

By the Committee on Health Regulation; and Senator Garcia

588-03820A-11

20111458c1

1                                   A bill to be entitled  
2           An act relating to assisted care communities; amending  
3           s. 400.141, F.S.; deleting adult care communities from  
4           the standards and rules of the Agency for Health Care  
5           Administration which apply to registered pharmacists  
6           under contract with a nursing home and related health  
7           care facilities; amending s. 408.820, F.S.; providing  
8           that assisted living facilities are exempt from  
9           certain provisions authorizing the agency to impose  
10          administrative fines for violations of laws and  
11          applicable rules; amending s. 409.912, F.S.; requiring  
12          the agency to provide for the establishment of a  
13          demonstration project for a psychiatric facility in  
14          Miami-Dade County; amending s. 429.01, F.S.; revising  
15          legislative intent and the purposes of the Assisted  
16          Living Facilities Act; amending s. 429.02, F.S.;  
17          providing, revising, and deleting definitions;  
18          amending s. 429.04, F.S.; deleting provisions  
19          exempting a home health agency from licensure as an  
20          assisted living facility under certain circumstances;  
21          amending s. 429.07, F.S.; deleting limited nursing  
22          services as a category of care in which the agency may  
23          issue a license; revising the criteria and  
24          requirements for categories of care in which the  
25          agency may issue a license; revising the licensing  
26          fees; requiring the agency to conduct a survey to  
27          determine whether a facility must be monitored;  
28          providing that certain cited assisted living  
29          facilities are subject to unannounced monitoring

588-03820A-11

20111458c1

30 activities; providing for a registered nurse to  
31 participate in monitoring visits within a certain time  
32 following a class I or class II violation involving  
33 nursing care; amending s. 429.08, F.S.; requiring  
34 emergency medical technicians or paramedics to report  
35 the operations of an unlicensed assisted living  
36 facility; amending s. 429.11, F.S.; requiring the  
37 Agency for Health Care Administration to develop an  
38 abbreviated form for submission of proof of financial  
39 ability to operate an assisted living facility;  
40 amending s. 429.12, F.S.; deleting the provision that  
41 requires a transferor of an assisted living facility  
42 to advise the transferee that a plan of correction  
43 must be submitted by the transferee and approved by  
44 the agency within a specified period; amending s.  
45 429.14, F.S.; deleting a provision that authorizes the  
46 agency to impose an administrative penalty due to the  
47 actions of a facility's employee; revising the actions  
48 for which the agency may impose an administrative  
49 penalty; conforming a provision to changes made by the  
50 act; deleting the provision that authorizes the agency  
51 to revoke or deny the license of an assisted living  
52 facility that has certain class I violations; deleting  
53 a provisions that requires the agency to provide to  
54 the Division of Hotels and Restaurants of the  
55 Department of Business and Professional Regulation a  
56 monthly list of assisted living facilities that have  
57 had their licenses denied, suspended, or revoked;  
58 amending s. 429.17, F.S.; conforming provisions to

588-03820A-11

20111458c1

59 changes made by the act; revising requirements for a  
60 conditional license; amending s. 429.178, F.S.;

61 providing safety requirements for facilities serving  
62 persons with Alzheimer's disease or other related  
63 disorders; deleting a provision relating to a  
64 facility's responsibility for the payment of certain  
65 training and education programs; amending s. 429.19,  
66 F.S.; revising procedures for the Agency for Health  
67 Care Administration regarding the imposition of fines  
68 for violations of ch. 429, F.S., related to adult care  
69 communities; specifying the conditions or occurrences  
70 that constitute a class I, class II, class III, or  
71 class IV violation; amending s. 429.195, F.S.;

72 prohibiting the licensee of an assisted living  
73 facility from contracting or promising to pay or  
74 receive any commission, bonus, kickback, or rebate or  
75 from engaging in any split-fee arrangement with any  
76 health care provider or health care facility;

77 providing certain exceptions; amending s. 429.20,  
78 F.S.; prohibiting the solicitation of contributions of  
79 any kind in a threatening, coercive, or unduly  
80 forceful manner by or on behalf of an assisted living  
81 facility; deleting provisions specifying that the  
82 solicitation or receipt of contributions is grounds  
83 for denial, suspension, or revocation of a license for  
84 an assisted living facility; amending s. 429.23, F.S.;

85 revising reporting requirements with respect to  
86 adverse incidents; amending s. 429.255, F.S.;

87 permitting certain licensed persons to provide limited

588-03820A-11

20111458c1

88 nursing services; deleting the provision that allows  
89 volunteers to perform duties within the scope of their  
90 license or certification in facilities that are  
91 licensed to provide extended congregate care; amending  
92 s. 429.256, F.S.; authorizing a facility to require  
93 certain dispensing systems for residents'  
94 prescriptions; revising criteria for assistance with  
95 self-administration of medication; amending s. 429.26,  
96 F.S.; removing a requirement that a facility notify a  
97 licensed physician when a resident exhibits certain  
98 signs of dementia, cognitive impairment, or change of  
99 condition; amending s. 429.27, F.S.; revising  
100 provisions relating to the property and personal  
101 effects of residents of a facility; requiring a  
102 facility's licensee, owner, administrator, staff, or  
103 representative to execute a surety bond for each  
104 resident for whom power of attorney has been granted  
105 to the licensee, owner, administrator, or staff;  
106 deleting the provision that requires a governmental  
107 agency or private charitable agency to receive a  
108 statement of all funds and other property of a  
109 resident; deleting a provision that prohibits an  
110 administrator of a facility from levying an additional  
111 charge to the individual or the account for any  
112 supplies or services that the facility has agreed by  
113 contract to provide; repealing s. 429.275(4), F.S.,  
114 relating to rulemaking authority of the Department of  
115 Elderly Affairs over financial records, personnel  
116 procedures, accounting procedures, reporting

588-03820A-11

20111458c1

117 procedures, and insurance coverage for residents of  
118 assisted living facilities; amending s. 429.28, F.S.,  
119 relating to the resident bill of rights; revising the  
120 number of days' notice for relocation or termination  
121 of residency at a facility; removing responsibilities  
122 of the agency for conducting compliance surveys and  
123 complaint investigations; revising the actions of a  
124 person for which a staff member or employee of a  
125 facility is prohibited from taking retaliatory action  
126 upon; prohibiting the administrator of a facility from  
127 terminating the residency of an individual under  
128 certain circumstances; amending s. 429.41, F.S.;  
129 revising rulemaking authority regarding resident care  
130 and maintenance of facilities; requiring the State  
131 Fire Marshal, in cooperation with the agency, to  
132 establish and enforce firesafety standards; deleting  
133 the requirement for a facility to conduct a minimum  
134 number of resident elopement drills; requiring the  
135 agency to use an abbreviated biennial standard  
136 licensure inspection; requiring the agency, in  
137 consultation with the Department of Health, to  
138 develop, maintain, and update the key quality-of-care  
139 standards with input from the State Long-Term Care  
140 Ombudsman Council and representatives of associations  
141 and organizations representing assisted living  
142 facilities; amending s. 429.42, F.S.; removing a  
143 provision that required a corrective plan for  
144 deficiencies related to assistance with the self-  
145 administration of medication or the administration of

588-03820A-11

20111458c1

146 medication; deleting a requirement that the agency  
147 employ a certain number of pharmacists among its  
148 personnel who inspect assisted living facilities;  
149 amending s. 429.445, F.S.; removing a requirement that  
150 an assisted living facility submit certain information  
151 to the agency before commencing construction to expand  
152 the facility; amending s. 429.47, F.S.; authorizing an  
153 owner of an assisted living facility to advertise to  
154 the public while the facility is under construction or  
155 is seeking licensure; deleting a provision that  
156 prohibits a freestanding facility from advertising or  
157 implying that any part of it is a nursing home;  
158 amending s. 429.49, F.S.; conforming terminology to  
159 changes made by the act; amending s. 429.52, F.S.;  
160 revising training and education requirements for  
161 certain administrators, facility staff, and other  
162 licensed professionals; requiring training providers  
163 certified by the department to meet continuing  
164 education requirements and standards; providing  
165 conditions for the sanctioning of training providers  
166 and trainees; amending s. 429.53, F.S.; removing  
167 provisions relating to preconstruction approvals and  
168 reviews and agency consultations; repealing s. 429.54,  
169 F.S., relating to the collection of information  
170 regarding the actual cost of providing services in  
171 assisted living facilities and local subsidies;  
172 amending s. 429.71, F.S.; clarifying terminology;  
173 removing a provision authorizing the agency to request  
174 a plan to remedy violations by adult family-care

588-03820A-11

20111458c1

175 homes; conforming terminology to changes made by the  
176 act; amending s. 429.81, F.S.; specifying that  
177 residency agreements require a resident to provide 30  
178 days' written notice of intent to terminate his or her  
179 residency; creating s. 430.081, F.S.; authorizing the  
180 Department of Elderly Affairs to sanction training  
181 providers and trainees for infractions involving any  
182 required training; providing training infractions;  
183 providing sanctions; amending s. 817.505, F.S.;  
184 providing that payments by an assisted living facility  
185 are not considered patient brokering under certain  
186 circumstances; providing that licensure fees adjusted  
187 by consumer price index increases prior to the  
188 effective date of the act are not intended to be reset  
189 by the act and may continue to accrue as authorized by  
190 law; providing an effective date.

