultation with the
171 administrator, or the administrator's designee, of an assisted
172 living facility with a limited mental health license ~~or the~~
173 ~~administrator's designee.~~ A copy must be provided to the
174 administrator. The plan must include information about the
175 supports, services, and special needs of the resident which
176 enable the resident to live in the assisted living facility and
177 a method by which facility staff can recognize and respond to
178 the signs and symptoms particular to that resident which
179 indicate the need for professional services.

180 (9) "Controlling interest" means:

181 (a) The applicant or licensee; or

182 (b) A person or entity that has a 50 percent or greater
183 ownership interest in the applicant or licensee.

184 (10)-(8) "Cooperative agreement" means a written statement
185 of understanding between a mental health care provider and the
186 administrator of the assisted living facility with a limited



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187 mental health license in which a mental health resident is
188 living. The agreement must specify directions for accessing
189 emergency and after-hours care for the mental health resident. A
190 single cooperative agreement may service all mental health
191 residents who are clients of the same mental health care
192 provider.

193 (11)~~(9)~~ "Department" means the Department of Elderly
194 Affairs.

195 (12)~~(10)~~ "Emergency" means a situation, physical condition,
196 or method of operation which presents imminent danger of death
197 or serious physical or mental harm to facility residents.

198 (13)~~(11)~~ "Extended congregate care" means acts beyond those
199 authorized in subsection (16) that may be performed pursuant to
200 part I of chapter 464 by persons licensed thereunder while
201 carrying out their professional duties, and other supportive
202 services which may be specified by rule. The purpose of such
203 services is to enable residents to age in place in a residential
204 environment despite mental or physical limitations that might
205 otherwise disqualify them from residency in a facility licensed
206 under this part.

207 (14)~~(12)~~ "Guardian" means a person to whom the law has
208 entrusted the custody and control of the person or property, or
209 both, of a person who has been legally adjudged incapacitated.

210 (15) "Licensed facility" means an assisted living facility
211 for which a licensee has been issued a license pursuant to this
212 part and part II of chapter 408.

213 (16)~~(13)~~ "Limited nursing services" means acts that may be
214 performed pursuant to part I of chapter 464 by persons licensed
215 thereunder while carrying out their professional duties but



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216 limited to those acts which the department specifies by rule.
217 Acts which may be specified by rule as allowable limited nursing
218 services shall be for persons who meet the admission criteria
219 established by the department for assisted living facilities and
220 shall not be complex enough to require 24-hour nursing
221 supervision and may include such services as the application and
222 care of routine dressings, and care of casts, braces, and
223 splints.

224 (17)~~(14)~~ "Managed risk" means the process by which the
225 facility staff discuss the service plan and the needs of the
226 resident with the resident and, if applicable, the resident's
227 representative or designee or the resident's surrogate,
228 guardian, or attorney in fact, in such a way that the
229 consequences of a decision, including any inherent risk, are
230 explained to all parties and reviewed periodically in
231 conjunction with the service plan, taking into account changes
232 in the resident's status and the ability of the facility to
233 respond accordingly.

234 (18)~~(15)~~ "Mental health resident" means an individual who
235 receives social security disability income due to a mental
236 disorder as determined by the Social Security Administration or
237 receives supplemental security income due to a mental disorder
238 as determined by the Social Security Administration and receives
239 optional state supplementation.

240 (19) "Person" means any individual, partnership,
241 corporation, association, or governmental unit.

242 (20)~~(16)~~ "Personal services" means direct physical
243 assistance with or supervision of the activities of daily living
244 and the self-administration of medication and other similar



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245 services which the department may define by rule. "Personal
246 services" shall not be construed to mean the provision of
247 medical, nursing, dental, or mental health services.

248 (21)~~(17)~~ "Physical restraint" means a device which
249 physically limits, restricts, or deprives an individual of
250 movement or mobility, including, but not limited to, a half-bed
251 rail, a full-bed rail, a geriatric chair, and a posey restraint.
252 The term "physical restraint" shall also include any device
253 which was not specifically manufactured as a restraint but which
254 has been altered, arranged, or otherwise used for this purpose.
255 The term shall not include bandage material used for the purpose
256 of binding a wound or injury.

257 (22)~~(18)~~ "Relative" means an individual who is the father,
258 mother, stepfather, stepmother, son, daughter, brother, sister,
259 grandmother, grandfather, great-grandmother, great-grandfather,
260 grandson, granddaughter, uncle, aunt, first cousin, nephew,
261 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
262 daughter-in-law, brother-in-law, sister-in-law, stepson,
263 stepdaughter, stepbrother, stepsister, half brother, or half
264 sister of an owner or administrator.

265 (23)~~(19)~~ "Resident" means a person 18 years of age or
266 older, residing in and receiving care from an assisted living a
267 facility.

268 (24)~~(20)~~ "Resident's representative or designee" means a
269 person other than the owner, or an agent or employee of the
270 assisted living facility, designated in writing by the resident,
271 if legally competent, to receive notice of changes in the
272 contract executed pursuant to s. 429.24; to receive notice of
273 and to participate in meetings between the resident and the



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274 facility owner, administrator, or staff concerning the rights of
275 the resident; to assist the resident in contacting the ombudsman
276 council if the resident has a complaint against the facility; or
277 to bring legal action on behalf of the resident pursuant to s.
278 429.29.

279 (25)~~(21)~~ "Service plan" means a written plan, developed and
280 agreed upon by the resident and, if applicable, the resident's
281 representative or designee or the resident's surrogate,
282 guardian, or attorney in fact, if any, and the administrator or
283 the administrator's designee representing the facility, which
284 addresses the unique physical and psychosocial needs, abilities,
285 and personal preferences of each resident receiving extended
286 congregate care services. The plan shall include a brief written
287 description, in easily understood language, of what services
288 shall be provided, who shall provide the services, when the
289 services shall be rendered, and the purposes and benefits of the
290 services.

291 (26)~~(22)~~ "Shared responsibility" means exploring the
292 options available to a resident within a facility and the risks
293 involved with each option when making decisions pertaining to
294 the resident's abilities, preferences, and service needs,
295 thereby enabling the resident and, if applicable, the resident's
296 representative or designee, or the resident's surrogate,
297 guardian, or attorney in fact, and the facility to develop a
298 service plan which best meets the resident's needs and seeks to
299 improve the resident's quality of life.

300 (27)~~(23)~~ "Supervision" means reminding residents to engage
301 in activities of daily living and the self-administration of
302 medication, and, when necessary, observing or providing verbal



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303 cuing to residents while they perform these activities.

304 Supervision does not include one-on-one observation.

305 ~~(28)(24)~~ "Supplemental security income," Title XVI of the
306 Social Security Act, means a program through which the Federal
307 Government guarantees a minimum monthly income to every person
308 who is age 65 or older, or disabled, or blind and meets the
309 income and asset requirements.

310 ~~(29)(25)~~ "Supportive services" means services designed to
311 encourage and assist residents ~~aged persons or adults with~~
312 ~~disabilities~~ to remain in the least restrictive living
313 environment and to maintain their independence as long as
314 possible.

315 ~~(30)(26)~~ "Twenty-four-hour nursing supervision" means
316 services that are ordered by a physician for a resident whose
317 condition requires the supervision of a physician and continued
318 monitoring of vital signs and physical status. Such services
319 shall be: medically complex enough to require constant
320 supervision, assessment, planning, or intervention by a nurse;
321 required to be performed by or under the direct supervision of
322 licensed nursing personnel or other professional personnel for
323 safe and effective performance; ~~required on a daily basis;~~ and
324 consistent with the nature and severity of the resident's
325 condition or the disease state or stage.

326 Section 6. Paragraphs (g) and (h) of subsection (2) of
327 section 429.04, Florida Statutes, are amended to read:

328 429.04 Facilities to be licensed; exemptions.—

329 (2) The following are exempt from licensure under this
330 part:

331 (g) Any facility certified under chapter 651, or a



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332 retirement community, may provide services authorized under this
333 ~~part or part III of chapter 400~~ to its residents who live in
334 single-family homes, duplexes, quadruplexes, or apartments
335 located on the campus without obtaining a license to operate an
336 assisted living facility if residential units within such
337 buildings are used by residents who do not require staff
338 supervision for that portion of the day when personal services
339 are not being delivered and the owner obtains a home health
340 license to provide such services. However, any building or
341 distinct part of a building on the campus that is designated for
342 persons who receive personal services and require supervision
343 beyond that which is available while such services are being
344 rendered must be licensed in accordance with this part. If a
345 facility provides personal services to residents who do not
346 otherwise require supervision and the owner is not licensed as a
347 home health agency, the buildings or distinct parts of buildings
348 where such services are rendered must be licensed under this
349 part. A resident of a facility that obtains a home health
350 license may contract with a home health agency of his or her
351 choice, provided that the home health agency provides liability
352 insurance and workers' compensation coverage for its employees.
353 Facilities covered by this exemption may establish policies that
354 give residents the option of contracting for services and care
355 beyond that which is provided by the facility to enable them to
356 age in place. For purposes of this section, a retirement
357 community consists of a facility licensed under this part or a
358 facility licensed under part II of chapter 400, and apartments
359 designed for independent living located on the same campus.

360 (h) Any residential unit for independent living which is



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361 located within a facility certified under chapter 651, or any
362 residential unit for independent living which is colocated with
363 a nursing home licensed under part II of chapter 400 or
364 colocated with a facility licensed under this part in which
365 services are provided through an outpatient clinic or a nursing
366 home on an outpatient basis.

367 Section 7. Subsections (3) and (4) of section 429.07,
368 Florida Statutes, are amended, and subsections (6) and (7) are
369 added to that section, to read:

370 429.07 License required; fee.—

371 (3) In addition to the requirements of s. 408.806, each
372 license granted by the agency must state the type of care for
373 which the license is granted. Licenses shall be issued for one
374 or more of the following categories of care: standard, extended
375 congregate care, ~~limited nursing services,~~ or limited mental
376 health.

377 (a) A standard license shall be issued to a licensee for a
378 facility ~~facilities~~ providing one or more of the personal
379 services identified in s. 429.02. ~~Such facilities may also~~
380 ~~employ or contract with a person licensed under part I of~~
381 ~~chapter 464 to administer medications and perform other tasks as~~
382 ~~specified in s. 429.255.~~

383 (b) An extended congregate care license shall be issued to
384 a licensee for a facility ~~facilities~~ providing, directly or
385 through contract, services beyond those authorized in paragraph
386 (a), including services performed by persons licensed under part
387 I of chapter 464 and supportive services, as defined by rule, to
388 persons who would otherwise be disqualified from continued
389 residence in a facility licensed under this part.



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390 1. In order for extended congregate care services to be
391 provided, the agency must first determine that all requirements
392 established in law and rule are met and must specifically
393 designate, on the facility's license, that such services may be
394 provided and whether the designation applies to all or part of
395 the facility. Such designation may be made at the time of
396 initial licensure or relicensure, or upon request in writing by
397 a licensee under this part and part II of chapter 408. The
398 notification of approval or the denial of the request shall be
399 made in accordance with part II of chapter 408. Existing
400 facilities qualifying to provide extended congregate care
401 services must have maintained a standard license and may not
402 have been subject to administrative sanctions during the
403 previous 2 years, or since initial licensure if the facility has
404 been licensed for less than 2 years, for any of the following
405 reasons:

406 a. A class I or class II violation;

407 ~~b. Three or more repeat or recurring class III violations~~
408 ~~of identical or similar resident care standards from which a~~
409 ~~pattern of noncompliance is found by the agency;~~

410 ~~c. Three or more class III violations that were not~~
411 ~~corrected in accordance with the corrective action plan approved~~
412 ~~by the agency;~~

413 ~~b.d.~~ Violation of resident care standards which results in
414 requiring the facility to employ the services of a consultant
415 pharmacist or consultant dietitian; or

416 ~~e. Denial, suspension, or revocation of a license for~~
417 ~~another facility licensed under this part in which the applicant~~
418 ~~for an extended congregate care license has at least 25 percent~~



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419 ~~ownership interest; or~~
420 ~~c.f.~~ Imposition of a moratorium pursuant to this part or
421 part II of chapter 408 or initiation of injunctive proceedings.
422 2. A licensee facility that is licensed to provide extended
423 congregate care services shall maintain a written progress
424 report for ~~on~~ each person who receives services, and the report
425 must describe ~~which describes~~ the type, amount, duration, scope,
426 and outcome of services that are rendered and the general status
427 of the resident's health. ~~A registered nurse, or appropriate~~
428 ~~designee, representing the agency shall visit the facility at~~
429 ~~least quarterly to monitor residents who are receiving extended~~
430 ~~congregate care services and to determine if the facility is in~~
431 ~~compliance with this part, part II of chapter 408, and relevant~~
432 ~~rules. One of the visits may be in conjunction with the regular~~
433 ~~survey. The monitoring visits may be provided through~~
434 ~~contractual arrangements with appropriate community agencies. A~~
435 ~~registered nurse shall serve as part of the team that inspects~~
436 ~~the facility. The agency may waive one of the required yearly~~
437 ~~monitoring visits for a facility that has been licensed for at~~
438 ~~least 24 months to provide extended congregate care services,~~
439 ~~if, during the inspection, the registered nurse determines that~~
440 ~~extended congregate care services are being provided~~
441 ~~appropriately, and if the facility has no class I or class II~~
442 ~~violations and no uncorrected class III violations. The agency~~
443 ~~must first consult with the long term care ombudsman council for~~
444 ~~the area in which the facility is located to determine if any~~
445 ~~complaints have been made and substantiated about the quality of~~
446 ~~services or care. The agency may not waive one of the required~~
447 ~~yearly monitoring visits if complaints have been made and~~



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448 ~~substantiated.~~

449 3. A licensee facility that is licensed to provide extended
450 congregate care services shall ~~must~~:

451 a. Demonstrate the capability to meet unanticipated
452 resident service needs.

453 b. Offer a physical environment that promotes a homelike
454 setting, provides for resident privacy, promotes resident
455 independence, and allows sufficient congregate space as defined
456 by rule.

457 c. Have sufficient staff available, taking into account the
458 physical plant and firesafety features of the residential
459 setting building, to assist with the evacuation of residents in
460 an emergency.

461 d. Adopt and follow policies and procedures that maximize
462 resident independence, dignity, choice, and decisionmaking to
463 permit residents to age in place, so that moves due to changes
464 in functional status are minimized or avoided.