191

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

193

194 Section 1. Paragraph (d) of subsection (1) of section  
195 400.141, Florida Statutes, is amended to read:

196 400.141 Administration and management of nursing home  
197 facilities.—

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

200 (d) Provide for resident use of a community pharmacy as  
201 specified in s. 400.022(1)(q). Any other law to the contrary  
202 notwithstanding, a registered pharmacist licensed in Florida,  
203 that is under contract with a facility licensed under this

588-03820A-11

20111458c1

204 chapter ~~or chapter 429~~, shall repackage a nursing facility  
205 resident's bulk prescription medication which has been packaged  
206 by another pharmacist licensed in any state in the United States  
207 into a unit dose system compatible with the system used by the  
208 nursing facility, if the pharmacist is requested to offer such  
209 service. In order to be eligible for the repackaging, a resident  
210 or the resident's spouse must receive prescription medication  
211 benefits provided through a former employer as part of his or  
212 her retirement benefits, a qualified pension plan as specified  
213 in s. 4972 of the Internal Revenue Code, a federal retirement  
214 program as specified under 5 C.F.R. s. 831, or a long-term care  
215 policy as defined in s. 627.9404(1). A pharmacist who correctly  
216 repackages and relabels the medication and the nursing facility  
217 which correctly administers such repackaged medication under  
218 this paragraph may not be held liable in any civil or  
219 administrative action arising from the repackaging. In order to  
220 be eligible for the repackaging, a nursing facility resident for  
221 whom the medication is to be repackaged shall sign an informed  
222 consent form provided by the facility which includes an  
223 explanation of the repackaging process and which notifies the  
224 resident of the immunities from liability provided in this  
225 paragraph. A pharmacist who repackages and relabels prescription  
226 medications, as authorized under this paragraph, may charge a  
227 reasonable fee for costs resulting from the administration  
228 ~~implementation~~ of this provision.

229 Section 2. Subsection (13) of section 408.820, Florida  
230 Statutes, is amended to read:

231 408.820 Exemptions.—Except as prescribed in authorizing  
232 statutes, the following exemptions shall apply to specified



588-03820A-11

20111458c1

233 requirements of this part:

234 (13) Assisted living facilities, as provided under part I  
235 of chapter 429, are exempt from ss. ~~s.~~ 408.810(10) and  
236 408.813(2).

237 Section 3. Subsection (41) of section 409.912, Florida  
238 Statutes, is amended to read:

239 409.912 Cost-effective purchasing of health care.—The  
240 agency shall purchase goods and services for Medicaid recipients  
241 in the most cost-effective manner consistent with the delivery  
242 of quality medical care. To ensure that medical services are  
243 effectively utilized, the agency may, in any case, require a  
244 confirmation or second physician's opinion of the correct  
245 diagnosis for purposes of authorizing future services under the  
246 Medicaid program. This section does not restrict access to  
247 emergency services or poststabilization care services as defined  
248 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
249 shall be rendered in a manner approved by the agency. The agency  
250 shall maximize the use of prepaid per capita and prepaid  
251 aggregate fixed-sum basis services when appropriate and other  
252 alternative service delivery and reimbursement methodologies,  
253 including competitive bidding pursuant to s. 287.057, designed  
254 to facilitate the cost-effective purchase of a case-managed  
255 continuum of care. The agency shall also require providers to  
256 minimize the exposure of recipients to the need for acute  
257 inpatient, custodial, and other institutional care and the  
258 inappropriate or unnecessary use of high-cost services. The  
259 agency shall contract with a vendor to monitor and evaluate the  
260 clinical practice patterns of providers in order to identify  
261 trends that are outside the normal practice patterns of a

588-03820A-11

20111458c1

262 provider's professional peers or the national guidelines of a  
263 provider's professional association. The vendor must be able to  
264 provide information and counseling to a provider whose practice  
265 patterns are outside the norms, in consultation with the agency,  
266 to improve patient care and reduce inappropriate utilization.  
267 The agency may mandate prior authorization, drug therapy  
268 management, or disease management participation for certain  
269 populations of Medicaid beneficiaries, certain drug classes, or  
270 particular drugs to prevent fraud, abuse, overuse, and possible  
271 dangerous drug interactions. The Pharmaceutical and Therapeutics  
272 Committee shall make recommendations to the agency on drugs for  
273 which prior authorization is required. The agency shall inform  
274 the Pharmaceutical and Therapeutics Committee of its decisions  
275 regarding drugs subject to prior authorization. The agency is  
276 authorized to limit the entities it contracts with or enrolls as  
277 Medicaid providers by developing a provider network through  
278 provider credentialing. The agency may competitively bid single-  
279 source-provider contracts if procurement of goods or services  
280 results in demonstrated cost savings to the state without  
281 limiting access to care. The agency may limit its network based  
282 on the assessment of beneficiary access to care, provider  
283 availability, provider quality standards, time and distance  
284 standards for access to care, the cultural competence of the  
285 provider network, demographic characteristics of Medicaid  
286 beneficiaries, practice and provider-to-beneficiary standards,  
287 appointment wait times, beneficiary use of services, provider  
288 turnover, provider profiling, provider licensure history,  
289 previous program integrity investigations and findings, peer  
290 review, provider Medicaid policy and billing compliance records,

588-03820A-11

20111458c1

291 clinical and medical record audits, and other factors. Providers  
292 shall not be entitled to enrollment in the Medicaid provider  
293 network. The agency shall determine instances in which allowing  
294 Medicaid beneficiaries to purchase durable medical equipment and  
295 other goods is less expensive to the Medicaid program than long-  
296 term rental of the equipment or goods. The agency may establish  
297 rules to facilitate purchases in lieu of long-term rentals in  
298 order to protect against fraud and abuse in the Medicaid program  
299 as defined in s. 409.913. The agency may seek federal waivers  
300 necessary to administer these policies.

301 (41) The agency shall establish ~~provide for the development~~  
302 ~~of~~ a demonstration project ~~by establishment~~ in Miami-Dade County  
303 of a long-term-care facility and a psychiatric facility licensed  
304 pursuant to chapter 395 to improve access to health care for a  
305 predominantly minority, medically underserved, and medically  
306 complex population and to evaluate alternatives to nursing home  
307 care and general acute care for such population. Such project is  
308 to be located in a health care condominium and collocated  
309 ~~collocated~~ with licensed facilities providing a continuum of  
310 care. These projects are ~~The establishment of this project is~~  
311 not subject to the provisions of s. 408.036 or s. 408.039.

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

314 429.01 Short title; purpose.—

315 (2) The purpose of this act is to:

316 (a) Promote the availability of appropriate services for  
317 elderly persons and adults with disabilities in the least  
318 restrictive and most homelike environment; ~~to~~

319 (b) Encourage the development of facilities that promote

588-03820A-11

20111458c1

320 the dignity, individuality, privacy, and decisionmaking ability  
321 of such persons;~~;~~~~to~~

322 (c) Provide for the health, safety, and welfare of  
323 residents of assisted living facilities in the state;~~;~~~~to~~

324 (d) Promote continued improvement of such facilities;~~;~~ to  
325 encourage the development of innovative and affordable  
326 facilities particularly for persons with low to moderate  
327 incomes;~~;~~~~to~~

328 (e) Ensure that all agencies of the state cooperate in the  
329 protection of such residents;~~;~~ and ~~to~~

330 (f) Ensure that needed economic, social, mental health,  
331 health, and leisure services are made available to residents of  
332 such facilities through the efforts of the Agency for Health  
333 Care Administration, the Department of Elderly Affairs, the  
334 Department of Children and Family Services, the Department of  
335 Health, assisted living facilities, and other community  
336 agencies.

337

338 To the maximum extent possible, appropriate community-based  
339 programs must be available to state-supported residents to  
340 augment the services provided in assisted living facilities. The  
341 Legislature recognizes that assisted living facilities are an  
342 important part of the continuum of long-term care in the state  
343 as community-based social models that have a health component  
344 and not as medical or nursing facilities. In support of the goal  
345 of aging in place, the Legislature further recognizes that  
346 assisted living facilities should be operated ~~and regulated~~ as  
347 residential environments with supportive services and not as  
348 medical or nursing facilities and, as such, should not be

588-03820A-11

20111458c1

349 subject to the same regulations as medical or nursing facilities  
350 but instead be regulated in a less restrictive manner that is  
351 appropriate for a residential, nonmedical setting. The services  
352 available in these facilities, either directly or through  
353 contract or agreement, are intended to help residents remain as  
354 independent as possible. Regulations governing these facilities  
355 must be sufficiently flexible to allow facilities to adopt  
356 policies that enable residents to age in place when resources  
357 are available to meet their needs and accommodate their  
358 preferences.

359 Section 5. Section 429.02, Florida Statutes, is amended to  
360 read:

361 429.02 Definitions.—When used in this part, the term:

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

365 (2) "Administrator" means an individual at least 21 years  
366 of age who is responsible for the operation and maintenance of  
367 an assisted living facility; for promoting the resident's  
368 dignity, autonomy, independence, and privacy in the least  
369 restrictive and most homelike setting consistent with the  
370 resident's preferences and physical and mental statuses; and for  
371 ensuring the appropriateness of continued placement of a  
372 resident, in consultation with the resident, resident's  
373 representative or designee, if applicable, and the resident's  
374 physician.

375 (3) "Agency" means the Agency for Health Care  
376 Administration.

377 (4) "Aging in place" or "age in place" means the process of

588-03820A-11

20111458c1

378 providing increased or adjusted services to a person to  
379 compensate for the physical or mental decline that may occur  
380 with the aging process, in order to maximize the person's  
381 dignity and independence and permit them to remain in a  
382 familiar, noninstitutional, residential environment for as long  
383 as possible, as determined by the individual, his or her  
384 physician, and the administrator. Such services may be provided  
385 by facility staff, volunteers, family, or friends, or through  
386 contractual arrangements with a third party.

387 (5) "Arbitration" means a process whereby a neutral third  
388 person or panel, called an arbitrator or arbitration panel,  
389 considers the facts and arguments presented by the parties and  
390 renders a decision that may be binding or nonbinding as provided  
391 for in chapter 44.

392 (6)~~(5)~~ "Assisted living facility" means any residential  
393 setting that provides, directly or indirectly by means of  
394 contracts or arrangements, for a period exceeding 24 hours,  
395 ~~building or buildings, section or distinct part of a building,~~  
396 ~~private home, boarding home, home for the aged, or other~~  
397 ~~residential facility, whether operated for profit or not, which~~  
398 ~~undertakes through its ownership or management to provide~~  
399 housing, meals, and one or more personal services that meet the  
400 resident's changing needs and preferences for a period exceeding  
401 24 hours to one or more adults who are not relatives of the  
402 owner or administrator. As used in this subsection, the term  
403 "residential setting" includes, but is not limited to, a  
404 building or buildings, section or distinct part of a building,  
405 private home, or other residence.

406 (7)~~(6)~~ "Chemical restraint" means a pharmacologic drug that

588-03820A-11

20111458c1

407 physically limits, restricts, or deprives an individual of  
408 movement or mobility, and is used for discipline or convenience  
409 and not required for the treatment of medical symptoms.

410 (8)~~(7)~~ "Community living support plan" means a written  
411 document prepared by a mental health resident and the resident's  
412 mental health case manager, in consultation with the  
413 administrator or the administrator's designee, of an assisted  
414 living facility with a limited mental health license ~~or the~~  
415 ~~administrator's designee~~. A copy must be provided to the  
416 administrator. The plan must include information about the  
417 supports, services, and special needs of the resident which  
418 enable the resident to live in the assisted living facility and  
419 a method by which facility staff can recognize and respond to  
420 the signs and symptoms particular to that resident which  
421 indicate the need for professional services.

422 (9)~~(8)~~ "Cooperative agreement" means a written statement of  
423 understanding between a mental health care provider and the  
424 administrator of the assisted living facility with a limited  
425 mental health license in which a mental health resident is  
426 living. The agreement must specify directions for accessing  
427 emergency and after-hours care for the mental health resident. A  
428 single cooperative agreement may service all mental health  
429 residents who are clients of the same mental health care  
430 provider.

431 (10)~~(9)~~ "Department" means the Department of Elderly  
432 Affairs.

433 (11)~~(10)~~ "Emergency" means a situation, physical condition,  
434 or method of operation which presents imminent danger of death  
435 or serious physical or mental harm to facility residents.

588-03820A-11

20111458c1

436        (12)~~(11)~~ "Extended congregate care" means acts beyond those  
437 authorized in subsection (19) ~~(16)~~ that may be performed  
438 pursuant to part I of chapter 464 by persons licensed thereunder  
439 while carrying out their professional duties, and other  
440 supportive services which may be specified by rule. The purpose  
441 of such services is to enable residents to age in place in a  
442 residential environment despite mental or physical limitations  
443 that might otherwise disqualify them from residency in a  
444 facility licensed under this part.

445        (13)~~(12)~~ "Guardian" means a person to whom the law has  
446 entrusted the custody and control of the person or property, or  
447 both, of a person who has been legally adjudged incapacitated.

448        (14) "Licensed facility" means an assisted living facility  
449 for which a licensee has been issued a license pursuant to this  
450 part and part II of chapter 408.

451        (15)~~(13)~~ "Limited nursing services" means acts that may be  
452 performed pursuant to part I of chapter 464 by persons licensed  
453 thereunder while carrying out their professional duties but  
454 limited to those acts which the department specifies by rule.  
455 Acts which may be specified by rule as allowable limited nursing  
456 services shall be for persons who meet the admission criteria  
457 established by the department for assisted living facilities and  
458 shall not be complex enough to require 24-hour nursing  
459 supervision and may include such services as the application and  
460 care of routine dressings, and care of casts, braces, and  
461 splints.

462        (16)~~(14)~~ "Managed risk" means the process by which the  
463 facility staff discuss the service plan and the needs of the  
464 resident with the resident and, if applicable, the resident's



588-03820A-11

20111458c1

465 representative or designee or the resident's surrogate,  
466 guardian, or attorney in fact, in such a way that the  
467 consequences of a decision, including any inherent risk, are  
468 explained to all parties and reviewed periodically in  
469 conjunction with the service plan, taking into account changes  
470 in the resident's status and the ability of the facility to  
471 respond accordingly.

472 (17)~~(15)~~ "Mental health resident" means an individual who  
473 receives social security disability income due to a mental  
474 disorder as determined by the Social Security Administration or  
475 receives supplemental security income due to a mental disorder  
476 as determined by the Social Security Administration and receives  
477 optional state supplementation.

478 (18) "Person" means any individual, partnership,  
479 corporation, association, or governmental unit.

480 (19)~~(16)~~ "Personal services" means direct physical  
481 assistance with or supervision of the activities of daily living  
482 and the self-administration of medication and other similar  
483 services which the department may define by rule. "Personal  
484 services" shall not be construed to mean the provision of  
485 medical, nursing, dental, or mental health services.

486 (20)~~(17)~~ "Physical restraint" means a device which  
487 physically limits, restricts, or deprives an individual of  
488 movement or mobility, including, but not limited to, a half-bed  
489 rail, a full-bed rail, a geriatric chair, and a posey restraint.  
490 The term "physical restraint" shall also include any device  
491 which was not specifically manufactured as a restraint but which  
492 has been altered, arranged, or otherwise used for this purpose.  
493 The term shall not include bandage material used for the purpose

588-03820A-11

20111458c1

494 of binding a wound or injury.

495 (21)~~(18)~~ "Relative" means an individual who is the father,  
496 mother, stepfather, stepmother, son, daughter, brother, sister,  
497 grandmother, grandfather, great-grandmother, great-grandfather,  
498 grandson, granddaughter, uncle, aunt, first cousin, nephew,  
499 niece, husband, wife, father-in-law, mother-in-law, son-in-law,  
500 daughter-in-law, brother-in-law, sister-in-law, stepson,  
501 stepdaughter, stepbrother, stepsister, half brother, or half  
502 sister of an owner or administrator.

503 (22)~~(19)~~ "Resident" means a person 18 years of age or  
504 older, residing in and receiving care from an assisted living a  
505 facility.

506 (23)~~(20)~~ "Resident's representative or designee" means a  
507 person other than the owner, or an agent or employee of the  
508 assisted living facility, designated in writing by the resident,  
509 if legally competent, to receive notice of changes in the  
510 contract executed pursuant to s. 429.24; to receive notice of  
511 and to participate in meetings between the resident and the  
512 facility owner, administrator, or staff concerning the rights of  
513 the resident; to assist the resident in contacting the ombudsman  
514 council if the resident has a complaint against the facility; or  
515 to bring legal action on behalf of the resident pursuant to s.  
516 429.29.

517 (24)~~(21)~~ "Service plan" means a written plan, developed and  
518 agreed upon by the resident and, if applicable, the resident's  
519 representative or designee or the resident's surrogate,  
520 guardian, or attorney in fact, if any, and the administrator or  
521 the administrator's designee representing the facility, which  
522 addresses the unique physical and psychosocial needs, abilities,

588-03820A-11

20111458c1

523 and personal preferences of each resident receiving extended  
524 congregate care services. The plan shall include a brief written  
525 description, in easily understood language, of what services  
526 shall be provided, who shall provide the services, when the  
527 services shall be rendered, and the purposes and benefits of the  
528 services.

529 (25)~~(22)~~ "Shared responsibility" means exploring the  
530 options available to a resident within a facility and the risks  
531 involved with each option when making decisions pertaining to  
532 the resident's abilities, preferences, and service needs,  
533 thereby enabling the resident and, if applicable, the resident's  
534 representative or designee, or the resident's surrogate,  
535 guardian, or attorney in fact, and the facility to develop a  
536 service plan which best meets the resident's needs and seeks to  
537 improve the resident's quality of life.

538 (26)~~(23)~~ "Supervision" means reminding residents to engage  
539 in activities of daily living and the self-administration of  
540 medication, and, when necessary, observing or providing verbal  
541 cuing to residents while they perform these activities. The term  
542 "supervision" does not include one-on-one observation.

543 (27)~~(24)~~ "Supplemental security income," Title XVI of the  
544 Social Security Act, means a program through which the Federal  
545 Government guarantees a minimum monthly income to every person  
546 who is age 65 or older, or disabled, or blind and meets the  
547 income and asset requirements.

548 (28)~~(25)~~ "Supportive services" means services designed to  
549 encourage and assist residents ~~aged persons or adults with~~  
550 ~~disabilities~~ to remain in the least restrictive living  
551 environment and to maintain their independence as long as

588-03820A-11

20111458c1

552 possible.

553 (29)~~(26)~~ "Twenty-four-hour nursing supervision" means  
554 services that are ordered by a physician for a resident whose  
555 condition requires the supervision of a physician and continued  
556 monitoring of vital signs and physical status. Such services  
557 shall be: medically complex enough to require constant  
558 supervision, assessment, planning, or intervention by a nurse;  
559 required to be performed by or under the direct supervision of  
560 licensed nursing personnel or other professional personnel for  
561 safe and effective performance; ~~required on a daily basis;~~ and  
562 consistent with the nature and severity of the resident's  
563 condition or the disease state or stage.

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

566 429.04 Facilities to be licensed; exemptions.—

567 (2) The following are exempt from licensure under this  
568 part:

569 (g) Any facility certified under chapter 651, or a  
570 retirement community, may provide services authorized under this  
571 part ~~or part III of chapter 400~~ to its residents who live in  
572 single-family homes, duplexes, quadruplexes, or apartments  
573 located on the campus without obtaining a license to operate an  
574 assisted living facility if residential units within such  
575 buildings are used by residents who do not require staff  
576 supervision for that portion of the day when personal services  
577 are not being delivered and the owner obtains a home health  
578 license to provide such services. However, any building or  
579 distinct part of a building on the campus that is designated for  
580 persons who receive personal services and require supervision

588-03820A-11

20111458c1

581 beyond that which is available while such services are being  
582 rendered must be licensed in accordance with this part. If a  
583 facility provides personal services to residents who do not  
584 otherwise require supervision and the owner is not licensed as a  
585 home health agency, the buildings or distinct parts of buildings  
586 where such services are rendered must be licensed under this  
587 part. A resident of a facility that obtains a home health  
588 license may contract with a home health agency of his or her  
589 choice, provided that the home health agency provides liability  
590 insurance and workers' compensation coverage for its employees.  
591 Facilities covered by this exemption may establish policies that  
592 give residents the option of contracting for services and care  
593 beyond that which is provided by the facility to enable them to  
594 age in place. For purposes of this section, a retirement  
595 community consists of a facility licensed under this part or a  
596 facility licensed under part II of chapter 400, and apartments  
597 designed for independent living located on the same campus.

598 (h) Any residential unit for independent living which is  
599 located within a facility certified under chapter 651, or any  
600 residential unit for independent living which is collocated  
601 ~~collocated~~ with a nursing home licensed under part II of chapter  
602 400 or collocated ~~collocated~~ with a facility licensed under this  
603 part in which services are provided through an outpatient clinic  
604 or a nursing home on an outpatient basis.