465 e. Allow residents or, if applicable, a resident's
466 representative, designee, surrogate, guardian, or attorney in
467 fact to make a variety of personal choices, participate in
468 developing service plans, and share responsibility in
469 decisionmaking.

470 f. Implement the concept of managed risk.

471 g. Provide, directly or through contract, the services of a
472 person licensed under part I of chapter 464.

473 h. In addition to the training mandated in s. 429.52,
474 provide specialized training as defined by rule for facility
475 staff.

476 4. A facility that is licensed to provide extended



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477 congregate care services is exempt from the criteria for
478 continued residency set forth in rules adopted under s. 429.41.
479 A licensed facility must adopt its own requirements within
480 guidelines for continued residency set forth by rule. However,
481 the facility may not serve residents who require 24-hour nursing
482 supervision. A licensed facility that provides extended
483 congregate care services must also provide each resident with a
484 written copy of facility policies governing admission and
485 retention.

486 5. The primary purpose of extended congregate care services
487 is to allow residents, as they become more impaired, the option
488 of remaining in a familiar setting from which they would
489 otherwise be disqualified for continued residency. A facility
490 licensed to provide extended congregate care services may also
491 admit an individual who exceeds the admission criteria for a
492 facility with a standard license, if the individual is
493 determined appropriate for admission to the extended congregate
494 care facility.

495 6. Before the admission of an individual to a facility
496 licensed to provide extended congregate care services, the
497 individual must undergo a medical examination as provided in s.
498 429.26(4) and the licensee ~~facility~~ must develop a preliminary
499 service plan for the individual.

500 7. When a licensee ~~facility~~ can no longer provide or
501 arrange for services in accordance with the resident's service
502 plan and needs and the licensee's ~~facility's~~ policy, the
503 licensee ~~facility~~ shall make arrangements for relocating the
504 person in accordance with s. 429.28(1)(k).

505 ~~8. Failure to provide extended congregate care services may~~



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506 ~~result in denial of extended congregate care license renewal.~~

507 ~~(c) A limited nursing services license shall be issued to a~~
508 ~~facility that provides services beyond those authorized in~~
509 ~~paragraph (a) and as specified in this paragraph.~~

510 ~~1. In order for limited nursing services to be provided in~~
511 ~~a facility licensed under this part, the agency must first~~
512 ~~determine that all requirements established in law and rule are~~
513 ~~met and must specifically designate, on the facility's license,~~
514 ~~that such services may be provided. Such designation may be made~~
515 ~~at the time of initial licensure or relicensure, or upon request~~
516 ~~in writing by a licensee under this part and part II of chapter~~
517 ~~408. Notification of approval or denial of such request shall be~~
518 ~~made in accordance with part II of chapter 408. Existing~~
519 ~~facilities qualifying to provide limited nursing services shall~~
520 ~~have maintained a standard license and may not have been subject~~
521 ~~to administrative sanctions that affect the health, safety, and~~
522 ~~welfare of residents for the previous 2 years or since initial~~
523 ~~licensure if the facility has been licensed for less than 2~~
524 ~~years.~~

525 ~~2. Facilities that are licensed to provide limited nursing~~
526 ~~services shall maintain a written progress report on each person~~
527 ~~who receives such nursing services, which report describes the~~
528 ~~type, amount, duration, scope, and outcome of services that are~~
529 ~~rendered and the general status of the resident's health. A~~
530 ~~registered nurse representing the agency shall visit such~~
531 ~~facilities at least twice a year to monitor residents who are~~
532 ~~receiving limited nursing services and to determine if the~~
533 ~~facility is in compliance with applicable provisions of this~~
534 ~~part, part II of chapter 408, and related rules. The monitoring~~



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535 ~~visits may be provided through contractual arrangements with~~
536 ~~appropriate community agencies. A registered nurse shall also~~
537 ~~serve as part of the team that inspects such facility.~~

538 ~~3. A person who receives limited nursing services under~~
539 ~~this part must meet the admission criteria established by the~~
540 ~~agency for assisted living facilities. When a resident no longer~~
541 ~~meets the admission criteria for a facility licensed under this~~
542 ~~part, arrangements for relocating the person shall be made in~~
543 ~~accordance with s. 429.28(1)(k), unless the facility is licensed~~
544 ~~to provide extended congregate care services.~~

545 (4) In accordance with s. 408.805, an applicant or licensee
546 shall pay a fee for each license application submitted under
547 this part, part II of chapter 408, and applicable rules. The
548 amount of the fee shall be established by rule.

549 (a) The biennial license fee required of a facility is \$371
550 ~~\$300~~ per license, with an additional fee of \$71 ~~\$50~~ per resident
551 based on the total licensed resident capacity of the facility,
552 except that no additional fee will be assessed for beds used by
553 ~~designated for~~ recipients of Medicaid home and community-based
554 waiver programs ~~optional state supplementation payments provided~~
555 ~~for in s. 409.212. The total fee may not exceed \$10,000.~~

556 (b) In addition to the total fee assessed under paragraph
557 (a), the agency shall require facilities that are licensed to
558 provide extended congregate care services under this part to pay
559 an additional fee per licensed facility. The amount of the
560 biennial fee shall be \$523 ~~\$400~~ per license, with an additional
561 fee of \$10 per resident based on the total licensed resident
562 capacity of the facility.

563 ~~(c) In addition to the total fee assessed under paragraph~~



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564 ~~(a), the agency shall require facilities that are licensed to~~
565 ~~provide limited nursing services under this part to pay an~~
566 ~~additional fee per licensed facility. The amount of the biennial~~
567 ~~fee shall be \$250 per license, with an additional fee of \$10 per~~
568 ~~resident based on the total licensed resident capacity of the~~
569 ~~facility.~~

570 (6) In order to determine whether the facility must
571 participate in the monitoring activities during the 12-month
572 period, the agency shall conduct a biennial survey that includes
573 private informal conversations with a sample of residents and
574 consultation with the ombudsman council in the planning and
575 service area in which the facility is located to discuss the
576 residents' experiences within the facility.

577 (7) An assisted living facility that has been cited within
578 the previous 24-month period for a class I or class II
579 violation, regardless of the status of any enforcement or
580 disciplinary action, is subject to periodic unannounced
581 monitoring to determine if the facility is in compliance with
582 this part, part II of chapter 408 and applicable rules.
583 Monitoring may occur through a desk review or an onsite
584 assessment. If the class I or class II violation relates to
585 providing or failing to provide nursing care, a registered nurse
586 must participate in the monitoring visits during the 12-month
587 period following the violation.

588 Section 8. Paragraph (a) of subsection (2) of section
589 429.08, Florida Statutes, is amended to read:

590 429.08 Unlicensed facilities; referral of person for
591 residency to unlicensed facility; penalties.—

592 (2) It is unlawful to knowingly refer a person for



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593 residency to an unlicensed assisted living facility; to an
594 assisted living facility the license of which is under denial or
595 has been suspended or revoked; or to an assisted living facility
596 that has a moratorium pursuant to part II of chapter 408.

597 (a) Any health care practitioner, as defined in s. 456.001,
598 or emergency medical technician or paramedic certified pursuant
599 to part III or chapter 401, who is aware of the operation of an
600 unlicensed facility shall report that facility to the agency.
601 Failure to report a facility that the practitioner knows or has
602 reasonable cause to suspect is unlicensed shall be reported to
603 the practitioner's licensing board.

604 Section 9. Subsection (8) is added to section 429.11,
605 Florida Statutes, to read:

606 429.11 Initial application for license; provisional
607 license.—

608 (8) The agency shall develop an abbreviated form for
609 submission of proof of financial ability to operate under s.
610 408.810(8).

611 Section 10. Section 429.12, Florida Statutes, is amended to
612 read:

613 429.12 Sale or transfer of ownership of a facility.—In
614 order ~~It is the intent of the Legislature to protect the rights~~
615 ~~of the residents of an assisted living facility when the~~
616 ~~facility is sold or the ownership thereof is transferred.~~
617 ~~Therefore,~~ in addition to the requirements of part II of chapter
618 408, whenever a facility is sold or the ownership thereof is
619 transferred, including leasing, ÷

620 ~~(1)~~ the transferee shall notify the residents, in writing,
621 of the change of ownership within 7 days after receipt of the



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622 new license.

623 ~~(2) The transferor of a facility the license of which is~~
624 ~~denied pending an administrative hearing shall, as a part of the~~
625 ~~written change of ownership contract, advise the transferee that~~
626 ~~a plan of correction must be submitted by the transferee and~~
627 ~~approved by the agency at least 7 days before the change of~~
628 ~~ownership and that failure to correct the condition which~~
629 ~~resulted in the moratorium pursuant to part II of chapter 408 or~~
630 ~~denial of licensure is grounds for denial of the transferee's~~
631 ~~license.~~

632 Section 11. Section 429.14, Florida Statutes, is amended to
633 read:

634 429.14 Administrative penalties.—

635 (1) In addition to the requirements of part II of chapter
636 408, the agency may deny, revoke, and suspend any license issued
637 under this part and impose an administrative fine in the manner
638 provided in chapter 120 against a licensee for a violation of
639 any provision of this part, part II of chapter 408, or
640 applicable rules, or for any of the following actions by a
641 licensee, for the actions of any person subject to level 2
642 background screening under s. 408.809, ~~or for the actions of any~~
643 ~~facility employee:~~

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

646 (b) The determination by the agency that the owner lacks
647 the financial ability to provide continuing adequate care to
648 residents.

649 (c) Misappropriation or conversion of the property of a
650 resident of the facility.



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651 ~~(d) Failure to follow the criteria and procedures provided~~
652 ~~under part I of chapter 394 relating to the transportation,~~
653 ~~voluntary admission, and involuntary examination of a facility~~
654 ~~resident.~~

655 (d)(e) A citation of any of the following violations
656 ~~deficiencies~~ as specified in s. 429.19:

- 657 1. One or more cited class I violations ~~deficiencies~~.
- 658 2. Three or more cited class II violations ~~deficiencies~~.
- 659 3. Five or more cited class III violations ~~deficiencies~~
660 that have been cited on a single survey and have not been
661 corrected within the times specified.

662 (e)(f) Failure to comply with the background screening
663 standards of this part, s. 408.809(1), or chapter 435.

664 (f)(g) Violation of a moratorium.

665 (g)(h) Failure of the license applicant, the licensee
666 during relicensure, or a licensee that holds a provisional
667 license to meet the minimum license requirements of this part,
668 or related rules, at the time of license application or renewal.

669 (h)(i) An intentional or negligent life-threatening act in
670 violation of the uniform firesafety standards for assisted
671 living facilities or other firesafety standards that threatens
672 the health, safety, or welfare of a resident of a facility, as
673 communicated to the agency by the local authority having
674 jurisdiction or the State Fire Marshal.

675 (i)(j) Knowingly operating any unlicensed facility or
676 providing without a license any service that must be licensed
677 under this chapter or chapter 400.

678 (j)(k) Any act constituting a ground upon which application
679 for a license may be denied.



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680 (2) Upon notification by the local authority having
681 jurisdiction or by the State Fire Marshal, the agency may deny
682 or revoke the license of a licensee of an assisted living
683 facility that fails to correct cited fire code violations that
684 affect or threaten the health, safety, or welfare of a resident
685 of a facility.

686 (3) The agency may deny a license to any applicant or
687 controlling interest as defined in part II of chapter 408 which
688 has or had a 25-percent or greater financial or ownership
689 interest in any other facility licensed under this part, or in
690 any entity licensed by this state or another state to provide
691 health or residential care, which facility or entity during the
692 5 years prior to the application for a license closed due to
693 financial inability to operate; had a receiver appointed or a
694 license denied, suspended, or revoked; was subject to a
695 moratorium; or had an injunctive proceeding initiated against
696 it.

697 ~~(4) The agency shall deny or revoke the license of an~~
698 ~~assisted living facility that has two or more class I violations~~
699 ~~that are similar or identical to violations identified by the~~
700 ~~agency during a survey, inspection, monitoring visit, or~~
701 ~~complaint investigation occurring within the previous 2 years.~~

702 (4)~~(5)~~ An action taken by the agency to suspend, deny, or
703 revoke a licensee's facility's license under this part or part
704 II of chapter 408, in which the agency claims that the facility
705 owner or a staff member ~~an employee~~ of the facility has
706 threatened the health, safety, or welfare of a resident of the
707 facility must be heard by the Division of Administrative
708 Hearings of the Department of Management Services within 120



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709 days after receipt of the facility's request for a hearing,
710 unless that time limitation is waived by both parties. The
711 administrative law judge must render a decision within 30 days
712 after receipt of a proposed recommended order.

713 ~~(6) The agency shall provide to the Division of Hotels and~~
714 ~~Restaurants of the Department of Business and Professional~~
715 ~~Regulation, on a monthly basis, a list of those assisted living~~
716 ~~facilities that have had their licenses denied, suspended, or~~
717 ~~revoked or that are involved in an appellate proceeding pursuant~~
718 ~~to s. 120.60 related to the denial, suspension, or revocation of~~
719 ~~a license.~~

720 (5) ~~(7)~~ Agency notification of a license suspension or
721 revocation, or denial of a license renewal, shall be posted and
722 visible to the public at the facility.

723 Section 12. Subsections (1), (4), and (5) of section
724 429.17, Florida Statutes, are amended to read:

725 429.17 Expiration of license; renewal; conditional
726 license.—

727 (1) ~~Limited nursing,~~ Extended congregate care, and limited
728 mental health licenses shall expire at the same time as the
729 facility's standard license, regardless of when issued.

730 (4) In addition to the license categories available in s.
731 408.808, a conditional license may be issued to an applicant for
732 license renewal if the applicant fails to meet all standards and
733 requirements for licensure. A conditional license issued under
734 this subsection shall be limited in duration to a specific
735 period of time not to exceed 6 months, as determined by the
736 agency, ~~and shall be accompanied by an agency approved plan of~~
737 ~~correction.~~



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738 (5) When an extended congregate care ~~or limited nursing~~
739 license is requested during a facility's biennial license
740 period, the fee shall be prorated in order to permit the
741 additional license to expire at the end of the biennial license
742 period. The fee shall be calculated as of the date the
743 additional license application is received by the agency.