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

608 429.07 License required; fee.—

609 (3) In addition to the requirements of s. 408.806, each

588-03820A-11

20111458c1

610 license granted by the agency must state the type of care for  
611 which the license is granted. Licenses shall be issued for one  
612 or more of the following categories of care: standard, extended  
613 congregate care, ~~limited nursing services,~~ or limited mental  
614 health.

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

621 (b) An extended congregate care license shall be issued to  
622 a licensee for a facility ~~facilities~~ providing, directly or  
623 through contract, services beyond those authorized in paragraph  
624 (a), including services performed by persons licensed under part  
625 I of chapter 464 and supportive services, as defined by rule, to  
626 persons who would otherwise be disqualified from continued  
627 residence in a facility licensed under this part.

628 1. In order for extended congregate care services to be  
629 provided, the agency must first determine that all requirements  
630 established in law and rule are met and must specifically  
631 designate, on the facility's license, that such services may be  
632 provided and whether the designation applies to all or part of  
633 the facility. Such designation may be made at the time of  
634 initial licensure or relicensure, or upon request in writing by  
635 a licensee under this part and part II of chapter 408. The  
636 notification of approval or the denial of the request shall be  
637 made in accordance with part II of chapter 408. Existing  
638 facilities qualifying to provide extended congregate care

588-03820A-11

20111458c1

639 services must have maintained a standard license and may not  
 640 have been subject to administrative sanctions during the  
 641 previous 2 years, or since initial licensure if the facility has  
 642 been licensed for less than 2 years, for any of the following  
 643 reasons:

644 a. A class I or class II violation;

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

648 ~~e. Three or more class III violations that were not~~  
 649 ~~corrected in accordance with the corrective action plan approved~~  
 650 ~~by the agency;~~

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

654 ~~e. Denial, suspension, or revocation of a license for~~  
 655 ~~another facility licensed under this part in which the applicant~~  
 656 ~~for an extended congregate care license has at least 25 percent~~  
 657 ~~ownership interest; or~~

658 ~~c.f.~~ Imposition of a moratorium pursuant to this part or  
 659 part II of chapter 408 or initiation of injunctive proceedings.

660 2. A licensee facility that is licensed to provide extended  
 661 congregate care services shall maintain a written progress  
 662 report for ~~on~~ each person who receives services, and the report  
 663 must describe ~~which describes~~ the type, amount, duration, scope,  
 664 and outcome of services that are rendered and the general status  
 665 of the resident's health. ~~A registered nurse, or appropriate~~  
 666 ~~designee, representing the agency shall visit the facility at~~  
 667 ~~least quarterly to monitor residents who are receiving extended~~

588-03820A-11

20111458c1

668 ~~congregate care services and to determine if the facility is in~~  
669 ~~compliance with this part, part II of chapter 408, and relevant~~  
670 ~~rules. One of the visits may be in conjunction with the regular~~  
671 ~~survey. The monitoring visits may be provided through~~  
672 ~~contractual arrangements with appropriate community agencies. A~~  
673 ~~registered nurse shall serve as part of the team that inspects~~  
674 ~~the facility. The agency may waive one of the required yearly~~  
675 ~~monitoring visits for a facility that has been licensed for at~~  
676 ~~least 24 months to provide extended congregate care services,~~  
677 ~~if, during the inspection, the registered nurse determines that~~  
678 ~~extended congregate care services are being provided~~  
679 ~~appropriately, and if the facility has no class I or class II~~  
680 ~~violations and no uncorrected class III violations. The agency~~  
681 ~~must first consult with the long-term care ombudsman council for~~  
682 ~~the area in which the facility is located to determine if any~~  
683 ~~complaints have been made and substantiated about the quality of~~  
684 ~~services or care. The agency may not waive one of the required~~  
685 ~~yearly monitoring visits if complaints have been made and~~  
686 ~~substantiated.~~

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

689 a. Demonstrate the capability to meet unanticipated  
690 resident service needs.

691 b. Offer a physical environment that promotes a homelike  
692 setting, provides for resident privacy, promotes resident  
693 independence, and allows sufficient congregate space as defined  
694 by rule.

695 c. Have sufficient staff available, taking into account the  
696 physical plant and firesafety features of the residential



588-03820A-11

20111458c1

697 setting ~~building~~, to assist with the evacuation of residents in  
698 an emergency.

699 d. Adopt and follow policies and procedures that maximize  
700 resident independence, dignity, choice, and decisionmaking to  
701 permit residents to age in place, so that moves due to changes  
702 in functional status are minimized or avoided.

703 e. Allow residents or, if applicable, a resident's  
704 representative, designee, surrogate, guardian, or attorney in  
705 fact to make a variety of personal choices, participate in  
706 developing service plans, and share responsibility in  
707 decisionmaking.

708 f. Implement the concept of managed risk.

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

711 h. In addition to the training mandated in s. 429.52,  
712 provide specialized training as defined by rule for facility  
713 staff.

714 4. A facility that is licensed to provide extended  
715 congregate care services is exempt from the criteria for  
716 continued residency set forth in rules adopted under s. 429.41.  
717 A licensed facility must adopt its own requirements within  
718 guidelines for continued residency set forth by rule. However,  
719 the facility may not serve residents who require 24-hour nursing  
720 supervision. A licensed facility that provides extended  
721 congregate care services must also provide each resident with a  
722 written copy of facility policies governing admission and  
723 retention.

724 5. The primary purpose of extended congregate care services  
725 is to allow residents, as they become more impaired, the option

588-03820A-11

20111458c1

726 of remaining in a familiar setting from which they would  
727 otherwise be disqualified for continued residency. A facility  
728 licensed to provide extended congregate care services may also  
729 admit an individual who exceeds the admission criteria for a  
730 facility with a standard license, if the individual is  
731 determined appropriate for admission to the extended congregate  
732 care facility.

733 6. Before the admission of an individual to a facility  
734 licensed to provide extended congregate care services, the  
735 individual must undergo a medical examination as provided in s.  
736 429.26(4) and the licensee ~~facility~~ must develop a preliminary  
737 service plan for the individual.

738 7. When a licensee ~~facility~~ can no longer provide or  
739 arrange for services in accordance with the resident's service  
740 plan and needs and the licensee's ~~facility's~~ policy, the  
741 licensee ~~facility~~ shall make arrangements for relocating the  
742 person in accordance with s. 429.28(1)(k).

743 ~~8. Failure to provide extended congregate care services may~~  
744 ~~result in denial of extended congregate care license renewal.~~

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

748 ~~1. In order for limited nursing services to be provided in~~  
749 ~~a facility licensed under this part, the agency must first~~  
750 ~~determine that all requirements established in law and rule are~~  
751 ~~met and must specifically designate, on the facility's license,~~  
752 ~~that such services may be provided. Such designation may be made~~  
753 ~~at the time of initial licensure or relicensure, or upon request~~  
754 ~~in writing by a licensee under this part and part II of chapter~~

588-03820A-11

20111458c1

755 ~~408. Notification of approval or denial of such request shall be~~  
756 ~~made in accordance with part II of chapter 408. Existing~~  
757 ~~facilities qualifying to provide limited nursing services shall~~  
758 ~~have maintained a standard license and may not have been subject~~  
759 ~~to administrative sanctions that affect the health, safety, and~~  
760 ~~welfare of residents for the previous 2 years or since initial~~  
761 ~~licensure if the facility has been licensed for less than 2~~  
762 ~~years.~~

763 ~~2. Facilities that are licensed to provide limited nursing~~  
764 ~~services shall maintain a written progress report on each person~~  
765 ~~who receives such nursing services, which report describes the~~  
766 ~~type, amount, duration, scope, and outcome of services that are~~  
767 ~~rendered and the general status of the resident's health. A~~  
768 ~~registered nurse representing the agency shall visit such~~  
769 ~~facilities at least twice a year to monitor residents who are~~  
770 ~~receiving limited nursing services and to determine if the~~  
771 ~~facility is in compliance with applicable provisions of this~~  
772 ~~part, part II of chapter 408, and related rules. The monitoring~~  
773 ~~visits may be provided through contractual arrangements with~~  
774 ~~appropriate community agencies. A registered nurse shall also~~  
775 ~~serve as part of the team that inspects such facility.~~

776 ~~3. A person who receives limited nursing services under~~  
777 ~~this part must meet the admission criteria established by the~~  
778 ~~agency for assisted living facilities. When a resident no longer~~  
779 ~~meets the admission criteria for a facility licensed under this~~  
780 ~~part, arrangements for relocating the person shall be made in~~  
781 ~~accordance with s. 429.28(1)(k), unless the facility is licensed~~  
782 ~~to provide extended congregate care services.~~

783 (4) In accordance with s. 408.805, an applicant or licensee

588-03820A-11

20111458c1

784 shall pay a fee for each license application submitted under  
785 this part, part II of chapter 408, and applicable rules. The  
786 amount of the fee shall be established by rule.

787 (a) The biennial license fee required of a facility is \$300  
788 per license, with an additional fee of \$71 ~~\$50~~ per resident  
789 based on the total licensed resident capacity of the facility,  
790 except that no additional fee will be assessed for beds used by  
791 ~~designated for~~ recipients of Medicaid home and community-based  
792 waiver programs ~~optional state supplementation payments provided~~  
793 ~~for in s. 409.212~~. The total fee may not exceed \$13,443 ~~\$10,000~~.

794 (b) In addition to the total fee assessed under paragraph  
795 (a), the agency shall require facilities that are licensed to  
796 provide extended congregate care services under this part to pay  
797 an additional fee per licensed facility. The amount of the  
798 biennial fee shall be \$400 per license, with an additional fee  
799 of \$10 per resident based on the total licensed resident  
800 capacity of the facility.

801 ~~(c) In addition to the total fee assessed under paragraph~~  
802 ~~(a), the agency shall require facilities that are licensed to~~  
803 ~~provide limited nursing services under this part to pay an~~  
804 ~~additional fee per licensed facility. The amount of the biennial~~  
805 ~~fee shall be \$250 per license, with an additional fee of \$10 per~~  
806 ~~resident based on the total licensed resident capacity of the~~  
807 ~~facility.~~

808 (6) In order to determine whether the facility is  
809 adequately protecting residents' rights as provided in s.  
810 429.28, the agency's standard license survey shall include  
811 private informal conversations with a sample of residents and  
812 consultation with the ombudsman council in the planning and

588-03820A-11

20111458c1

813 service area in which the facility is located to discuss  
814 residents' experiences within the facility.

815 (7) An assisted living facility that has been cited within  
816 the previous 24-month period for a class I violation or class II  
817 violation, regardless of the status of any enforcement or  
818 disciplinary action, is subject to periodic unannounced  
819 monitoring to determine if the facility is in compliance with  
820 this part, part II of chapter 408, and applicable rules.  
821 Monitoring may occur through a desk review or an onsite  
822 assessment. If the class I violation or class II violation  
823 relates to providing or failing to provide nursing care, a  
824 registered nurse must participate in the monitoring visits  
825 during the 12-month period following the violation.

826 Section 8. Paragraph (a) of subsection (2) of section  
827 429.08, Florida Statutes, is amended to read:

828 429.08 Unlicensed facilities; referral of person for  
829 residency to unlicensed facility; penalties.—

830 (2) It is unlawful to knowingly refer a person for  
831 residency to an unlicensed assisted living facility; to an  
832 assisted living facility the license of which is under denial or  
833 has been suspended or revoked; or to an assisted living facility  
834 that has a moratorium pursuant to part II of chapter 408.

835 (a) Any health care practitioner, as defined in s. 456.001,  
836 or emergency medical technician or paramedic certified under  
837 part III of chapter 401, who is aware of the operation of an  
838 unlicensed facility shall report that facility to the agency.  
839 Failure to report a facility that the practitioner knows or has  
840 reasonable cause to suspect is unlicensed shall be reported to  
841 the practitioner's licensing board.

588-03820A-11

20111458c1

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

844 429.11 Initial application for license; provisional  
845 license.-

846 (8) The agency shall develop an abbreviated form for  
847 submission of proof of financial ability to operate under s.  
848 408.810(8) which is specific to applicants for a license to  
849 operate an assisted living facility. The form must request  
850 information that demonstrates the applicant has adequate  
851 resources to sustain operations and has sufficient assets,  
852 credit, and projected revenues to cover liabilities and expenses  
853 of the facility based on the number of beds and services the  
854 applicant will provide.

855 Section 10. Section 429.12, Florida Statutes, is amended to  
856 read:

857 429.12 Sale or transfer of ownership of a facility.~~It is~~  
858 ~~the intent of the Legislature to protect the rights of the~~  
859 ~~residents of an assisted living facility when the facility is~~  
860 ~~sold or the ownership thereof is transferred. Therefore, In~~  
861 addition to the requirements of part II of chapter 408, whenever  
862 a facility is sold or the ownership thereof is transferred,  
863 including leasing,÷

864 ~~(1)~~ the transferee shall notify the residents, in writing,  
865 of the change of ownership within 7 days after receipt of the  
866 new license in order to protect the rights of the residents of  
867 an assisted living facility.

868 ~~(2) The transferor of a facility the license of which is~~  
869 ~~denied pending an administrative hearing shall, as a part of the~~  
870 ~~written change of ownership contract, advise the transferee that~~

588-03820A-11

20111458c1

871 ~~a plan of correction must be submitted by the transferee and~~  
872 ~~approved by the agency at least 7 days before the change of~~  
873 ~~ownership and that failure to correct the condition which~~  
874 ~~resulted in the moratorium pursuant to part II of chapter 408 or~~  
875 ~~denial of licensure is grounds for denial of the transferee's~~  
876 ~~license.~~

877 Section 11. Section 429.14, Florida Statutes, is amended to  
878 read:

879 429.14 Administrative penalties.-

880 (1) In addition to the requirements of part II of chapter  
881 408, the agency may deny, revoke, and suspend any license issued  
882 under this part and impose an administrative fine in the manner  
883 provided in chapter 120 against a licensee for a violation of  
884 any provision of this part, part II of chapter 408, or  
885 applicable rules, or for any of the following actions by a  
886 licensee, or for the actions of any person subject to level 2  
887 background screening under s. 408.809, ~~or for the actions of any~~  
888 ~~facility employee:~~

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

891 (b) The determination by the agency that the owner lacks  
892 the financial ability to provide continuing adequate care to  
893 residents.

894 (c) Misappropriation or conversion of the property of a  
895 resident of the facility.

896 ~~(d) Failure to follow the criteria and procedures provided~~  
897 ~~under part I of chapter 394 relating to the transportation,~~  
898 ~~voluntary admission, and involuntary examination of a facility~~  
899 ~~resident.~~

588-03820A-11

20111458c1

- 900        (d)~~(e)~~ A citation of any of the following violations  
901 ~~deficiencies~~ as specified in s. 429.19:
- 902            1. One or more cited class I violations ~~deficiencies~~.
  - 903            2. Three or more cited class II violations ~~deficiencies~~.
  - 904            3. Five or more cited class III violations ~~deficiencies~~  
905 that have been cited on a single survey and have not been  
906 corrected within the times specified.
- 907        (e)~~(f)~~ Failure to comply with the background screening  
908 standards of this part, s. 408.809(1), or chapter 435.
- 909        (f)~~(g)~~ Violation of a moratorium.
- 910        (g)~~(h)~~ Failure of the license applicant, the licensee  
911 during relicensure, or a licensee that holds a provisional  
912 license to meet the minimum license requirements of this part,  
913 or related rules, at the time of license application or renewal.
- 914        (h)~~(i)~~ An intentional or negligent life-threatening act in  
915 violation of the uniform firesafety standards for assisted  
916 living facilities or other firesafety standards that threatens  
917 the health, safety, or welfare of a resident of a facility, as  
918 communicated to the agency by the local authority having  
919 jurisdiction or the State Fire Marshal.
- 920        (i)~~(j)~~ Knowingly operating any unlicensed facility or  
921 providing without a license any service that must be licensed  
922 under this chapter or chapter 400.
- 923        (j)~~(k)~~ Any act constituting a ground upon which application  
924 for a license may be denied.
- 925        (2) Upon notification by the local authority having  
926 jurisdiction or by the State Fire Marshal, the agency may deny  
927 or revoke the license of a licensee of an assisted living  
928 facility that fails to correct cited fire code violations that



588-03820A-11

20111458c1

929 affect or threaten the health, safety, or welfare of a resident  
930 of a facility.

931 (3) The agency may deny a license to any applicant or  
932 controlling interest as defined in part II of chapter 408 which  
933 has or had a 25-percent or greater financial or ownership  
934 interest in any other facility licensed under this part, or in  
935 any entity licensed by this state or another state to provide  
936 health or residential care, which facility or entity during the  
937 5 years prior to the application for a license closed due to  
938 financial inability to operate; had a receiver appointed or a  
939 license denied, suspended, or revoked; was subject to a  
940 moratorium; or had an injunctive proceeding initiated against  
941 it.

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

947 (4)~~(5)~~ An action taken by the agency to suspend, deny, or  
948 revoke a licensee's facility's license under this part or part  
949 II of chapter 408, in which the agency claims that the facility  
950 owner or a staff member ~~an employee~~ of the facility has  
951 threatened the health, safety, or welfare of a resident of the  
952 facility must be heard by the Division of Administrative  
953 Hearings of the Department of Management Services within 120  
954 days after receipt of the facility's request for a hearing,  
955 unless that time limitation is waived by both parties. The  
956 administrative law judge must render a decision within 30 days  
957 after receipt of a proposed recommended order.

588-03820A-11

20111458c1

958       ~~(6) The agency shall provide to the Division of Hotels and~~  
959 ~~Restaurants of the Department of Business and Professional~~  
960 ~~Regulation, on a monthly basis, a list of those assisted living~~  
961 ~~facilities that have had their licenses denied, suspended, or~~  
962 ~~revoked or that are involved in an appellate proceeding pursuant~~  
963 ~~to s. 120.60 related to the denial, suspension, or revocation of~~  
964 ~~a license.~~

965       (5)~~(7)~~ Agency notification of a license suspension or  
966 revocation, or denial of a license renewal, shall be posted and  
967 visible to the public at the facility.

968       Section 12. Subsections (1), (4), and (5) of section  
969 429.17, Florida Statutes, are amended to read:

970       429.17 Expiration of license; renewal; conditional  
971 license.—

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

975       (4) In addition to the license categories available in s.  
976 408.808, a conditional license may be issued to an applicant for  
977 license renewal if the applicant fails to meet all standards and  
978 requirements for licensure. A conditional license issued under  
979 this subsection shall be limited in duration to a specific  
980 period of time not to exceed 6 months, as determined by the  
981 agency, ~~and shall be accompanied by an agency approved plan of~~  
982 ~~correction.~~

983       (5) When an extended congregate care ~~or limited nursing~~  
984 license is requested during a facility's biennial license  
985 period, the fee shall be prorated in order to permit the  
986 additional license to expire at the end of the biennial license

588-03820A-11

20111458c1

987 period. The fee shall be calculated as of the date the  
988 additional license application is received by the agency.

989 Section 13. Subsections (1), (6), (7), and (8) of section  
990 429.178, Florida Statutes, are amended to read:

991 429.178 Special care for persons with Alzheimer's disease  
992 or other related disorders.—

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

997 ~~(a)1. If the facility has 17 or more residents,~~ Have an  
998 awake staff member on duty at all hours of the day and night for  
999 each secured unit of the facility which houses any residents who  
1000 have Alzheimer's disease or other related disorders. ~~;~~ ~~or~~

1001 ~~2. If the facility has fewer than 17 residents,~~ have an  
1002 awake staff member on duty at all hours of the day and night ~~or~~  
1003 ~~have mechanisms in place to monitor and ensure the safety of the~~  
1004 ~~facility's residents.~~

1005 (b) Offer activities specifically designed for persons who  
1006 are cognitively impaired.

1007 (c) Have a physical environment that provides for the  
1008 safety and welfare of the facility's residents.