744 Section 13. Subsections (1), (6), (7), and (8) of section
745 429.178, Florida Statutes, are amended to read:

746 429.178 Special care for persons with Alzheimer's disease
747 or other related disorders.-

748 (1) A facility that ~~which~~ advertises that it provides
749 special care for persons with Alzheimer's disease or other
750 related disorders must meet the following standards of
751 operation:

752 ~~(a)1. If the facility has 17 or more residents,~~ Have an
753 awake staff member on duty at all hours of the day and night for
754 each secured unit of the facility that houses any residents who
755 have Alzheimer's disease or other related disorders. ~~;~~ ~~or~~

756 ~~2. If the facility has fewer than 17 residents,~~ have an
757 awake staff member on duty at all hours of the day and night ~~or~~
758 ~~have mechanisms in place to monitor and ensure the safety of the~~
759 ~~facility's residents.~~

760 (b) Offer activities specifically designed for persons who
761 are cognitively impaired.

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

764 (d) Employ staff who have completed the training and
765 continuing education required in subsection (2).
766



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767 For the safety and protection of residents who have Alzheimer's
768 disease, related disorders, or dementia, a secured locked unit
769 may be designated. The unit may consist of the entire building
770 or a distinct part of the building. Exit doors shall be equipped
771 with an operating alarm system that releases upon activation of
772 the fire alarm. These units are exempt from specific life safety
773 requirements to which assisted living residences are normally
774 subject. A staff member must be awake and present in the secured
775 unit at all times.

776 (6) The department shall maintain and post on its website
777 ~~keep~~ a current list of providers who are approved to provide
778 initial and continuing education for staff and direct care staff
779 members of facilities that provide special care for persons with
780 Alzheimer's disease or other related disorders.

781 ~~(7) Any facility more than 90 percent of whose residents~~
782 ~~receive monthly optional supplementation payments is not~~
783 ~~required to pay for the training and education programs required~~
784 ~~under this section. A facility that has one or more such~~
785 ~~residents shall pay a reduced fee that is proportional to the~~
786 ~~percentage of such residents in the facility. A facility that~~
787 ~~does not have any residents who receive monthly optional~~
788 ~~supplementation payments must pay a reasonable fee, as~~
789 ~~established by the department, for such training and education~~
790 ~~programs.~~

791 (7)-(8) The department shall adopt rules to establish
792 standards for trainers and training and to implement this
793 section.

794 Section 14. Subsections (1), (2), (5), (7), (8), and (9) of
795 section 429.19, Florida Statutes, are amended to read:



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796 429.19 Violations; imposition of administrative fines;
797 grounds.—

798 (1) In addition to the requirements of part II of chapter
799 408, the agency shall impose an administrative fine in the
800 manner provided in chapter 120 for the violation of any
801 provision of this part, part II of chapter 408, and applicable
802 rules by an assisted living facility, for the actions of any
803 person subject to level 2 background screening under s. 408.809,
804 ~~for the actions of any facility employee,~~ or for an intentional
805 or negligent act seriously affecting the health, safety, or
806 welfare of a resident of the facility.

807 (2) Each violation of this part and adopted rules shall be
808 classified according to the nature of the violation and the
809 gravity of its probable effect on facility residents. The agency
810 shall indicate the classification on the written notice of the
811 violation as follows:

812 (a) Class "I" violations are those conditions or
813 occurrences related to the operation and maintenance of a
814 facility or to the care of residents which the agency determines
815 present an imminent danger to the residents or a substantial
816 probability that death or serious physical or emotional harm
817 would result. The condition or practice constituting a class I
818 violation shall be abated or eliminated within 24 hours, unless
819 a fixed period, as determined by the agency, is required for
820 correction defined in s. 408.813. The agency shall impose an
821 administrative fine for a cited class I violation in an amount
822 not less than \$5,000 and not exceeding \$10,000 for each
823 violation. A fine shall be levied notwithstanding the correction
824 of the violation.



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825 (b) Class "II" violations are those conditions or
826 occurrences related to the operation and maintenance of a
827 facility or to the care of residents which the agency determines
828 directly threaten the physical or emotional health, safety, or
829 security of the residents, other than class I violations defined
830 in s. 408.813. The agency shall impose an administrative fine
831 for a cited class II violation in an amount not less than \$1,000
832 and not exceeding \$5,000 for each violation. A fine shall be
833 levied notwithstanding the correction of the violation.

834 (c) Class "III" violations are those conditions or
835 occurrences related to the operation and maintenance of a
836 facility or to the care of residents which the agency determines
837 indirectly or potentially threaten the physical or emotional
838 health, safety, or security of residents, other than class I or
839 class II violations defined in s. 408.813. The agency shall
840 impose an administrative fine for a cited class III violation in
841 an amount not less than \$500 and not exceeding \$1,000 for each
842 violation. If a class III violation is corrected within the time
843 specified, a fine may not be imposed.

844 (d) Class "IV" violations are those conditions or
845 occurrences related to the operation and maintenance of a
846 facility or to required reports, forms, or documents that do not
847 have the potential of negatively affecting residents. These
848 violations are of a type that the agency determines do not
849 threaten the health, safety, or security of residents defined in
850 s. 408.813. The agency shall impose an administrative fine for a
851 cited class IV violation in an amount not less than \$100 and not
852 exceeding \$200 for each violation. A citation for a class IV
853 violation must specify the time within which the violation is



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854 required to be corrected. If a class IV violation is corrected
855 within the time specified, a fine may not be imposed.

856 (5) Any action taken to correct a violation shall be
857 documented in writing by the licensee ~~owner~~ or administrator of
858 the facility and verified through followup visits by agency
859 personnel or desk review. The agency may impose a fine and, in
860 the case of an owner-operated facility, revoke or deny a
861 licensee's ~~facility's~~ license when the agency has documented
862 that a facility administrator has fraudulently misrepresented
863 ~~misrepresents~~ action taken to correct a violation.

864 (7) In addition to any administrative fines imposed, the
865 agency may assess a survey fee, equal to the lesser of one half
866 of the facility's biennial license and bed fee or \$500, to cover
867 the cost of conducting initial complaint investigations that
868 result in the finding of a violation that was the subject of the
869 complaint ~~or monitoring visits conducted under s. 429.28(3)(c)~~
870 ~~to verify the correction of the violations.~~

871 (8) During an inspection, the agency shall ~~make a~~
872 ~~reasonable attempt to~~ discuss each violation with the owner or
873 administrator of the facility, before giving ~~prior to~~ written
874 notification.

875 (9) The agency shall develop and disseminate an annual list
876 of all facilities sanctioned or fined for violations of state
877 standards, the number and class of violations involved, the
878 penalties imposed, and the current status of cases. ~~The list~~
879 ~~shall be disseminated, at no charge, to the Department of~~
880 ~~Elderly Affairs, the Department of Health, the Department of~~
881 ~~Children and Family Services, the Agency for Persons with~~
882 ~~Disabilities, the area agencies on aging, the Florida Statewide~~



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883 ~~Advocacy Council, and the state and local ombudsman councils.~~
884 ~~The Department of Children and Family Services shall disseminate~~
885 ~~the list to service providers under contract to the department~~
886 ~~who are responsible for referring persons to a facility for~~
887 ~~residency. The agency may charge a fee commensurate with the~~
888 ~~cost of printing and postage to other interested parties~~
889 ~~requesting a copy of this list. This information may be provided~~
890 ~~electronically or through the agency's Internet site.~~

891 Section 15. Section 429.195, Florida Statutes, is amended
892 to read:

893 429.195 Rebates prohibited; penalties.-

894 (1) It is unlawful for the licensee of any assisted living
895 facility licensed under this part to contract or promise to pay
896 or receive any commission, bonus, kickback, or rebate or engage
897 in any split-fee arrangement in any form whatsoever with any
898 health care provider or health care facility under s. 817.505
899 physician, surgeon, organization, agency, or person, either
900 directly or indirectly, for residents referred to an assisted
901 living facility licensed under this part. A facility may employ
902 or contract with persons to market the facility, provided the
903 employee or contract provider clearly indicates that he or she
904 represents the facility. A person or agency independent of the
905 facility may provide placement or referral services for a fee to
906 individuals seeking assistance in finding a suitable facility;
907 however, any fee paid for placement or referral services must be
908 paid by the individual looking for a facility, not by the
909 facility. Any agreement to market, promote, or provide referral
910 services shall be in compliance with s. 817.505 and federal law.

911 (2) A violation of this section shall be considered patient



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912 brokering and is punishable as provided in s. 817.505.

913 (3) This section does not apply to:

914 (a) A referral service that provides information,
915 consultation, or referrals to consumers to assist them in
916 finding appropriate care or housing options for seniors or
917 disabled adults if such referred consumers are not Medicaid
918 recipients.

919 (b) A resident of an assisted living facility who refers a
920 friend, a family member, or other individual with whom the
921 resident has a personal relationship to the assisted living
922 facility, and does not prohibit the assisted living facility
923 from providing a monetary reward to the resident for making such
924 a referral.

925 Section 16. Subsections (2) and (3) of section 429.20,
926 Florida Statutes, are amended to read:

927 429.20 Certain solicitation prohibited; third-party
928 supplementation.-

929 (2) Solicitation of contributions of any kind in a
930 threatening, coercive, or unduly forceful manner by or on behalf
931 of an assisted living facility or facilities by any agent,
932 employee, owner, or representative of any assisted living
933 facility or facilities is prohibited ~~grounds for denial,~~
934 ~~suspension, or revocation of the license of the assisted living~~
935 ~~facility or facilities by or on behalf of which such~~
936 ~~contributions were solicited.~~

937 (3) The admission or maintenance of assisted living
938 facility residents whose care is supported, in whole or in part,
939 by state funds may not be conditioned upon the receipt of any
940 manner of contribution or donation from any person. ~~The~~



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941 ~~solicitation or receipt of contributions in violation of this~~
942 ~~subsection is grounds for denial, suspension, or revocation of~~
943 ~~license, as provided in s. 429.14, for any assisted living~~
944 ~~facility by or on behalf of which such contributions were~~
945 ~~solicited.~~

946 Section 17. Section 429.23, Florida Statutes, is amended to
947 read:

948 429.23 Internal risk management and quality assurance
949 program; adverse incidents and reporting requirements.—

950 (1) Every licensed facility ~~licensed under this part~~ may,
951 as part of its administrative functions, voluntarily establish a
952 risk management and quality assurance program, the purpose of
953 which is to assess resident care practices, facility incident
954 reports, violations ~~deficiencies~~ cited by the agency, adverse
955 incident reports, and resident grievances and develop plans of
956 action to correct and respond quickly to identify quality
957 differences.

958 (2) Every licensed facility ~~licensed under this part~~ is
959 required to maintain adverse incident reports. For purposes of
960 this section, the term, "adverse incident" means:

961 (a) An event over which facility staff ~~personnel~~ could
962 exercise control rather than as a result of the resident's
963 condition and results in:

- 964 1. Death;
- 965 2. Brain or spinal damage;
- 966 3. Permanent disfigurement;
- 967 4. Fracture or dislocation of bones or joints;
- 968 5. Any condition that required medical attention to which
- 969 the resident has not given his or her consent, excluding



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970 proceedings governed by part I of chapter 394, but including
971 failure to honor advanced directives;

972 6. Any condition that requires the transfer of the resident
973 from the facility to a unit providing more acute care due to the
974 incident rather than the resident's condition before the
975 incident; or

976 7. An event that is reported to law enforcement or its
977 personnel for investigation; or

978 (b) Resident elopement, if the elopement places the
979 resident at risk of harm or injury.

980 ~~(3) Licensed facilities shall provide within 1 business day~~
981 ~~after the occurrence of an adverse incident, by electronic mail,~~
982 ~~facsimile, or United States mail, a preliminary report to the~~
983 ~~agency on all adverse incidents specified under this section.~~
984 ~~The report must include information regarding the identity of~~
985 ~~the affected resident, the type of adverse incident, and the~~
986 ~~status of the facility's investigation of the incident.~~

987 (3)(4) Licensed facilities shall provide within 15 business
988 days after the occurrence of an adverse incident, by electronic
989 mail, facsimile, or United States mail, a full report to the
990 agency on the all adverse incident, including information
991 regarding the identity of the affected resident, the type of
992 adverse incident, and incidents specified in this section. The
993 report must include the results of the facility's investigation
994 into the adverse incident.

995 ~~(5) Each facility shall report monthly to the agency any~~
996 ~~liability claim filed against it. The report must include the~~
997 ~~name of the resident, the dates of the incident leading to the~~
998 ~~claim, if applicable, and the type of injury or violation of~~



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999 ~~rights alleged to have occurred. This report is not discoverable~~
1000 ~~in any civil or administrative action, except in such actions~~
1001 ~~brought by the agency to enforce the provisions of this part.~~

1002 (4)~~(6)~~ Abuse, neglect, or exploitation must be reported to
1003 the Department of Children and Family Services as required under
1004 chapter 415.

1005 (5)~~(7)~~ The information reported to the agency pursuant to
1006 ~~subsection (3)~~ which relates to persons licensed under chapter
1007 458, chapter 459, chapter 461, chapter 464, or chapter 465 must
1008 ~~shall~~ be reviewed by the agency. The agency shall determine
1009 whether any of the incidents potentially involved conduct by a
1010 health care professional who is subject to disciplinary action,
1011 in which case the provisions of s. 456.073 apply. The agency may
1012 investigate, as it deems appropriate, any such incident and
1013 prescribe measures that must or may be taken in response to the
1014 incident. The agency shall review each incident and determine
1015 whether it potentially involved conduct by a health care
1016 professional who is subject to disciplinary action, in which
1017 case the provisions of s. 456.073 apply.

1018 (6)~~(8)~~ If the agency, through its receipt of the adverse
1019 incident reports prescribed in this part or through any
1020 investigation, has reasonable belief that conduct by a staff
1021 member ~~or employee~~ of a licensed facility is grounds for
1022 disciplinary action by the appropriate board, the agency shall
1023 report this fact to such regulatory board.

1024 (7)~~(9)~~ The adverse incident report ~~reports and preliminary~~
1025 ~~adverse incident reports~~ required under this section is ~~are~~
1026 confidential as provided by law and is ~~are~~ not discoverable or
1027 admissible in any civil or administrative action, except in



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1028 disciplinary proceedings by the agency or appropriate regulatory
1029 board.

1030 (8)~~(10)~~ The Department of Elderly Affairs may adopt rules
1031 necessary to administer this section.

1032 Section 18. Subsections (1) and (2) of section 429.255,
1033 Florida Statutes, are amended to read:

1034 429.255 Use of personnel; emergency care.-

1035 (1) (a) Persons under contract to the facility or ~~facility~~
1036 ~~staff, or volunteers,~~ who are licensed according to part I of
1037 chapter 464, or those persons exempt under s. 464.022(1), and
1038 others as defined by rule, may administer medications to
1039 residents, take residents' vital signs, manage individual weekly
1040 pill organizers for residents who self-administer medication,
1041 give prepackaged enemas ordered by a physician, observe
1042 residents, document observations on the appropriate resident's
1043 record, report observations to the resident's physician, and
1044 contract or allow residents or a resident's representative,
1045 designee, surrogate, guardian, or attorney in fact to contract
1046 with a third party, provided residents meet the criteria for
1047 appropriate placement as defined in s. 429.26. Nursing
1048 assistants certified pursuant to part II of chapter 464 may take
1049 residents' vital signs as directed by a licensed nurse or
1050 physician. A person under contract to the facility or facility
1051 staff who are licensed under part I of chapter 464 may provide
1052 limited nursing services.

1053 (b) All staff in facilities licensed under this part shall
1054 exercise their ~~professional~~ responsibility to observe residents,
1055 to document observations on the appropriate resident's record,
1056 and to report the observations to the administrator or the



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1057 administrator's designee ~~resident's physician~~. However, The
1058 ~~owner or~~ administrator of the facility shall be responsible for
1059 determining that the resident receiving services is appropriate
1060 for residence in the assisted living facility.

1061 ~~(c) In an emergency situation, licensed personnel may carry~~
1062 ~~out their professional duties pursuant to part I of chapter 464~~
1063 ~~until emergency medical personnel assume responsibility for~~
1064 ~~care.~~

1065 (2) In facilities licensed to provide extended congregate
1066 care, persons under contract to the facility or ~~facility staff,~~
1067 ~~or volunteers,~~ who are licensed according to part I of chapter
1068 464, or those persons exempt under s. 464.022(1), or those
1069 persons certified as nursing assistants pursuant to part II of
1070 chapter 464, may also perform all duties within the scope of
1071 their license or certification, as approved by the facility
1072 administrator and pursuant to this part.

1073 Section 19. Subsections (2), (3), and (4) of section
1074 429.256, Florida Statutes, are amended to read:

1075 429.256 Assistance with self-administration of medication.—

1076 (2) Residents who are capable of self-administering their
1077 own medications without assistance shall be encouraged and
1078 allowed to do so. However, an unlicensed person may, consistent
1079 with a dispensed prescription's label or the package directions
1080 of an over-the-counter medication, assist a resident whose
1081 condition is medically stable with the self-administration of
1082 routine, regularly scheduled medications that are intended to be
1083 self-administered. Assistance with self-medication by an
1084 unlicensed person may occur only upon a documented request by,
1085 and the written informed consent of, a resident or the



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1086 resident's surrogate, guardian, or attorney in fact. To minimize
1087 the potential risk for improper dosage administration of
1088 prescription drugs, a facility may require standard medication
1089 dispensing systems for residents' prescriptions, as specified by
1090 rule. For the purposes of this section, self-administered
1091 medications include both legend and over-the-counter oral dosage
1092 forms, topical dosage forms and topical ophthalmic, otic, and
1093 nasal dosage forms including solutions, suspensions, sprays, ~~and~~
1094 inhalers, and continuous positive airway pressure machines.

1095 (3) Assistance with self-administration of medication
1096 includes:

1097 (a) Taking the medication, in its previously dispensed,
1098 properly labeled container, from where it is stored, and
1099 bringing it to the resident.

1100 (b) In the presence of the resident, reading the label,
1101 opening the container, removing a prescribed amount of
1102 medication from the container, and closing the container.

1103 (c) Placing an oral dosage in the resident's hand or
1104 placing the dosage in another container and helping the resident
1105 by lifting the container to his or her mouth.

1106 (d) Applying topical medications.

1107 (e) Returning the medication container to proper storage.

1108 (f) Keeping a record of when a resident receives assistance
1109 with self-administration under this section.

1110 (g) Assisting a resident in holding a nebulizer.

1111 (h) Using a glucometer to perform blood glucose checks.

1112 (i) Assisting with the putting on and taking off anti-
1113 embolism stockings.

1114 (j) Assisting with applying and removing an oxygen cannula.



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1115 (4) Assistance with self-administration does not include:

1116 (a) Mixing, compounding, converting, or calculating
1117 medication doses, except for measuring a prescribed amount of
1118 liquid medication or breaking a scored tablet or crushing a
1119 tablet as prescribed.

1120 (b) The preparation of syringes for injection or the
1121 administration of medications by any injectable route.

1122 ~~(c) Administration of medications through intermittent~~
1123 ~~positive pressure breathing machines or a nebulizer.~~

1124 (c)~~(d)~~ Administration of medications by way of a tube
1125 inserted in a cavity of the body.

1126 (d)~~(e)~~ Administration of parenteral preparations.

1127 (e)~~(f)~~ Irrigations or debriding agents used in the
1128 treatment of a skin condition.

1129 (f)~~(g)~~ Rectal, urethral, or vaginal preparations.

1130 (g)~~(h)~~ Medications ordered by the physician or health care
1131 professional with prescriptive authority to be given "as
1132 needed," unless the order is written with specific parameters
1133 that preclude independent judgment on the part of the unlicensed
1134 person, and at the request of a competent resident.

1135 (h)~~(i)~~ Medications for which the time of administration,
1136 the amount, the strength of dosage, the method of
1137 administration, or the reason for administration requires
1138 judgment or discretion on the part of the unlicensed person.

1139 Section 20. Subsections (3), (7), (8), (9), (10), and (11)
1140 of section 429.26, Florida Statutes, are amended to read:

1141 429.26 Appropriateness of placements; examinations of
1142 residents.—

1143 (3) Persons licensed under part I of chapter 464 who are



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1144 employed by or under contract with a facility shall, on a
1145 routine basis or at least monthly, perform a nursing assessment
1146 of the residents for whom they are providing nursing services
1147 ordered by a physician, except administration of medication, and
1148 shall document such assessment, including any significant change
1149 ~~substantial changes~~ in a resident's status which may necessitate
1150 relocation to a nursing home, hospital, or specialized health
1151 care facility. Such records shall be maintained in the facility
1152 for inspection by the agency and shall be forwarded to the
1153 resident's case manager, if applicable.

1154 ~~(7) The facility must notify a licensed physician when a~~
1155 ~~resident exhibits signs of dementia or cognitive impairment or~~
1156 ~~has a change of condition in order to rule out the presence of~~
1157 ~~an underlying physiological condition that may be contributing~~
1158 ~~to such dementia or impairment. The notification must occur~~
1159 ~~within 30 days after the acknowledgment of such signs by~~
1160 ~~facility staff. If an underlying condition is determined to~~
1161 ~~exist, the facility shall arrange, with the appropriate health~~
1162 ~~care provider, the necessary care and services to treat the~~
1163 ~~condition.~~

1164 (7)~~(8)~~ The Department of Children and Family Services may
1165 require an examination for supplemental security income and
1166 optional state supplementation recipients residing in facilities
1167 at any time and shall provide the examination whenever a
1168 resident's condition requires it. Any facility administrator;
1169 personnel of the agency, the department, or the Department of
1170 Children and Family Services; or long-term care ombudsman
1171 council member who believes a resident needs to be evaluated
1172 shall notify the resident's case manager, who shall take



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1173 appropriate action. A report of the examination findings shall
1174 be provided to the resident's case manager and the facility
1175 administrator to help the administrator meet his or her
1176 responsibilities under subsection (1).

1177 ~~(8)-(9)~~ A terminally ill resident who no longer meets the
1178 criteria for continued residency may remain in the facility if
1179 the arrangement is mutually agreeable to the resident and the
1180 administrator, facility, additional care is rendered through a
1181 licensed hospice, and the resident is under the care of a
1182 physician who agrees that the physical needs of the resident are
1183 being met.

1184 ~~(9)-(10)~~ Facilities licensed to provide extended congregate
1185 care services shall promote aging in place by determining
1186 appropriateness of continued residency based on a comprehensive
1187 review of the resident's physical and functional status; the
1188 ability of the facility, family members, friends, or any other
1189 pertinent individuals or agencies to provide the care and
1190 services required; and documentation that a written service plan
1191 consistent with facility policy has been developed and
1192 implemented to ensure that the resident's needs and preferences
1193 are addressed.

1194 ~~(10)-(11)~~ A ~~No~~ resident who requires 24-hour nursing
1195 supervision, except for a resident who is an enrolled hospice
1196 patient pursuant to part IV of chapter 400, may not shall be
1197 retained in a licensed facility ~~licensed under this part~~.

1198 Section 21. Section 429.27, Florida Statutes, is amended to
1199 read:

1200 429.27 Property and personal affairs of residents.—

1201 (1) (a) A resident shall be given the option of using his or



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1202 her own belongings, as space permits; choosing his or her
1203 roommate; and, whenever possible, unless the resident is
1204 adjudicated incompetent or incapacitated under state law,
1205 managing his or her own affairs.

1206 (b) The admission of a resident to a facility and his or
1207 her presence therein does ~~shall~~ not give ~~confer on~~ the facility
1208 or its licensee, owner, administrator, employees, or
1209 representatives any authority to manage, use, or dispose of any
1210 property of the resident; nor shall such admission or presence
1211 give ~~confer on~~ any of such persons any authority or
1212 responsibility for the personal affairs of the resident, except
1213 that which may be necessary for the safe management of the
1214 facility or for the safety of the resident.

1215 (2) The licensee, ~~A facility, or an~~ owner, administrator,
1216 employee of an assisted living facility, or representative
1217 thereof, may not act as the guardian, trustee, or conservator
1218 for any resident of the assisted living facility or any of such
1219 resident's property. A licensee, ~~An~~ owner, administrator, or
1220 staff member, or representative thereof, may not act as a
1221 competent resident's payee for social security, veteran's, or
1222 railroad benefits without the consent of the resident. Any
1223 facility whose licensee, owner, administrator, or staff, or
1224 representative thereof, serves as representative payee for any
1225 resident of the facility shall file a surety bond with the
1226 agency in an amount equal to twice the average monthly aggregate
1227 income or personal funds due to residents, or expendable for
1228 their account, which are received by a facility. Any facility
1229 whose licensee, owner, administrator, or staff, or a
1230 representative thereof, is granted power of attorney for any



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1231 resident of the facility shall file a surety bond with the
1232 agency for each resident for whom such power of attorney is
1233 granted. The surety bond shall be in an amount equal to twice
1234 the average monthly income of the resident, plus the value of
1235 any resident's property under the control of the attorney in
1236 fact. The bond shall be executed by the facility's licensee,
1237 owner, administrator, or staff, or a representative thereof,
1238 ~~facility~~ as principal and a licensed surety company. The bond
1239 shall be conditioned upon the faithful compliance of the
1240 licensee, owner, administrator, or staff, or a representative
1241 thereof, of the facility with this section and shall run to the
1242 agency for the benefit of any resident who suffers a financial
1243 loss as a result of the misuse or misappropriation by a
1244 licensee, owner, administrator, or staff, or representative
1245 thereof, of the facility of funds held pursuant to this
1246 subsection. Any surety company that cancels or does not renew
1247 the bond of any licensee shall notify the agency in writing not
1248 less than 30 days in advance of such action, giving the reason
1249 for the cancellation or nonrenewal. Any facility's licensee,
1250 ~~facility~~ owner, administrator, or staff, or representative
1251 thereof, who is granted power of attorney for any resident of
1252 the facility shall, on a monthly basis, be required to provide
1253 the resident a written statement of any transaction made on
1254 behalf of the resident pursuant to this subsection, and a copy
1255 of such statement given to the resident shall be retained in
1256 each resident's file and available for agency inspection.

1257 (3) A facility administrator, upon mutual consent with the
1258 resident, shall provide for the safekeeping in the facility of
1259 personal effects, including funds, not in excess of \$500 ~~and~~



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1260 ~~funds of the resident not in excess of \$200 cash~~, and shall keep
1261 complete and accurate records of all such funds and personal
1262 effects received. If a resident is absent from a facility for 24
1263 hours or more, the facility may provide for the safekeeping of
1264 the resident's personal effects, including funds, in excess of
1265 \$500.

1266 (4) Any funds or other property belonging to or due to a
1267 resident, or expendable for his or her account, which is
1268 received by the administrator ~~a facility~~ shall be trust funds
1269 which shall be kept separate from the funds and property of the
1270 facility and other residents or shall be specifically credited
1271 to such resident. Such trust funds shall be used or otherwise
1272 expended only for the account of the resident. Upon written
1273 request, at least once every 3 months, unless upon order of a
1274 court of competent jurisdiction, the administrator ~~facility~~
1275 shall furnish the resident and his or her guardian, trustee, or
1276 conservator, if any, a complete and verified statement of all
1277 funds and other property to which this subsection applies,
1278 detailing the amount and items received, together with their
1279 sources and disposition. In any event, the administrator
1280 ~~facility~~ shall furnish such statement annually and upon the
1281 discharge or transfer of a resident. ~~Any governmental agency or~~
1282 ~~private charitable agency contributing funds or other property~~
1283 ~~to the account of a resident shall also be entitled to receive~~
1284 ~~such statement annually and upon the discharge or transfer of~~
1285 ~~the resident.~~

1286 (5) Any personal funds available to facility residents may
1287 be used by residents as they choose to obtain clothing, personal
1288 items, leisure activities, and other supplies and services for



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1289 their personal use. An administrator ~~A facility~~ may not demand,
1290 require, or contract for payment of all or any part of the
1291 personal funds in satisfaction of the facility rate for supplies
1292 and services beyond that amount agreed to in writing ~~and may not~~
1293 ~~levy an additional charge to the individual or the account for~~
1294 ~~any supplies or services that the facility has agreed by~~
1295 ~~contract to provide as part of the standard monthly rate.~~ Any
1296 service or supplies provided by the facility which are charged
1297 separately to the individual or the account may be provided only
1298 with the specific written consent of the individual, who shall
1299 be furnished in advance of the provision of the services or
1300 supplies with an itemized written statement to be attached to
1301 the contract setting forth the charges for the services or
1302 supplies.