1009 (d) Employ staff who have completed the training and  
1010 continuing education required in subsection (2).

1011

1012 For the safety and protection of residents who have Alzheimer's  
1013 disease, related disorders, or dementia, a secured locked unit  
1014 may be designated. The unit may consist of the entire building  
1015 or a distinct part of the building. Exit doors shall be equipped

588-03820A-11

20111458c1

1016 with an operating alarm system that releases upon activation of  
1017 the fire alarm. These units are exempt from specific life safety  
1018 requirements to which assisted living facilities are normally  
1019 subject. A staff member must be awake and present in the secured  
1020 unit at all times.

1021 (6) The department shall maintain and post on its website  
1022 ~~keep~~ a current list of providers who are approved to provide  
1023 initial and continuing education for staff and direct care staff  
1024 members of facilities that provide special care for persons with  
1025 Alzheimer's disease or other related disorders.

1026 ~~(7) Any facility more than 90 percent of whose residents~~  
1027 ~~receive monthly optional supplementation payments is not~~  
1028 ~~required to pay for the training and education programs required~~  
1029 ~~under this section. A facility that has one or more such~~  
1030 ~~residents shall pay a reduced fee that is proportional to the~~  
1031 ~~percentage of such residents in the facility. A facility that~~  
1032 ~~does not have any residents who receive monthly optional~~  
1033 ~~supplementation payments must pay a reasonable fee, as~~  
1034 ~~established by the department, for such training and education~~  
1035 ~~programs.~~

1036 (7) ~~(8)~~ The department shall adopt rules to establish  
1037 standards for trainers and training and to implement this  
1038 section.

1039 Section 14. Subsections (1), (2), (5), (7), (8), and (9) of  
1040 section 429.19, Florida Statutes, are amended to read:

1041 429.19 Violations; imposition of administrative fines;  
1042 grounds.—

1043 (1) In addition to the requirements of part II of chapter  
1044 408, the agency shall impose an administrative fine in the

588-03820A-11

20111458c1

1045 manner provided in chapter 120 for the violation of any  
1046 provision of this part, part II of chapter 408, and applicable  
1047 rules by an assisted living facility, for the actions of any  
1048 person subject to level 2 background screening under s. 408.809,  
1049 ~~for the actions of any facility employee,~~ or for an intentional  
1050 or negligent act seriously affecting the health, safety, or  
1051 welfare of a resident of the facility.

1052 (2) Each violation of this part and adopted rules shall be  
1053 classified according to the nature of the violation and the  
1054 gravity of its probable effect on facility residents. The agency  
1055 shall indicate the classification on the written notice of the  
1056 violation as follows:

1057 (a) Class "I" violations are those conditions or  
1058 occurrences related to the operation and maintenance of a  
1059 facility or to the care of residents which the agency determines  
1060 present an imminent danger to the residents or a substantial  
1061 probability that death or serious physical or emotional harm  
1062 would result. The condition or practice that constitutes a class  
1063 I violation must be abated or eliminated within 24 hours, unless  
1064 a fixed period, as determined by the agency, is required for  
1065 correction defined in s. 408.813. The agency shall impose an  
1066 administrative fine for a cited class I violation in an amount  
1067 not less than \$5,000 and not exceeding \$10,000 for each  
1068 violation. A fine shall be levied notwithstanding the correction  
1069 of the violation.

1070 (b) Class "II" violations are those conditions or  
1071 occurrences related to the operation and maintenance of a  
1072 facility or to the care of residents which the agency determines  
1073 directly threaten the physical or emotional health, safety, or

588-03820A-11

20111458c1

1074 security of the residents, other than class I violations ~~defined~~  
1075 ~~in s. 408.813~~. The agency shall impose an administrative fine  
1076 for a cited class II violation in an amount not less than \$1,000  
1077 and not exceeding \$5,000 for each violation. A fine shall be  
1078 levied notwithstanding the correction of the violation.

1079 (c) Class "III" violations are those conditions or  
1080 occurrences related to the operation and maintenance of a  
1081 facility or to the care of residents which the agency determines  
1082 indirectly or potentially threaten the physical or emotional  
1083 health, safety, or security of residents, other than class I  
1084 violations or class II violations ~~defined in s. 408.813~~. The  
1085 agency shall impose an administrative fine for a cited class III  
1086 violation in an amount not less than \$500 and not exceeding  
1087 \$1,000 for each violation. If a class III violation is corrected  
1088 within the time specified, a fine may not be imposed.

1089 (d) Class "IV" violations are those conditions or  
1090 occurrences related to the operation and maintenance of a  
1091 facility or to required reports, forms, or documents which do  
1092 not have the potential of negatively affecting residents. These  
1093 violations are of a type that the agency determines do not  
1094 threaten the health, safety, or security of residents ~~defined in~~  
1095 ~~s. 408.813~~. The agency shall impose an administrative fine for a  
1096 cited class IV violation in an amount not less than \$100 and not  
1097 exceeding \$200 for each violation. A citation for a class IV  
1098 violation must specify the time within which the violation is  
1099 required to be corrected. If a class IV violation is corrected  
1100 within the time specified, a fine may not be imposed.

1101 (5) Any action taken to correct a violation shall be  
1102 documented in writing by the licensee ~~owner~~ or administrator of

588-03820A-11

20111458c1

1103 the facility and verified through followup visits by agency  
1104 personnel or desk review. The agency may impose a fine and, in  
1105 the case of an owner-operated facility, revoke or deny a  
1106 licensee's facility's license when the agency has documented  
1107 that a facility administrator has fraudulently misrepresented  
1108 misrepresents action taken to correct a violation.

1109 (7) In addition to any administrative fines imposed, the  
1110 agency may assess a survey fee, equal to the lesser of one half  
1111 of the facility's biennial license and bed fee or \$500, to cover  
1112 the cost of conducting initial complaint investigations that  
1113 result in the finding of a violation that was the subject of the  
1114 complaint ~~or monitoring visits conducted under s. 429.28(3)(c)~~  
1115 ~~to verify the correction of the violations.~~

1116 (8) During an inspection, the agency shall ~~make a~~  
1117 ~~reasonable attempt to~~ discuss each violation with the owner or  
1118 administrator of the facility before giving, ~~prior to~~ written  
1119 notification.

1120 (9) The agency shall develop and disseminate an annual list  
1121 of all facilities sanctioned or fined for violations of state  
1122 standards, the number and class of violations involved, the  
1123 penalties imposed, and the current status of cases. ~~The list~~  
1124 ~~shall be disseminated, at no charge, to the Department of~~  
1125 ~~Elderly Affairs, the Department of Health, the Department of~~  
1126 ~~Children and Family Services, the Agency for Persons with~~  
1127 ~~Disabilities, the area agencies on aging, the Florida Statewide~~  
1128 ~~Advocacy Council, and the state and local ombudsman councils.~~  
1129 ~~The Department of Children and Family Services shall disseminate~~  
1130 ~~the list to service providers under contract to the department~~  
1131 ~~who are responsible for referring persons to a facility for~~

588-03820A-11

20111458c1

1132 ~~residency. The agency may charge a fee commensurate with the~~  
1133 ~~cost of printing and postage to other interested parties~~  
1134 ~~requesting a copy of this list.~~ This information may be provided  
1135 electronically or through the agency's Internet site.

1136 Section 15. Section 429.195, Florida Statutes, is amended  
1137 to read:

1138 429.195 Rebates prohibited; penalties.-

1139 (1) It is unlawful for the licensee of any assisted living  
1140 facility licensed under this part to contract or promise to pay  
1141 or receive any commission, bonus, kickback, or rebate or engage  
1142 in any split-fee arrangement in any form whatsoever with any  
1143 health care provider or health care facility under s. 817.505  
1144 ~~physician, surgeon, organization, agency, or person, either~~  
1145 ~~directly or indirectly, for residents referred to an assisted~~  
1146 ~~living facility licensed under this part. A facility may employ~~  
1147 ~~or contract with persons to market the facility, provided the~~  
1148 ~~employee or contract provider clearly indicates that he or she~~  
1149 ~~represents the facility. A person or agency independent of the~~  
1150 ~~facility may provide placement or referral services for a fee to~~  
1151 ~~individuals seeking assistance in finding a suitable facility;~~  
1152 ~~however, any fee paid for placement or referral services must be~~  
1153 ~~paid by the individual looking for a facility, not by the~~  
1154 ~~facility.~~

1155 (2) A violation of this section shall be considered patient  
1156 brokering and is punishable as provided in s. 817.505.

1157 (3) This section does not apply to:

1158 (a) Any individual with whom the facility employs or  
1159 contracts with to market the facility if the employee or  
1160 contract provider clearly indicates that he or she works with or



588-03820A-11

20111458c1

1161 for the facility.

1162 (b) A referral service that provides information,  
1163 consultation, or referrals to consumers to assist them in  
1164 finding appropriate care or housing options for seniors or  
1165 disabled adults if such referred consumers are not Medicaid  
1166 recipients.

1167 (c) A resident of an assisted living facility who refers to  
1168 the assisted living facility a friend, a family member, or other  
1169 individual with whom the resident has a personal relationship.  
1170 Such a referral does not prohibit the assisted living facility  
1171 from providing a monetary reward to the resident for making such  
1172 a referral.