1303 (6) (a) In addition to any damages or civil penalties to
1304 which a person is subject, any person who:

1305 1. Intentionally withholds a resident's personal funds,
1306 personal property, or personal needs allowance, or who demands,
1307 beneficially receives, or contracts for payment of all or any
1308 part of a resident's personal property or personal needs
1309 allowance in satisfaction of the facility rate for supplies and
1310 services; or

1311 2. Borrows from or pledges any personal funds of a
1312 resident, other than the amount agreed to by written contract
1313 under s. 429.24,

1314
1315 commits a misdemeanor of the first degree, punishable as
1316 provided in s. 775.082 or s. 775.083.

1317 (b) Any licensee, facility owner, administrator, or staff,



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1318 or representative thereof, who is granted power of attorney for
1319 any resident of the facility and who misuses or misappropriates
1320 funds obtained through this power commits a felony of the third
1321 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1322 775.084.

1323 (7) In the event of the death of a resident, a licensee
1324 shall return all refunds, funds, and property held in trust to
1325 the resident's personal representative, if one has been
1326 appointed at the time the facility disburses such funds, and, if
1327 not, to the resident's spouse or adult next of kin named in a
1328 beneficiary designation form provided by the licensee facility
1329 to the resident. If the resident has no spouse or adult next of
1330 kin or such person cannot be located, funds due the resident
1331 shall be placed in an interest-bearing account, and all property
1332 held in trust by the licensee facility shall be safeguarded
1333 until such time as the funds and property are disbursed pursuant
1334 to the Florida Probate Code. Such funds shall be kept separate
1335 from the funds and property of the facility and other residents
1336 of the facility. If the funds of the deceased resident are not
1337 disbursed pursuant to the Florida Probate Code within 2 years
1338 after the resident's death, the funds shall be deposited in the
1339 Health Care Trust Fund administered by the agency.

1340 (8) The department may by rule clarify terms and specify
1341 procedures and documentation necessary to administer the
1342 provisions of this section relating to the proper management of
1343 residents' funds and personal property and the execution of
1344 surety bonds.

1345 Section 22. Subsection (4) of section 429.275, Florida
1346 Statutes, is repealed.



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1347 Section 23. Paragraph (k) of subsection (1) and subsections
1348 (3), (4), (5), (6), and (7) of section 429.28, Florida Statutes,
1349 are amended to read:

1350 429.28 Resident bill of rights.—

1351 (1) ~~A~~ ~~Ne~~ resident of a facility may not ~~shall~~ be deprived
1352 of any civil or legal rights, benefits, or privileges guaranteed
1353 by law, the Constitution of the State of Florida, or the
1354 Constitution of the United States as a resident of a facility.
1355 Every resident of a facility shall have the right to:

1356 (k) At least 30 ~~45~~ days' notice of relocation or
1357 termination of residency from the facility unless, for medical
1358 reasons, the resident is certified by a physician to require an
1359 emergency relocation to a facility providing a more skilled
1360 level of care or the resident engages in a pattern of conduct
1361 that is harmful or offensive to other residents. In the case of
1362 a resident who has been adjudicated mentally incapacitated, the
1363 guardian shall be given at least 30 ~~45~~ days' notice of a
1364 nonemergency relocation or residency termination. Reasons for
1365 relocation shall be set forth in writing. ~~In order for a~~
1366 ~~facility to terminate the residency of an individual without~~
1367 ~~notice as provided herein, the facility shall show good cause in~~
1368 ~~a court of competent jurisdiction.~~

1369 ~~(3) (a) The agency shall conduct a survey to determine~~
1370 ~~general compliance with facility standards and compliance with~~
1371 ~~residents' rights as a prerequisite to initial licensure or~~
1372 ~~licensure renewal.~~

1373 ~~(b) In order to determine whether the facility is~~
1374 ~~adequately protecting residents' rights, the biennial survey~~
1375 ~~shall include private informal conversations with a sample of~~



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1376 ~~residents and consultation with the ombudsman council in the~~
1377 ~~planning and service area in which the facility is located to~~
1378 ~~discuss residents' experiences within the facility.~~

1379 ~~(c) During any calendar year in which no survey is~~
1380 ~~conducted, the agency shall conduct at least one monitoring~~
1381 ~~visit of each facility cited in the previous year for a class I~~
1382 ~~or class II violation, or more than three uncorrected class III~~
1383 ~~violations.~~

1384 ~~(d) The agency may conduct periodic followup inspections as~~
1385 ~~necessary to monitor the compliance of facilities with a history~~
1386 ~~of any class I, class II, or class III violations that threaten~~
1387 ~~the health, safety, or security of residents.~~

1388 ~~(e) The agency may conduct complaint investigations as~~
1389 ~~warranted to investigate any allegations of noncompliance with~~
1390 ~~requirements required under this part or rules adopted under~~
1391 ~~this part.~~

1392 ~~(3)(4) The administrator shall ensure that facility shall~~
1393 ~~not hamper or prevent residents may exercise from exercising~~
1394 ~~their rights as specified in this section.~~

1395 ~~(4)(5) A staff member ~~No~~ facility or employee of a facility~~
1396 ~~may not serve notice upon a resident to leave the premises or~~
1397 ~~take any other retaliatory action against any person who:~~

1398 ~~(a) Exercises any right set forth in this section.~~

1399 ~~(b) Appears as a witness in any hearing, inside or outside~~
1400 ~~the facility.~~

1401 ~~(c) Files a civil action alleging a violation of the~~
1402 ~~provisions of this part ~~or notifies a state attorney or the~~~~
1403 ~~Attorney General of a possible violation of such provisions.~~

1404 ~~(5)(6) An administrator may not terminate ~~Any facility~~~~



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1405 ~~which terminates~~ the residency of an individual who participated
1406 in activities specified in subsection ~~(4) (5)~~ shall ~~show good~~
1407 ~~cause in a court of competent jurisdiction.~~

1408 ~~(6) (7)~~ Any person who submits or reports a complaint
1409 concerning a suspected violation of the provisions of this part
1410 or concerning services and conditions in facilities, or who
1411 testifies in any administrative or judicial proceeding arising
1412 from such a complaint, shall have immunity from any civil or
1413 criminal liability therefor, unless such person has acted in bad
1414 faith or with malicious purpose or the court finds that there
1415 was a complete absence of a justiciable issue of either law or
1416 fact raised by the losing party.

1417 Section 24. Section 429.29, Florida Statutes, is amended to
1418 read:

1419 429.29 Civil actions to enforce rights.—

1420 (1) A Any person or resident whose who alleges negligence
1421 or a violation of rights as specified in this part has are
1422 violated shall have a cause of action against the licensee or
1423 its management company, as identified in the state application
1424 for assisted living facility licensure. However, the cause of
1425 action may not be asserted individually against an officer,
1426 director, owner, including an owner designated as having a
1427 controlling interest on the state application for assisted
1428 living facility licensure, or agent of a licensee or management
1429 company unless, following an evidentiary hearing, the court
1430 determines there is sufficient evidence in the record or
1431 proffered by the claimant which establishes a reasonable basis
1432 for finding that the person or entity breached, failed to
1433 perform, or acted outside the scope of duties as an officer,



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1434 director, owner, or agent, and that the breach, failure to
1435 perform, or action outside the scope of duties is a legal cause
1436 of actual loss, injury, death, or damage to the resident.

1437 (2) The action may be brought by the resident or his or her
1438 guardian, or by a person or organization acting on behalf of a
1439 resident with the consent of the resident or his or her
1440 guardian, or by the personal representative of the estate of a
1441 deceased resident regardless of the cause of death.

1442 (3) If the action alleges a claim for the resident's rights
1443 or for negligence that:

1444 (a) Caused the death of the resident, the claimant shall ~~be~~
1445 ~~required to~~ elect ~~either~~ survival damages pursuant to s. 46.021
1446 or wrongful death damages pursuant to s. 768.21. If the claimant
1447 elects wrongful death damages, total noneconomic damages may not
1448 exceed \$250,000, regardless of the number of claimants.

1449 ~~(b) If the action alleges a claim for the resident's rights~~
1450 ~~or for negligence that~~ Did not cause the death of the resident,
1451 the personal representative of the estate may recover damages
1452 for the negligence that caused injury to the resident.

1453 (4) The action may be brought in any court of competent
1454 jurisdiction to enforce such rights and to recover actual
1455 damages, and punitive damages for violation of the rights of a
1456 resident or negligence.

1457 (5) Any resident who prevails in seeking injunctive relief
1458 or a claim for an administrative remedy is entitled to recover
1459 the costs of the action and a reasonable attorney's fee assessed
1460 against the defendant not to exceed \$25,000. Fees shall be
1461 awarded solely for the injunctive or administrative relief and
1462 not for any claim or action for damages whether such claim or



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1463 action is brought together with a request for an injunction or
1464 administrative relief or as a separate action, except as
1465 provided under s. 768.79 or the Florida Rules of Civil
1466 Procedure. Sections 429.29-429.298 provide the exclusive remedy
1467 for a cause of action for recovery of damages for the personal
1468 injury or death of a resident arising out of negligence or a
1469 violation of rights specified in s. 429.28. This section does
1470 not preclude theories of recovery not arising out of negligence
1471 or s. 429.28 which are available to a resident or to the agency.
1472 The provisions of chapter 766 do not apply to any cause of
1473 action brought under ss. 429.29-429.298.

1474 (6)(2) ~~If the In any~~ claim brought pursuant to this part
1475 alleges ~~alleging~~ a violation of resident's rights or negligence
1476 causing injury to or the death of a resident, the claimant shall
1477 have the burden of proving, by a preponderance of the evidence,
1478 that:

- 1479 (a) The defendant owed a duty to the resident;
1480 (b) The defendant breached the duty to the resident;
1481 (c) The breach of the duty is a legal cause of loss,
1482 injury, death, or damage to the resident; and
1483 (d) The resident sustained loss, injury, death, or damage
1484 as a result of the breach.

1485
1486 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
1487 strict liability. A violation of the rights set forth in s.
1488 429.28 or in any other standard or guidelines specified in this
1489 part or in any applicable administrative standard or guidelines
1490 of this state or a federal regulatory agency shall be evidence
1491 of negligence but shall not be considered negligence per se.



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1492 (7)~~(3)~~ In any claim brought pursuant to this section, a
1493 licensee, person, or entity has ~~shall have~~ a duty to exercise
1494 reasonable care. Reasonable care is that degree of care which a
1495 reasonably careful licensee, person, or entity would use under
1496 like circumstances.

1497 (8)~~(4)~~ In any claim for resident's rights violation or
1498 negligence by a nurse licensed under part I of chapter 464, such
1499 nurse has a ~~shall have the~~ duty to exercise care consistent with
1500 the prevailing professional standard of care for a nurse. The
1501 prevailing professional standard of care for a nurse is ~~shall be~~
1502 that level of care, skill, and treatment which, in light of all
1503 relevant surrounding circumstances, is recognized as acceptable
1504 and appropriate by reasonably prudent similar nurses.

1505 (9)~~(5)~~ Discovery of financial information for the purpose
1506 of determining the value of punitive damages may not be had
1507 unless the plaintiff shows the court by proffer or evidence in
1508 the record that a reasonable basis exists to support a claim for
1509 punitive damages.

1510 (10)~~(6)~~ In addition to any other standards for punitive
1511 damages, any award of punitive damages must be reasonable in
1512 light of the actual harm suffered by the resident and the
1513 egregiousness of the conduct that caused the actual harm to the
1514 resident.

1515 (11)~~(7)~~ The resident or the resident's legal representative
1516 shall serve a copy of any complaint alleging in whole or in part
1517 a violation of any rights specified in this part to the agency
1518 ~~for Health Care Administration~~ at the time of filing the initial
1519 complaint with the clerk of the court for the county in which
1520 the action is pursued. ~~The requirement of~~ Providing a copy of



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1521 the complaint to the agency does not impair the resident's legal
1522 rights or ability to seek relief for his or her claim.

1523 Section 25. Subsections (4) and (7) of section 429.293,
1524 Florida Statutes, are amended, subsection (11) is redesignated
1525 as subsection (12), and a new subsection (11) is added to that
1526 section, to read:

1527 429.293 Presuit notice; investigation; notification of
1528 violation of residents' rights or alleged negligence; claims
1529 evaluation procedure; informal discovery; review; settlement
1530 offer; mediation.—

1531 (4) The notification of a violation of a resident's rights
1532 or alleged negligence shall be served within the applicable
1533 statute of limitations period; however, during the 75-day
1534 period, the statute of limitations is tolled as to all
1535 prospective defendants. Upon written stipulation by the parties,
1536 the 75-day period may be extended and the statute of limitations
1537 is tolled during any such extension. Upon receiving written
1538 notice by certified mail, return receipt requested, of
1539 termination of negotiations in an extended period, the claimant
1540 shall have 30 ~~60~~ days or the remainder of the period of the
1541 statute of limitations, whichever is greater, within which to
1542 file suit.

1543 (7) Informal discovery may be used by a party to obtain
1544 unsworn statements and the production of documents or things, as
1545 follows:

1546 (a) *Unsworn statements.*—Any party may require other parties
1547 to appear for the taking of an unsworn statement. Such
1548 statements may be used only for the purpose of claims evaluation
1549 and are not discoverable or admissible in any civil action for



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1550 any purpose by any party. A party seeking to take the unsworn
1551 statement of any party must give reasonable notice in writing to
1552 all parties. The notice must state the time and place for taking
1553 the statement and the name and address of the party to be
1554 examined. Unless otherwise impractical, the examination of any
1555 party must be done at the same time by all other parties. Any
1556 party may be represented by counsel at the taking of an unsworn
1557 statement. An unsworn statement may be recorded electronically,
1558 stenographically, or on videotape. The taking of unsworn
1559 statements is subject to the provisions of the Florida Rules of
1560 Civil Procedure and may be terminated for abuses.

1561 (b) *Documents or things.*—Any party may request discovery of
1562 relevant documents or things relevant to evaluating the merits
1563 of the claim. The documents or things must be produced, at the
1564 expense of the requesting party, within 20 days after the date
1565 of receipt of the request. A party is required to produce
1566 relevant and discoverable documents or things within that
1567 party's possession or control, if in good faith it can
1568 reasonably be done within the timeframe of the claims evaluation
1569 process.