1173 Section 16. Subsections (2) and (3) of section 429.20,  
1174 Florida Statutes, are amended to read:

1175 429.20 Certain solicitation prohibited; third-party  
1176 supplementation.—

1177 (2) Solicitation of contributions of any kind in a  
1178 threatening, coercive, or unduly forceful manner by or on behalf  
1179 of an assisted living facility or facilities by any agent,  
1180 employee, owner, or representative of any assisted living  
1181 facility or facilities is prohibited ~~grounds for denial,~~  
1182 ~~suspension, or revocation of the license of the assisted living~~  
1183 ~~facility or facilities by or on behalf of which such~~  
1184 ~~contributions were solicited.~~

1185 (3) The admission or maintenance of assisted living  
1186 facility residents whose care is supported, in whole or in part,  
1187 by state funds may not be conditioned upon the receipt of any  
1188 manner of contribution or donation from any person. ~~The~~  
1189 ~~solicitation or receipt of contributions in violation of this~~

588-03820A-11

20111458c1

1190 ~~subsection is grounds for denial, suspension, or revocation of~~  
1191 ~~license, as provided in s. 429.14, for any assisted living~~  
1192 ~~facility by or on behalf of which such contributions were~~  
1193 ~~solicited.~~

1194 Section 17. Section 429.23, Florida Statutes, is amended to  
1195 read:

1196 429.23 Internal risk management and quality assurance  
1197 program; adverse incidents and reporting requirements.—

1198 (1) Every licensed facility ~~licensed under this part~~ may,  
1199 as part of its administrative functions, voluntarily establish a  
1200 risk management and quality assurance program, the purpose of  
1201 which is to assess resident care practices, facility incident  
1202 reports, violations ~~deficiencies~~ cited by the agency, adverse  
1203 incident reports, and resident grievances and develop plans of  
1204 action to correct and respond quickly to identify quality  
1205 differences.

1206 (2) Every licensed facility ~~licensed under this part~~ is  
1207 required to maintain adverse incident reports. For purposes of  
1208 this section, the term, "adverse incident" means:

1209 (a) An event over which facility staff ~~personnel~~ could  
1210 exercise control rather than as a result of the resident's  
1211 condition and results in:

- 1212 1. Death;
- 1213 2. Brain or spinal damage;
- 1214 3. Permanent disfigurement;
- 1215 4. Fracture or dislocation of bones or joints;
- 1216 5. Any condition that required medical attention to which  
1217 the resident has not given his or her consent, excluding  
1218 proceedings governed by part I of chapter 394, but including

588-03820A-11

20111458c1

1219 failure to honor advanced directives;

1220 6. Any condition that requires the transfer of the resident  
1221 from the facility to a unit providing more acute care due to the  
1222 incident rather than the resident's condition before the  
1223 incident; or

1224 7. An event that is reported to law enforcement or its  
1225 personnel for investigation; or

1226 (b) Resident elopement, if the elopement places the  
1227 resident at risk of harm or injury.

1228 ~~(3) Licensed facilities shall provide within 1 business day~~  
1229 ~~after the occurrence of an adverse incident, by electronic mail,~~  
1230 ~~facsimile, or United States mail, a preliminary report to the~~  
1231 ~~agency on all adverse incidents specified under this section.~~  
1232 ~~The report must include information regarding the identity of~~  
1233 ~~the affected resident, the type of adverse incident, and the~~  
1234 ~~status of the facility's investigation of the incident.~~

1235 (3)~~(4)~~ A licensed facility ~~Licensed facilities~~ shall  
1236 provide within 15 business days after the occurrence of an  
1237 adverse incident, by electronic mail, facsimile, or United  
1238 States mail, a full report to the agency on the all adverse  
1239 incident, including information regarding the identity of the  
1240 affected resident, the type of adverse incident, and incidents  
1241 specified in this section. ~~The report must include the results~~  
1242 ~~of the facility's investigation into the adverse incident.~~

1243 ~~(5) Each facility shall report monthly to the agency any~~  
1244 ~~liability claim filed against it. The report must include the~~  
1245 ~~name of the resident, the dates of the incident leading to the~~  
1246 ~~claim, if applicable, and the type of injury or violation of~~  
1247 ~~rights alleged to have occurred. This report is not discoverable~~

588-03820A-11

20111458c1

1248 ~~in any civil or administrative action, except in such actions~~  
1249 ~~brought by the agency to enforce the provisions of this part.~~

1250 (4) ~~(6)~~ Abuse, neglect, or exploitation must be reported to  
1251 the Department of Children and Family Services as required under  
1252 chapter 415.

1253 (5) ~~(7)~~ The information reported to the agency ~~pursuant to~~  
1254 ~~subsection (3)~~ which relates to persons licensed under chapter  
1255 458, chapter 459, chapter 461, chapter 464, or chapter 465 must  
1256 ~~shall~~ be reviewed by the agency. The agency shall determine  
1257 whether any of the incidents potentially involved conduct by a  
1258 health care professional who is subject to disciplinary action,  
1259 in which case the provisions of s. 456.073 apply. The agency may  
1260 investigate, as it deems appropriate, any such incident and  
1261 prescribe measures that must or may be taken in response to the  
1262 incident. The agency shall review each incident and determine  
1263 whether it potentially involved conduct by a health care  
1264 professional who is subject to disciplinary action, in which  
1265 case the provisions of s. 456.073 apply.

1266 (6) ~~(8)~~ If the agency, through its receipt of the adverse  
1267 incident reports prescribed in this part or through any  
1268 investigation, has reasonable belief that conduct by a staff  
1269 member ~~or employee~~ of a licensed facility is grounds for  
1270 disciplinary action by the appropriate board, the agency shall  
1271 report this fact to such regulatory board.

1272 (7) ~~(9)~~ The adverse incident report ~~reports and preliminary~~  
1273 ~~adverse incident reports~~ required under this section is ~~are~~  
1274 confidential as provided by law and is ~~are~~ not discoverable or  
1275 admissible in any civil or administrative action, except in  
1276 disciplinary proceedings by the agency or appropriate regulatory

588-03820A-11

20111458c1

1277 board.

1278 ~~(8)-(10)~~ The Department of Elderly Affairs may adopt rules  
1279 necessary to administer this section.

1280 Section 18. Subsections (1) and (2) of section 429.255,  
1281 Florida Statutes, are amended to read:

1282 429.255 Use of personnel; emergency care.—

1283 (1) (a) Persons under contract to the facility or facility  
1284 staff, ~~or volunteers~~, who are licensed according to part I of  
1285 chapter 464, or those persons exempt under s. 464.022(1), and  
1286 others as defined by rule, may administer medications to  
1287 residents, take residents' vital signs, manage individual weekly  
1288 pill organizers for residents who self-administer medication,  
1289 give prepackaged enemas ordered by a physician, observe  
1290 residents, document observations on the appropriate resident's  
1291 record, report observations to the resident's physician, and  
1292 contract or allow residents or a resident's representative,  
1293 designee, surrogate, guardian, or attorney in fact to contract  
1294 with a third party, provided residents meet the criteria for  
1295 appropriate placement as defined in s. 429.26. Nursing  
1296 assistants certified pursuant to part II of chapter 464 may take  
1297 residents' vital signs as directed by a licensed nurse or  
1298 physician. A person under contract to the facility or facility  
1299 staff who is licensed under part I of chapter 464 may provide  
1300 limited nursing services.

1301 (b) All staff in facilities licensed under this part shall  
1302 exercise their ~~professional~~ responsibility to observe residents,  
1303 to document observations on the appropriate resident's record,  
1304 and to report the observations to the administrator or the  
1305 administrator's designee ~~resident's physician~~. ~~However,~~ The

588-03820A-11

20111458c1

1306 ~~owner or~~ administrator of the facility shall be responsible for  
1307 determining that the resident receiving services is appropriate  
1308 for residence in the assisted living facility.

1309 ~~(c) In an emergency situation, licensed personnel may carry~~  
1310 ~~out their professional duties pursuant to part I of chapter 464~~  
1311 ~~until emergency medical personnel assume responsibility for~~  
1312 ~~care.~~

1313 (2) In facilities licensed to provide extended congregate  
1314 care, persons under contract to the facility or facility staff,  
1315 ~~or volunteers,~~ who are licensed according to part I of chapter  
1316 464, or those persons exempt under s. 464.022(1), or those  
1317 persons certified as nursing assistants pursuant to part II of  
1318 chapter 464, may also perform all duties within the scope of  
1319 their license or certification, as approved by the facility  
1320 administrator and pursuant to this part.

1321 Section 19. Subsections (2), (3), and (4) of section  
1322 429.256, Florida Statutes, are amended to read:

1323 429.256 Assistance with self-administration of medication.—

1324 (2) Residents who are capable of self-administering their  
1325 own medications without assistance shall be encouraged and  
1326 allowed to do so. However, an unlicensed person may, consistent  
1327 with a dispensed prescription's label or the package directions  
1328 of an over-the-counter medication, assist a resident whose  
1329 condition is medically stable with the self-administration of  
1330 routine, regularly scheduled medications that are intended to be  
1331 self-administered. Assistance with self-medication by an  
1332 unlicensed person may occur only upon a documented request by,  
1333 and the written informed consent of, a resident or the  
1334 resident's surrogate, guardian, or attorney in fact. To minimize

588-03820A-11

20111458c1

1335 the potential risk for improper dosage administration of  
1336 prescription drugs, a facility may require standard-medication  
1337 dispensing systems for residents' prescriptions, as specified by  
1338 rule. For the purposes of this section, self-administered  
1339 medications include both legend and over-the-counter oral dosage  
1340 forms, topical dosage forms and topical ophthalmic, otic, and  
1341 nasal dosage forms including solutions, suspensions, sprays, ~~and~~  
1342 inhalers, and continuous positive airway pressure machines.

1343 (3) Assistance with self-administration of medication  
1344 includes:

1345 (a) Taking the medication, in its previously dispensed,  
1346 properly labeled container, from where it is stored, and  
1347 bringing it to the resident.

1348 (b) In the presence of the resident, reading the label,  
1349 opening the container, removing a prescribed amount of  
1350 medication from the container, and closing the container.

1351 (c) Placing an oral dosage in the resident's hand or  
1352 placing the dosage in another container and helping the resident  
1353 by lifting the container to his or her mouth.

1354 (d) Applying topical medications.

1355 (e) Returning the medication container to proper storage.

1356 (f) Keeping a record of when a resident receives assistance  
1357 with self-administration under this section.

1358 (g) Assisting a resident in holding a nebulizer.

1359 (h) Using a glucometer to perform blood glucose checks.

1360 (i) Assisting with the putting on and taking off anti-  
1361 embolism stockings.

1362 (j) Assisting with applying and removing an oxygen cannula.

1363 (4) Assistance with self-administration does not include:

588-03820A-11

20111458c1

1364 (a) Mixing, compounding, converting, or calculating  
 1365 medication doses, except for measuring a prescribed amount of  
 1366 liquid medication or breaking a scored tablet or crushing a  
 1367 tablet as prescribed.