1570 (11) An arbitration process as provided for in chapter 44
1571 may be used to resolve a claim filed pursuant to this section.

1572 (12)~~(11)~~ Within 30 days after the claimant's receipt of the
1573 defendant's response to the claim, the parties or their
1574 designated representatives shall meet in mediation to discuss
1575 the issues of liability and damages in accordance with the
1576 mediation rules of practice and procedures adopted by the
1577 Supreme Court. Upon written stipulation of the parties, this 30-
1578 day period may be extended and the statute of limitations is



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1579 tolled during the mediation and any such extension. At the
1580 conclusion of mediation, the claimant shall have 60 days or the
1581 remainder of the period of the statute of limitations, whichever
1582 is greater, within which to file suit.

1583 Section 26. Section 429.294, Florida Statutes, is amended
1584 to read:

1585 429.294 Availability of facility records for investigation
1586 of resident's rights violations and defenses; penalty.—

1587 (1) Unless expressly prohibited by a legally competent
1588 resident, an assisted living facility licensed under this part
1589 shall furnish to the spouse, guardian, surrogate, proxy, or
1590 attorney in fact, as provided in chapters 744 and 765, of a
1591 current, within 7 working days after receipt of a written
1592 request, or of a former resident, within 10 working days after
1593 receipt of a written request, a copy of that resident's records
1594 that are in the possession of the facility. Such records must
1595 include medical and psychiatric records and any records
1596 concerning the care and treatment of the resident performed by
1597 the facility, except progress notes and consultation report
1598 sections of a psychiatric nature. Copies of such records are not
1599 considered part of a deceased resident's estate and may be made
1600 available before the administration of an estate, upon request,
1601 to the spouse, guardian, surrogate, proxy, or attorney in fact,
1602 as provided in chapters 744 and 765. A facility may charge a
1603 reasonable fee for the copying of a resident's records. Such fee
1604 shall not exceed \$1 per page for the first 25 pages and 25 cents
1605 per page for each additional page in excess of 25 pages. The
1606 facility shall further allow any such spouse, guardian,
1607 surrogate, proxy, or attorney in fact, as provided in chapters



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1608 744 and 765, to examine the original records in its possession,
1609 or microfilms or other suitable reproductions of the records,
1610 upon such reasonable terms as shall be imposed, to help ensure
1611 that the records are not damaged, destroyed, or altered.

1612 (2) A person may not obtain copies of a resident's records
1613 under this section more often than once per month, except that a
1614 physician's report in the a resident's records may be obtained
1615 as often as necessary to effectively monitor the resident's
1616 condition.

1617 (3)(1) Failure to provide complete copies of a resident's
1618 records, including, but not limited to, all medical records and
1619 the resident's chart, within the control or possession of the
1620 facility within 10 days, in accordance with the provisions of
1621 this section s. 400.145, shall constitute evidence of failure of
1622 that party to comply with good faith discovery requirements and
1623 shall waive the good faith certificate and presuit notice
1624 requirements under this part by the requesting party.

1625 (4)(2) A licensee may not ~~No facility shall~~ be held liable
1626 for any civil damages as a result of complying with this
1627 section.

1628 Section 27. Subsections (1), (2), and (3) of section
1629 429.297, Florida Statutes, are amended to read:

1630 429.297 Punitive damages; pleading; burden of proof.-

1631 (1) In any action ~~for damages~~ brought under this part, ~~a~~ a ~~no~~
1632 claim for punitive damages is not shall be permitted unless,
1633 based on admissible there is a reasonable showing by evidence in
1634 the record or proffered by the claimant, which would provide a
1635 reasonable basis for recovery of such damages is demonstrated
1636 upon applying the criteria set forth in this section. The



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1637 defendant may proffer admissible evidence to refute the
1638 claimant's proffer of evidence to recover punitive damages. The
1639 trial judge shall conduct an evidentiary hearing and weigh the
1640 admissible evidence proffered by the claimant and the defendant
1641 to ensure that there is a reasonable basis to believe that the
1642 claimant, at trial, will be able to demonstrate by clear and
1643 convincing evidence that the recovery of such damages is
1644 warranted. The claimant may move to amend her or his complaint
1645 to assert a claim for punitive damages as allowed by the rules
1646 of civil procedure. ~~The rules of civil procedure shall be~~
1647 ~~liberally construed so as to allow the claimant discovery of~~
1648 ~~evidence which appears reasonably calculated to lead to~~
1649 ~~admissible evidence on the issue of punitive damages. No~~
1650 Discovery of financial worth may not shall proceed until after
1651 the trial judge approves the pleading on concerning punitive
1652 damages ~~is permitted.~~

1653 (2) A defendant, including the licensee or management
1654 company, against whom punitive damages is sought may be held
1655 liable for punitive damages only if the trier of fact, based on
1656 clear and convincing evidence, finds that a specific individual
1657 or corporate defendant actively and knowingly participated in
1658 intentional misconduct, or engaged in conduct that constituted
1659 gross negligence, and that conduct contributed to the loss,
1660 damages, or injury suffered by the claimant ~~the defendant was~~
1661 ~~personally guilty of intentional misconduct or gross negligence.~~
1662 As used in this section, the term:

1663 (a) "Intentional misconduct" means that the defendant
1664 against whom a claim for punitive damages is sought had actual
1665 knowledge of the wrongfulness of the conduct and the high



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1666 probability that injury or damage to the claimant would result
1667 and, despite that knowledge, intentionally pursued that course
1668 of conduct, resulting in injury or damage.

1669 (b) "Gross negligence" means that the defendant's conduct
1670 was so reckless or wanting in care that it constituted a
1671 conscious disregard or indifference to the life, safety, or
1672 rights of persons exposed to such conduct.

1673 (3) In the case of vicarious liability of an employer,
1674 principal, corporation, or other legal entity, punitive damages
1675 may not be imposed for the conduct of an identified employee or
1676 agent unless only if the conduct of the employee or agent meets
1677 the criteria specified in subsection (2) and officers,
1678 directors, or managers of the actual employer corporation or
1679 legal entity condoned, ratified, or consented to the specific
1680 conduct as alleged by the claimant in subsection (2).÷

1681 ~~(a) The employer, principal, corporation, or other legal~~
1682 ~~entity actively and knowingly participated in such conduct;~~

1683 ~~(b) The officers, directors, or managers of the employer,~~
1684 ~~principal, corporation, or other legal entity condoned,~~
1685 ~~ratified, or consented to such conduct; or~~

1686 ~~(c) The employer, principal, corporation, or other legal~~
1687 ~~entity engaged in conduct that constituted gross negligence and~~
1688 ~~that contributed to the loss, damages, or injury suffered by the~~
1689 ~~claimant.~~

1690 Section 28. Subsections (1) and (4) of section 429.298,
1691 Florida Statutes, are amended to read:

1692 429.298 Punitive damages; limitation.—

1693 (1) (a) ~~Except as provided in paragraphs (b) and (c),~~ An
1694 award of punitive damages may not exceed the greater of:



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1695 1. Three times the amount of compensatory damages awarded
1696 to each claimant entitled thereto, consistent with the remaining
1697 provisions of this section; or

1698 2. The sum of \$250,000 ~~\$1 million~~.

1699 ~~(b) Where the fact finder determines that the wrongful~~
1700 ~~conduct proven under this section was motivated primarily by~~
1701 ~~unreasonable financial gain and determines that the unreasonably~~
1702 ~~dangerous nature of the conduct, together with the high~~
1703 ~~likelihood of injury resulting from the conduct, was actually~~
1704 ~~known by the managing agent, director, officer, or other person~~
1705 ~~responsible for making policy decisions on behalf of the~~
1706 ~~defendant, it may award an amount of punitive damages not to~~
1707 ~~exceed the greater of:~~

1708 1. ~~Four times the amount of compensatory damages awarded to~~
1709 ~~each claimant entitled thereto, consistent with the remaining~~
1710 ~~provisions of this section; or~~

1711 2. ~~The sum of \$4 million.~~

1712 ~~(c) Where the fact finder determines that at the time of~~
1713 ~~injury the defendant had a specific intent to harm the claimant~~
1714 ~~and determines that the defendant's conduct did in fact harm the~~
1715 ~~claimant, there shall be no cap on punitive damages.~~

1716 (b) ~~(d)~~ This subsection is not intended to prohibit an
1717 appropriate court from exercising its jurisdiction under s.
1718 768.74 in determining the reasonableness of an award of punitive
1719 damages that is less than three times the amount of compensatory
1720 damages.

1721 ~~(e) In any case in which the findings of fact support an~~
1722 ~~award of punitive damages pursuant to paragraph (b) or paragraph~~
1723 ~~(c), the clerk of the court shall refer the case to the~~



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1724 ~~appropriate law enforcement agencies, to the state attorney in~~
1725 ~~the circuit where the long-term care facility that is the~~
1726 ~~subject of the underlying civil cause of action is located, and,~~
1727 ~~for multijurisdictional facility owners, to the Office of the~~
1728 ~~Statewide Prosecutor; and such agencies, state attorney, or~~
1729 ~~Office of the Statewide Prosecutor shall initiate a criminal~~
1730 ~~investigation into the conduct giving rise to the award of~~
1731 ~~punitive damages. All findings by the trier of fact which~~
1732 ~~support an award of punitive damages under this paragraph shall~~
1733 ~~be admissible as evidence in any subsequent civil or criminal~~
1734 ~~proceeding relating to the acts giving rise to the award of~~
1735 ~~punitive damages under this paragraph.~~

1736 (4) Notwithstanding any other law to the contrary, the
1737 amount of punitive damages awarded pursuant to this section
1738 shall be ~~equally~~ divided between the claimant and the Quality of
1739 Long-Term Care Facility Improvement Trust Fund, in accordance
1740 with the following provisions:

1741 (a) The clerk of the court shall transmit a copy of the
1742 jury verdict to the Chief Financial Officer by certified mail.
1743 In the final judgment, the court shall order the percentages of
1744 the award, payable as provided herein.

1745 (b) A settlement agreement entered into between the
1746 original parties to the action after a verdict has been returned
1747 must provide a ~~proportionate~~ share payable to the Quality of
1748 Long-Term Care Facility Improvement Trust Fund specified herein.
1749 For purposes of this paragraph, the a proportionate share
1750 payable to the Quality of Long-Term Care Facility Improvement
1751 Trust Fund must be is a 75 percent 50-percent share of that
1752 percentage of the settlement amount which the punitive damages



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1753 portion of the verdict bore to the total of the compensatory and
1754 punitive damages in the verdict.

1755 (c) The Department of Financial Services shall collect or
1756 cause to be collected all payments due the state under this
1757 section. Such payments are made to the Chief Financial Officer
1758 and deposited in the appropriate fund specified in this
1759 subsection.

1760 (d) If the full amount of punitive damages awarded cannot
1761 be collected, the claimant and the other recipient designated
1762 pursuant to this subsection are each entitled to a proportionate
1763 share of the punitive damages collected.

1764 Section 29. Paragraphs (a), (d), (h), (i), (j), and (l) of
1765 subsection (1) and subsection (5) of section 429.41, Florida
1766 Statutes, are amended to read:

1767 429.41 Rules establishing standards.—

1768 (1) It is the intent of the Legislature that rules
1769 published and enforced pursuant to this section shall include
1770 criteria by which a reasonable and consistent quality of
1771 resident care and quality of life may be ensured and the results
1772 of such resident care may be demonstrated. Such rules shall also
1773 ensure a safe and sanitary environment that is residential and
1774 noninstitutional in design or nature. It is further intended
1775 that reasonable efforts be made to accommodate the needs and
1776 preferences of residents to enhance the quality of life in a
1777 facility. The agency, in consultation with the department, may
1778 adopt rules to administer the requirements of part II of chapter
1779 408. In order to provide safe and sanitary facilities and the
1780 highest quality of resident care accommodating the needs and
1781 preferences of residents, the department, in consultation with



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1782 the agency, the Department of Children and Family Services, and
1783 the Department of Health, shall adopt rules, policies, and
1784 procedures to administer this part, which must include
1785 reasonable and fair minimum standards in relation to:

1786 (a) The requirements for and maintenance of facilities, not
1787 in conflict with the provisions of chapter 553, relating to
1788 plumbing, heating, cooling, lighting, ventilation, living space,
1789 and other housing conditions, which will ensure the health,
1790 safety, and comfort of residents and protection from fire
1791 hazard, including adequate provisions for fire alarm and other
1792 fire protection suitable to the size of the structure. Uniform
1793 firesafety standards shall be ~~established and~~ enforced by the
1794 State Fire Marshal in cooperation with the agency, ~~the~~
1795 ~~department, and the Department of Health.~~

1796 1. Evacuation capability determination.—

1797 a. The provisions of the National Fire Protection
1798 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
1799 for determining the ability of the residents, with or without
1800 staff assistance, to relocate from or within a licensed facility
1801 to a point of safety as provided in the fire codes adopted
1802 herein. An evacuation capability evaluation for initial
1803 licensure shall be conducted within 6 months after the date of
1804 licensure. For existing licensed facilities that are not
1805 equipped with an automatic fire sprinkler system, the
1806 administrator shall evaluate the evacuation capability of
1807 residents at least annually. The evacuation capability
1808 evaluation for each facility not equipped with an automatic fire
1809 sprinkler system shall be validated, without liability, by the
1810 State Fire Marshal, by the local fire marshal, or by the local



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1811 authority having jurisdiction over firesafety, before the
1812 license renewal date. If the State Fire Marshal, local fire
1813 marshal, or local authority having jurisdiction over firesafety
1814 has reason to believe that the evacuation capability of a
1815 facility as reported by the administrator may have changed, it
1816 may, with assistance from the facility administrator, reevaluate
1817 the evacuation capability through timed exiting drills.
1818 Translation of timed fire exiting drills to evacuation
1819 capability may be determined:

1820 (I) Three minutes or less: prompt.

1821 (II) More than 3 minutes, but not more than 13 minutes:
1822 slow.

1823 (III) More than 13 minutes: impractical.

1824 b. The Office of the State Fire Marshal shall provide or
1825 cause the provision of training and education on the proper
1826 application of Chapter 5, NFPA 101A, 1995 edition, to its
1827 employees, to staff of the Agency for Health Care Administration
1828 who are responsible for regulating facilities under this part,
1829 and to local governmental inspectors. The Office of the State
1830 Fire Marshal shall provide or cause the provision of this
1831 training within its existing budget, but may charge a fee for
1832 this training to offset its costs. The initial training must be
1833 delivered within 6 months after July 1, 1995, and as needed
1834 thereafter.

1835 c. The Office of the State Fire Marshal, in cooperation
1836 with provider associations, shall provide or cause the provision
1837 of a training program designed to inform facility operators on
1838 how to properly review bid documents relating to the
1839 installation of automatic fire sprinklers. The Office of the



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1840 State Fire Marshal shall provide or cause the provision of this
1841 training within its existing budget, but may charge a fee for
1842 this training to offset its costs. The initial training must be
1843 delivered within 6 months after July 1, 1995, and as needed
1844 thereafter.

1845 d. The administrator of a licensed facility shall sign an
1846 affidavit verifying the number of residents occupying the
1847 facility at the time of the evacuation capability evaluation.

1848 2. Firesafety requirements.—

1849 a. Except for the special applications provided herein,
1850 effective January 1, 1996, the provisions of the National Fire
1851 Protection Association, Life Safety Code, NFPA 101, 1994
1852 edition, Chapter 22 for new facilities and Chapter 23 for
1853 existing facilities shall be the uniform fire code applied by
1854 the State Fire Marshal for assisted living facilities, pursuant
1855 to s. 633.022.

1856 b. Any new facility, regardless of size, that applies for a
1857 license on or after January 1, 1996, must be equipped with an
1858 automatic fire sprinkler system. The exceptions as provided in
1859 s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply
1860 to any new facility housing eight or fewer residents. On July 1,
1861 1995, local governmental entities responsible for the issuance
1862 of permits for construction shall inform, without liability, any
1863 facility whose permit for construction is obtained prior to
1864 January 1, 1996, of this automatic fire sprinkler requirement.
1865 As used in this part, the term "a new facility" does not mean an
1866 existing facility that has undergone change of ownership.

1867 c. Notwithstanding any provision of s. 633.022 or of the
1868 National Fire Protection Association, NFPA 101A, Chapter 5, 1995



1869 edition, to the contrary, any existing facility housing eight or
1870 fewer residents is not required to install an automatic fire
1871 sprinkler system, nor to comply with any other requirement in
1872 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
1873 requirements of NFPA 101, 1988 edition, that applies to this
1874 size facility, unless the facility has been classified as
1875 impractical to evacuate. Any existing facility housing eight or
1876 fewer residents that is classified as impractical to evacuate
1877 must install an automatic fire sprinkler system within the
1878 timeframes granted in this section.

1879 d. Any existing facility that is required to install an
1880 automatic fire sprinkler system under this paragraph need not
1881 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
1882 edition, which exceed the provisions of NFPA 101, 1988 edition.
1883 The mandate contained in this paragraph which requires certain
1884 facilities to install an automatic fire sprinkler system
1885 supersedes any other requirement.

1886 e. This paragraph does not supersede the exceptions granted
1887 in NFPA 101, 1988 edition or 1994 edition.

1888 f. This paragraph does not exempt facilities from other
1889 firesafety provisions adopted under s. 633.022 and local
1890 building code requirements in effect before July 1, 1995.

1891 g. A local government may charge fees only in an amount not
1892 to exceed the actual expenses incurred by local government
1893 relating to the installation and maintenance of an automatic
1894 fire sprinkler system in an existing and properly licensed
1895 assisted living facility structure as of January 1, 1996.

1896 h. If a licensed facility undergoes major reconstruction or
1897 addition to an existing building on or after January 1, 1996,



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1898 the entire building must be equipped with an automatic fire
1899 sprinkler system. Major reconstruction of a building means
1900 repair or restoration that costs in excess of 50 percent of the
1901 value of the building as reported on the tax rolls, excluding
1902 land, before reconstruction. Multiple reconstruction projects
1903 within a 5-year period the total costs of which exceed 50
1904 percent of the initial value of the building at the time the
1905 first reconstruction project was permitted are to be considered
1906 as major reconstruction. Application for a permit for an
1907 automatic fire sprinkler system is required upon application for
1908 a permit for a reconstruction project that creates costs that go
1909 over the 50-percent threshold.

1910 i. Any facility licensed before January 1, 1996, that is
1911 required to install an automatic fire sprinkler system shall
1912 ensure that the installation is completed within the following
1913 timeframes based upon evacuation capability of the facility as
1914 determined under subparagraph 1.:

1915 (I) Impractical evacuation capability, 24 months.

1916 (II) Slow evacuation capability, 48 months.

1917 (III) Prompt evacuation capability, 60 months.

1918
1919 The beginning date from which the deadline for the automatic
1920 fire sprinkler installation requirement must be calculated is
1921 upon receipt of written notice from the local fire official that
1922 an automatic fire sprinkler system must be installed. The local
1923 fire official shall send a copy of the document indicating the
1924 requirement of a fire sprinkler system to the Agency for Health
1925 Care Administration.

1926 j. It is recognized that the installation of an automatic



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1927 fire sprinkler system may create financial hardship for some
1928 facilities. The appropriate local fire official shall, without
1929 liability, grant two 1-year extensions to the timeframes for
1930 installation established herein, if an automatic fire sprinkler
1931 installation cost estimate and proof of denial from two
1932 financial institutions for a construction loan to install the
1933 automatic fire sprinkler system are submitted. However, for any
1934 facility with a class I or class II, or a history of uncorrected
1935 class III, firesafety deficiencies, an extension must not be
1936 granted. The local fire official shall send a copy of the
1937 document granting the time extension to the Agency for Health
1938 Care Administration.

1939 k. A facility owner whose facility is required to be
1940 equipped with an automatic fire sprinkler system under Chapter
1941 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
1942 any potential buyer of the facility that an installation of an
1943 automatic fire sprinkler requirement exists. The sale of the
1944 facility does not alter the timeframe for the installation of
1945 the automatic fire sprinkler system.

1946 l. Existing facilities required to install an automatic
1947 fire sprinkler system as a result of construction-type
1948 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
1949 herein, or evacuation capability requirements shall be notified
1950 by the local fire official in writing of the automatic fire
1951 sprinkler requirement, as well as the appropriate date for final
1952 compliance as provided in this subparagraph. The local fire
1953 official shall send a copy of the document to the Agency for
1954 Health Care Administration.

1955 m. Except in cases of life-threatening fire hazards, if an



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1956 existing facility experiences a change in the evacuation
1957 capability, or if the local authority having jurisdiction
1958 identifies a construction-type restriction, such that an
1959 automatic fire sprinkler system is required, it shall be
1960 afforded time for installation as provided in this subparagraph.
1961

1962 Facilities that are fully sprinkled and in compliance with other
1963 firesafety standards are not required to conduct more than one
1964 of the required fire drills between the hours of 11 p.m. and 7
1965 a.m., per year. In lieu of the remaining drills, staff
1966 responsible for residents during such hours may be required to
1967 participate in a mock drill that includes a review of evacuation
1968 procedures. Such standards must be included or referenced in the
1969 rules adopted by the State Fire Marshal. Pursuant to s.
1970 633.022(1)(b), the State Fire Marshal is the final
1971 administrative authority for firesafety standards established
1972 and enforced pursuant to this section. All licensed facilities
1973 must have an annual fire inspection conducted by the local fire
1974 marshal or authority having jurisdiction.

1975 3. Resident elopement requirements.—Facilities are required
1976 to conduct a minimum of two resident elopement prevention and
1977 response drills per year. All administrators and direct care
1978 staff must participate in the drills which shall include a
1979 review of procedures to address resident elopement. Facilities
1980 must document the implementation of the drills and ensure that
1981 the drills are conducted in a manner consistent with the
1982 facility's resident elopement policies and procedures.

1983 (d) All sanitary conditions within the facility and its
1984 surroundings which will ensure the health and comfort of



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1985 residents. To ensure that inspections are not duplicative, the
1986 rules must clearly delineate the responsibilities of the agency
1987 regarding agency's licensure and survey inspections staff, the
1988 county health departments regarding food safety and sanitary
1989 inspections, and the local fire marshal regarding firesafety
1990 inspections authority having jurisdiction over firesafety and
1991 ensure that inspections are not duplicative. The agency may
1992 collect fees for food service inspections conducted by the
1993 county health departments and transfer such fees to the
1994 Department of Health.

- 1995 (h) The care ~~and maintenance~~ of residents, which must
1996 include, but is not limited to:
- 1997 1. The supervision of residents;
 - 1998 2. The provision of personal services;
 - 1999 3. The provision of, or arrangement for, social and leisure
2000 activities;
 - 2001 4. The arrangement for appointments and transportation to
2002 appropriate medical, dental, nursing, or mental health services,
2003 as needed by residents;
 - 2004 5. The management of medication;
 - 2005 6. The food service nutritional needs of residents; and
 - 2006 7. Resident records. ~~;~~ and
 - 2007 ~~8. Internal risk management and quality assurance.~~

2008 (i) Facilities holding an a limited nursing, extended
2009 congregate care, ~~or limited mental health license.~~

2010 (j) The establishment of specific criteria to define
2011 appropriateness of resident admission and continued residency in
2012 a facility holding a standard, ~~limited nursing,~~ extended
2013 congregate care, and limited mental health license.



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2014 ~~(1) The establishment of specific policies and procedures~~
2015 ~~on resident elopement. Facilities shall conduct a minimum of two~~
2016 ~~resident elopement drills each year. All administrators and~~
2017 ~~direct care staff shall participate in the drills. Facilities~~
2018 ~~shall document the drills.~~

2019 (5) Beginning January 1, 2012, the agency shall ~~may~~ use an
2020 abbreviated biennial standard licensure inspection that consists
2021 of a review of key quality-of-care standards in lieu of a full
2022 inspection in a facility that has a good record of past
2023 performance. However, a full inspection must be conducted in a
2024 facility that has a history of class I or class II violations,
2025 uncorrected class III violations, confirmed ombudsman council
2026 complaints, or confirmed licensure complaints, within the
2027 previous licensure period immediately preceding the inspection
2028 or if a potentially serious problem is identified during the
2029 abbreviated inspection. The agency, in consultation with the
2030 department, shall develop, maintain, and update the key quality-
2031 of-care standards with input from the State Long-Term Care
2032 Ombudsman Council and representatives of associations and
2033 organizations representing assisted living facilities ~~provider~~
2034 ~~groups~~ for incorporation into its rules.

2035 Section 30. Section 429.42, Florida Statutes, is amended to
2036 read:

2037 429.42 Pharmacy and dietary services.-

2038 (1) Any assisted living facility in which the agency has
2039 documented a class I or class II violation ~~deficiency~~ or
2040 uncorrected class III violations ~~deficiencies~~ regarding
2041 medicinal drugs or over-the-counter preparations, including
2042 their storage, use, delivery, or administration, or dietary



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2043 services, or both, during a biennial survey or a monitoring
2044 visit or an investigation in response to a complaint, shall, in
2045 addition to or as an alternative to any penalties imposed under
2046 s. 429.19, be required to employ the consultant services of a
2047 licensed pharmacist, a licensed registered nurse, or a
2048 registered or licensed dietitian, as applicable. The consultant
2049 shall, at a minimum, provide onsite quarterly consultation until
2050 the inspection team from the agency determines that such
2051 consultation services are no longer required.

2052 ~~(2) A corrective action plan for deficiencies related to~~
2053 ~~assistance with the self-administration of medication or the~~
2054 ~~administration of medication must be developed and implemented~~
2055 ~~by the facility within 48 hours after notification of such~~
2056 ~~deficiency, or sooner if the deficiency is determined by the~~
2057 ~~agency to be life-threatening.~~

2058 ~~(3) The agency shall employ at least two pharmacists~~
2059 ~~licensed pursuant to chapter 465 among its personnel who~~
2060 ~~biennially inspect assisted living facilities licensed under~~
2061 ~~this part, to participate in biennial inspections or consult~~
2062 ~~with the agency regarding deficiencies relating to medicinal~~
2063 ~~drugs or over-the-counter preparations.~~

2064 (2)~~(4)~~ The department may by rule establish procedures and
2065 specify documentation as necessary to implement this section.

2066 Section 31. Section 429.445, Florida Statutes, is amended
2067 to read:

2068 429.445 Compliance with local zoning requirements. ~~No~~
2069 ~~facility licensed under this part may commence any construction~~
2070 ~~which will expand the size of the existing structure unless the~~
2071 ~~licensee first submits to the agency proof that such~~



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2072 ~~construction will be in compliance with applicable local zoning~~
2073 ~~requirements.~~ Facilities with a licensed capacity of less than
2074 15 persons shall comply with the provisions of chapter 419.

2075 Section 32. Section 429.47, Florida Statutes, is amended to
2076 read:

2077 429.47 Prohibited acts; ~~penalties for violation.~~-

2078 (1) While an assisted living a facility is under
2079 construction or is seeking licensure, the owner may advertise to
2080 the public prior to obtaining a license. Facilities that are
2081 certified under chapter 651 shall comply with the advertising
2082 provisions of s. 651.095 rather than those provided for in this
2083 subsection.

2084 (2) A freestanding facility may ~~shall~~ not advertise or
2085 imply that any part of it is a nursing home. For the purpose of
2086 this subsection, "freestanding facility" means a facility that
2087 is not operated in conjunction with a nursing home to which
2088 residents of the facility are given priority when nursing care
2089 is required. A person who violates this subsection is subject to
2090 fine as specified in s. 429.19.

2091 (3) Any facility that ~~which~~ is affiliated with any
2092 religious organization or which has a name implying religious
2093 affiliation shall include in its advertising whether or not it
2094 is affiliated with any religious organization and, if so, which
2095 organization.

2096 (4) A facility licensed under this part which is not part
2097 of a facility authorized under chapter 651 shall include the
2098 facility's license number as given by the agency in all
2099 advertising. A company or person owning more than one facility
2100 shall include at least one license number per advertisement. All



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2101 advertising shall include the term "assisted living facility"
2102 before the license number.

2103 Section 33. Subsection (1) of section 429.49, Florida
2104 Statutes, is amended to read:

2105 429.49 Resident records; penalties for alteration.—

2106 (1) Any person who fraudulently alters, defaces, or
2107 falsifies any medical or other resident record of an assisted
2108 living facility, or causes or procures any such offense to be
2109 committed, commits a misdemeanor of the second degree,
2110 punishable as provided in s. 775.082 or s. 775.083.

2111 Section 34. Subsections (3), (5), and (8), of section
2112 429.52, Florida Statutes, are amended, present subsection (11)
2113 of that section is redesignated as subsection (12), and a new
2114 subsection (11) is added to that section, read:

2115 429.52 Staff training and educational programs; core
2116 educational requirement.—

2117 (3) Effective January 1, 2004, a new facility administrator
2118 must complete the required training and education, including the
2119 competency test, within a reasonable time after being employed
2120 as an administrator, as determined by the department. Failure to
2121 do so is a violation of this part and subjects the violator to
2122 an administrative fine as prescribed in s. 429.19.

2123 Administrators licensed in accordance with part II of chapter
2124 468 are exempt from this requirement. ~~Other licensed~~
2125 ~~professionals may be exempted, as determined by the department~~
2126 ~~by rule.~~

2127 (5) Staff involved with the management of medications and
2128 assisting with the self-administration of medications under s.
2129 429.256 must complete a minimum of 4 additional hours of



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2130 training provided by a registered nurse, licensed pharmacist, or
2131 department staff, and must complete 2 hours of continuing
2132 education training annually. ~~The department shall establish by~~
2133 ~~rule the minimum requirements of this additional training.~~

2134 (8) The department shall adopt rules related to these
2135 training requirements, the competency test, necessary
2136 procedures, and competency test fees and shall adopt or contract
2137 with another entity to develop a curriculum, which shall be used
2138 as the minimum core training requirements. The department shall
2139 consult with representatives of ~~stakeholder~~ associations,
2140 organizations representing assisted living facilities, and
2141 agencies in the development of the curriculum.

2142 (11) A trainer certified by the department must continue to
2143 meet continuing education requirements and other standards as
2144 set forth in rules adopted by the department. Noncompliance with
2145 the standards set forth in the rules may result in the
2146 sanctioning of a trainer and trainees pursuant to s. 430.081.

2147 Section 35. Subsections (1) and (2) of section 429.53,
2148 Florida Statutes, are amended to read:

2149 429.53 Consultation by the agency.—

2150 (1) ~~The area offices of licensure and certification of the~~
2151 agency shall provide consultation to the following upon request:

2152 (a) A licensee of a facility.

2153 (b) A person interested in obtaining a license to operate a
2154 facility under this part.

2155 (2) As used in this section, "consultation" includes:

2156 (a) An explanation of the requirements of this part and
2157 rules adopted pursuant thereto;

2158 (b) An explanation of the license application and renewal



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2159 procedures;

2160 ~~(c) The provision of a checklist of general local and state~~
2161 ~~approvals required prior to constructing or developing a~~
2162 ~~facility and a listing of the types of agencies responsible for~~
2163 ~~such approvals;~~

2164 ~~(d) An explanation of benefits and financial assistance~~
2165 ~~available to a recipient of supplemental security income~~
2166 ~~residing in a facility;~~

2167 (c)~~(e)~~ Any other information which the agency deems
2168 necessary to promote compliance with the requirements of this
2169 part; and

2170 ~~(f) A preconstruction review of a facility to ensure~~
2171 ~~compliance with agency rules and this part.~~

2172 Section 36. Section 429.54, Florida Statutes, is repealed.

2173 Section 37. Paragraphs (a) and (b) of subsection (1) and
2174 subsections (5) and (6) of section 429.71, Florida Statutes, are
2175 amended to read:

2176 429.71 Classification of deficiencies; administrative
2177 fines.—

2178 (1) In addition to the requirements of part II of chapter
2179 408 and ~~in addition to~~ any other liability or penalty provided
2180 by law, the agency may impose an administrative fine on a
2181 provider according to the following classification:

2182 (a) Class I violations are those conditions or practices
2183 related to the operation and maintenance of an adult family-care
2184 home or to the care of residents which the agency determines
2185 present an imminent danger to the residents or guests of the
2186 adult family-care home facility or a substantial probability
2187 that death or serious physical or emotional harm would result



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2188 therefrom. The condition or practice that constitutes a class I
2189 violation must be abated or eliminated within 24 hours, unless a
2190 fixed period, as determined by the agency, is required for
2191 correction. A class I violation ~~deficiency~~ is subject to an
2192 administrative fine in an amount not less than \$500 and not
2193 exceeding \$1,000 for each violation. A fine may be levied
2194 notwithstanding the correction of the violation ~~deficiency~~.

2195 (b) Class II violations are those conditions or practices
2196 related to the operation and maintenance of an adult family-care
2197 home or to the care of residents which the agency determines
2198 directly threaten the physical or emotional health, safety, or
2199 security of the residents, other than class I violations. A
2200 class II violation is subject to an administrative fine in an
2201 amount not less than \$250 and not exceeding \$500 for each
2202 violation. A citation for a class II violation must specify the
2203 time within which the violation is required to be corrected. If
2204 a class II violation is corrected within the time specified, no
2205 civil penalty shall be imposed, unless it is a repeated offense.

2206 ~~(5) As an alternative to or in conjunction with an~~
2207 ~~administrative action against a provider, the agency may request~~
2208 ~~a plan of corrective action that demonstrates a good faith~~
2209 ~~effort to remedy each violation by a specific date, subject to~~
2210 ~~the approval of the agency.~~

2211 (5)~~(6)~~ The department shall set forth, by rule, notice
2212 requirements and procedures for correction of violations
2213 ~~deficiencies~~.

2214 Section 38. Subsection (3) is added to section 429.81,
2215 Florida Statutes, to read:

2216 429.81 Residency agreements.—



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2217 (3) Each residency agreement must specify that the resident
2218 must give the provider a 30 days' written notice of intent to
2219 terminate his or her residency from the adult family-care home.

2220 Section 39. Section 430.081, Florida Statutes, is created
2221 to read:

2222 430.081 Sanctioning of training providers and trainees.—The
2223 Department of Elderly Affairs may sanction training providers
2224 and trainees for infractions involving any required training
2225 that the department has the authority to regulate under chapter
2226 400, chapter 429, or chapter 430 in order to ensure that such
2227 training providers and trainees satisfy specific qualification
2228 requirements and adhere to training curricula that is approved
2229 by the department. Training infractions include, but are not
2230 limited to, falsification of training records, falsification of
2231 training certificates, falsification of a trainer's
2232 qualifications, failure to adhere to the required number of
2233 training hours, failure to use the required curriculum, failure
2234 to maintain the continuing education for the trainer's
2235 recertification, failure to obtain reapproval of a curriculum
2236 when required, providing false or inaccurate information,
2237 misrepresentation of the required materials and use of a false
2238 identification as a training provider or trainee. Sanctions may
2239 be progressive in nature and may consist of corrective action
2240 measures; suspension or termination from participation as an
2241 approved training provider or trainee, including sitting for any
2242 required examination; and administrative fines not to exceed
2243 \$1,000 per incident. One or more sanctions may be levied per
2244 incident.

2245 Section 40. Paragraph (j) is added to subsection (3) of



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2246 section 817.505, Florida Statutes, to read:
2247 817.505 Patient brokering prohibited; exceptions;
2248 penalties.—
2249 (3) This section shall not apply to:
2250 (j) Any payments by an assisted living facility, as defined
2251 in s. 429.02, which are permitted under s. 429.195(3).

2252 Section 41. This act shall take effect July 1, 2011.

2253
2254 ===== T I T L E A M E N D M E N T =====

2255 And the title is amended as follows:

2256 Delete everything before the enacting clause
2257 and insert:

2258 A bill to be entitled
2259 An act relating to assisted living communities;
2260 amending s. 400.141, F.S.; revising licensing
2261 requirements for registered pharmacists under contract
2262 with a nursing home and related health care
2263 facilities; amending s. 408.810, F.S.; providing
2264 additional licensing requirements for assisted living
2265 facilities; amending s. 408.820, F.S.; providing that
2266 certain assisted living facilities are exempt from
2267 requirements of part II of ch. 408, F.S., related to
2268 health care licensing; amending s. 429.01, F.S.;
2269 revising the purpose of the "Assisted Living
2270 Facilities Act"; amending s. 429.02, F.S.; providing,
2271 revising, and deleting definitions; amending ss.
2272 429.04, 429.07, and 429.17, F.S.; revising provisions
2273 relating to licensing of assisted living facilities,
2274 including licensing fees; amending s. 429.08, F.S.;



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2275 requiring emergency medical technicians or paramedics
2276 to report the operations of an unlicensed assisted
2277 living facility; amending s. 429.11, F.S.; requiring
2278 the Agency for Health Care Administration to develop
2279 an abbreviated form for submission of proof of
2280 financial ability to operate an assisted living
2281 facility; amending s. 429.12, F.S.; revising
2282 provisions relating to the sale or transfer of
2283 ownership of an assisted living facility; amending s.
2284 429.14, F.S.; revising provisions relating to
2285 administrative penalties; amending s. 429.178, F.S.;
2286 providing safety requirements for facilities serving
2287 persons with Alzheimer's disease or other related
2288 disorders; repealing a provision relating to a
2289 facility's responsibility for the payment of certain
2290 training fees; amending s. 429.19, F.S.; revising
2291 Agency for Health Care Administration procedures for
2292 the imposition of fines for violations of ch. 429,
2293 F.S.; amending s. 429.195, F.S.; permitting the
2294 licensee of an assisted living facility to provide
2295 monetary payments to a referral service under certain
2296 circumstances and to residents who refer certain
2297 individuals to the facility; amending s. 429.20, F.S.;
2298 prohibiting the solicitation of contributions of any
2299 kind in a threatening, coercive, or unduly forceful
2300 manner by or on behalf of an assisted living facility;
2301 amending s. 429.23, F.S.; revising adverse incidents
2302 reporting requirements; amending s. 429.255, F.S.;
2303 permitting certain licensed persons to provide limited



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2304 nursing services; deleting rulemaking authority of the
2305 Department of Elderly Affairs with regard to
2306 cardiopulmonary resuscitation in assisted living
2307 facilities; amending s. 429.256, F.S.; providing
2308 additional guidelines for the assistance with self-
2309 administration of medication; amending s. 429.26,
2310 F.S.; removing a requirement that a facility notify a
2311 licensed physician when a resident exhibits certain
2312 signs of dementia, cognitive impairment, or change of
2313 condition; revising the persons who are authorized to
2314 notify a resident's case manager about examining the
2315 resident; amending s. 429.27, F.S.; revising
2316 provisions relating to the property and personal
2317 effects of residents; repealing s. 429.275, F.S.;
2318 removing rulemaking authority of the Department of
2319 Elderly Affairs over financial records, personnel
2320 procedures, accounting procedures, reporting
2321 procedures, and insurance coverage for residents of
2322 assisted living facilities; amending s. 429.28, F.S.,
2323 relating to the resident bill of rights; revising
2324 provisions relating to termination of residency;
2325 removing responsibilities of the agency for conducting
2326 compliance surveys and complaint investigations;
2327 amending s. 429.29, F.S.; providing that a resident
2328 who alleges negligence or a violation of rights has a
2329 cause of action against the licensee of an assisted
2330 living facility or its management company under
2331 certain circumstances; amending s. 429.293, F.S.;
2332 permitting the use of an arbitration process to



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2333 resolve a resident's claim of a rights violation or
2334 negligence; revising notification requirements;
2335 amending s. 429.294, F.S.; authorizing the release of
2336 copies of a resident's records to specified persons
2337 under certain conditions; providing limits on the
2338 frequency of the release of such records; amending s.
2339 429.297, F.S.; revising procedures for bringing a
2340 claim for punitive damages against an assisted living
2341 facility; amending s. 429.298, F.S.; revising the
2342 limits on the amount of punitive damages; removing a
2343 provision that provides for a criminal investigation
2344 with a finding of liability for punitive damages;
2345 removing a provision that provides for admissibility
2346 of findings in subsequent civil and criminal actions;
2347 providing that the punitive damages awarded are not
2348 necessarily divided equally between the claimant and
2349 the Quality of Long-Term Care Facility Improvement
2350 Trust Fund; revising the percentages of the division
2351 of the settlement amount; amending s. 429.41, F.S.;
2352 revising rulemaking authority regarding resident care
2353 and maintenance of facilities; deleting the
2354 requirement for a facility to conduct a minimum number
2355 of resident elopement drills; requiring the agency to
2356 use an abbreviated biennial standard licensure
2357 inspection; requiring the agency, in consultation with
2358 the Department of Health, shall develop, maintain, and
2359 update the key quality-of-care standards with input
2360 from the State Long-Term Care Ombudsman Council and
2361 representatives of associations and organizations



2362 representing assisted living facilities; amending s.
2363 429.42, F.S.; revising provisions relating to pharmacy
2364 services; amending s. 429.445, F.S.; removing a
2365 requirement that assisted living facilities submit
2366 certain information to the agency before commencing
2367 construction to expand the facility; amending s.
2368 429.47, F.S.; authorizing an owner of an assisted
2369 living facility to advertise to the public while the
2370 facility is under construction or is seeking
2371 licensure; amending s. 429.49, F.S.; conforming
2372 terminology; amending s. 429.52, F.S.; revising
2373 training and education requirements for certain
2374 administrators, facility staff, and other licensed
2375 professionals; requiring trainers certified by the
2376 department to meet continuing education requirements
2377 and standards; providing conditions for the
2378 sanctioning of a trainer and trainees; amending s.
2379 429.53, F.S.; removing provisions relating to
2380 preconstruction approvals and reviews and agency
2381 consultations; repealing s. 429.54, F.S., relating to
2382 the collection of information regarding the actual
2383 cost of providing services in assisted living
2384 facilities and local subsidies; amending s. 429.71,
2385 F.S.; removing a provision authorizing the agency to
2386 request a plan to remedy violations by adult family-
2387 care homes; amending s. 429.81, F.S.; specifying that
2388 residency agreements require a resident to provide 30
2389 days' written notice of intent to terminate residency;
2390 creating s. 430.081, F.S.; authorizing the Department



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2391 of Elderly Affairs to sanction training providers and
2392 trainees for infractions involving any required
2393 training; providing training infractions; providing
2394 sanctions; amending s. 817.505, F.S.; providing that
2395 payments by an assisted living facility are not
2396 considered patient brokering under certain
2397 circumstances; providing an effective date.