1368 (b) The preparation of syringes for injection or the  
 1369 administration of medications by any injectable route.

1370 ~~(c) Administration of medications through intermittent~~  
 1371 ~~positive pressure breathing machines or a nebulizer.~~

1372 (c) ~~(d)~~ Administration of medications by way of a tube  
 1373 inserted in a cavity of the body.

1374 (d) ~~(e)~~ Administration of parenteral preparations.

1375 (e) ~~(f)~~ Irrigations or debriding agents used in the  
 1376 treatment of a skin condition.

1377 (f) ~~(g)~~ Rectal, urethral, or vaginal preparations.

1378 (g) ~~(h)~~ Medications ordered by the physician or health care  
 1379 professional with prescriptive authority to be given "as  
 1380 needed," unless the order is written with specific parameters  
 1381 that preclude independent judgment on the part of the unlicensed  
 1382 person, and at the request of a competent resident.

1383 (h) ~~(i)~~ Medications for which the time of administration,  
 1384 the amount, the strength of dosage, the method of  
 1385 administration, or the reason for administration requires  
 1386 judgment or discretion on the part of the unlicensed person.

1387 Section 20. Subsections (3), (7), (8), (9), (10), and (11)  
 1388 of section 429.26, Florida Statutes, are amended to read:

1389 429.26 Appropriateness of placements; examinations of  
 1390 residents.—

1391 (3) Persons licensed under part I of chapter 464 who are  
 1392 employed by or under contract with a facility shall, on a



588-03820A-11

20111458c1

1393 routine basis or at least monthly, perform a nursing assessment  
1394 of the residents for whom they are providing nursing services  
1395 ordered by a physician, except administration of medication, and  
1396 shall document such assessment, including any significant change  
1397 ~~substantial changes~~ in a resident's status which may necessitate  
1398 relocation to a nursing home, hospital, or specialized health  
1399 care facility. Such records shall be maintained in the facility  
1400 for inspection by the agency and shall be forwarded to the  
1401 resident's case manager, if applicable.

1402 ~~(7) The facility must notify a licensed physician when a~~  
1403 ~~resident exhibits signs of dementia or cognitive impairment or~~  
1404 ~~has a change of condition in order to rule out the presence of~~  
1405 ~~an underlying physiological condition that may be contributing~~  
1406 ~~to such dementia or impairment. The notification must occur~~  
1407 ~~within 30 days after the acknowledgment of such signs by~~  
1408 ~~facility staff. If an underlying condition is determined to~~  
1409 ~~exist, the facility shall arrange, with the appropriate health~~  
1410 ~~care provider, the necessary care and services to treat the~~  
1411 ~~condition.~~

1412 (7)~~(8)~~ The Department of Children and Family Services may  
1413 require an examination for supplemental security income and  
1414 optional state supplementation recipients residing in facilities  
1415 at any time and shall provide the examination whenever a  
1416 resident's condition requires it. Any facility administrator;  
1417 personnel of the agency, the department, or the Department of  
1418 Children and Family Services; or long-term care ombudsman  
1419 council member who believes a resident needs to be evaluated  
1420 shall notify the resident's case manager, who shall take  
1421 appropriate action. A report of the examination findings shall

588-03820A-11

20111458c1

1422 be provided to the resident's case manager and the facility  
1423 administrator to help the administrator meet his or her  
1424 responsibilities under subsection (1).

1425 (8)~~(9)~~ A terminally ill resident who no longer meets the  
1426 criteria for continued residency may remain in the facility if  
1427 the arrangement is mutually agreeable to the resident and the  
1428 administrator ~~facility~~; additional care is rendered through a  
1429 licensed hospice, and the resident is under the care of a  
1430 physician who agrees that the physical needs of the resident are  
1431 being met.

1432 (9)~~(10)~~ Facilities licensed to provide extended congregate  
1433 care services shall promote aging in place by determining  
1434 appropriateness of continued residency based on a comprehensive  
1435 review of the resident's physical and functional status; the  
1436 ability of the facility, family members, friends, or any other  
1437 pertinent individuals or agencies to provide the care and  
1438 services required; and documentation that a written service plan  
1439 consistent with facility policy has been developed and  
1440 implemented to ensure that the resident's needs and preferences  
1441 are addressed.

1442 (10)~~(11)~~ A ~~Ne~~ resident who requires 24-hour nursing  
1443 supervision, except for a resident who is an enrolled hospice  
1444 patient pursuant to part IV of chapter 400, may not ~~shall~~ be  
1445 retained in a licensed facility ~~licensed under this part~~.

1446 Section 21. Section 429.27, Florida Statutes, is amended to  
1447 read:

1448 429.27 Property and personal affairs of residents.—

1449 (1) (a) A resident shall be given the option of using his or  
1450 her own belongings, as space permits; choosing his or her

588-03820A-11

20111458c1

1451 roommate; and, whenever possible, unless the resident is  
1452 adjudicated incompetent or incapacitated under state law,  
1453 managing his or her own affairs.

1454 (b) The admission of a resident to a facility and his or  
1455 her presence therein does ~~shall~~ not give ~~confer on~~ the facility  
1456 or its licensee, owner, administrator, employees, or  
1457 representatives any authority to manage, use, or dispose of any  
1458 property of the resident; nor shall such admission or presence  
1459 give ~~confer on~~ any of such persons any authority or  
1460 responsibility for the personal affairs of the resident, except  
1461 that which may be necessary for the safe management of the  
1462 facility or for the safety of the resident.

1463 (2) The licensee, ~~A facility, or an~~ owner, administrator,  
1464 employee of an assisted living facility, or representative  
1465 thereof, may not act as the guardian, trustee, or conservator  
1466 for any resident of the assisted living facility or any of such  
1467 resident's property. A licensee, ~~An~~ owner, administrator, or  
1468 staff member, or representative thereof, may not act as a  
1469 competent resident's payee for social security, veteran's, or  
1470 railroad benefits without the consent of the resident. Any  
1471 facility whose licensee, owner, administrator, or staff, or  
1472 representative thereof, serves as representative payee for any  
1473 resident of the facility shall file a surety bond with the  
1474 agency in an amount equal to twice the average monthly aggregate  
1475 income or personal funds due to residents, or expendable for  
1476 their account, which are received by a facility. Any facility  
1477 whose licensee, owner, administrator, or staff, or a  
1478 representative thereof, is granted power of attorney for any  
1479 resident of the facility shall file a surety bond with the

588-03820A-11

20111458c1

1480 agency for each resident for whom such power of attorney is  
1481 granted. The surety bond shall be in an amount equal to twice  
1482 the average monthly income of the resident, plus the value of  
1483 any resident's property under the control of the attorney in  
1484 fact. The bond shall be executed by the facility's licensee,  
1485 owner, administrator, or staff, or a representative thereof,  
1486 ~~facility~~ as principal and a licensed surety company. The bond  
1487 shall be conditioned upon the faithful compliance of the  
1488 licensee, owner, administrator, or staff, or a representative  
1489 thereof, of the facility with this section and shall run to the  
1490 agency for the benefit of any resident who suffers a financial  
1491 loss as a result of the misuse or misappropriation by a  
1492 licensee, owner, administrator, or staff, or representative  
1493 thereof, of the facility of funds held pursuant to this  
1494 subsection. Any surety company that cancels or does not renew  
1495 the bond of any licensee shall notify the agency in writing not  
1496 less than 30 days in advance of such action, giving the reason  
1497 for the cancellation or nonrenewal. Any facility's licensee,  
1498 ~~facility~~ owner, administrator, or staff, or representative  
1499 thereof, who is granted power of attorney for any resident of  
1500 the facility shall, on a monthly basis, be required to provide  
1501 the resident a written statement of any transaction made on  
1502 behalf of the resident pursuant to this subsection, and a copy  
1503 of such statement given to the resident shall be retained in  
1504 each resident's file and available for agency inspection.

1505 (3) A facility's administrator ~~facility,~~ upon mutual  
1506 consent with the resident, shall provide for the safekeeping in  
1507 the facility of personal effects, including funds not in excess  
1508 of \$500 ~~and funds of the resident not in excess of \$200 cash,~~

588-03820A-11

20111458c1

1509 and shall keep complete and accurate records of all such funds  
1510 and personal effects received. If a resident is absent from a  
1511 facility for 24 hours or more, the facility may provide for the  
1512 safekeeping of the resident's personal effects, including funds  
1513 in excess of \$500.

1514 (4) Any funds or other property belonging to or due to a  
1515 resident, or expendable for his or her account, which is  
1516 received by the administrator ~~a facility~~ shall be trust funds  
1517 which shall be kept separate from the funds and property of the  
1518 facility and other residents or shall be specifically credited  
1519 to such resident. Such trust funds shall be used or otherwise  
1520 expended only for the account of the resident. Upon written  
1521 request, at least once every 3 months, unless upon order of a  
1522 court of competent jurisdiction, the administrator ~~facility~~  
1523 shall furnish the resident and his or her guardian, trustee, or  
1524 conservator, if any, a complete and verified statement of all  
1525 funds and other property to which this subsection applies,  
1526 detailing the amount and items received, together with their  
1527 sources and disposition. In any event, the administrator  
1528 ~~facility~~ shall furnish such statement annually and upon the  
1529 discharge or transfer of a resident. ~~Any governmental agency or~~  
1530 ~~private charitable agency contributing funds or other property~~  
1531 ~~to the account of a resident shall also be entitled to receive~~  
1532 ~~such statement annually and upon the discharge or transfer of~~  
1533 ~~the resident.~~

1534 (5) Any personal funds available to facility residents may  
1535 be used by residents as they choose to obtain clothing, personal  
1536 items, leisure activities, and other supplies and services for  
1537 their personal use. An administrator ~~A facility~~ may not demand,

588-03820A-11

20111458c1

1538 require, or contract for payment of all or any part of the  
1539 personal funds in satisfaction of the facility rate for supplies  
1540 and services beyond that amount agreed to in writing ~~and may not~~  
1541 ~~levy an additional charge to the individual or the account for~~  
1542 ~~any supplies or services that the facility has agreed by~~  
1543 ~~contract to provide as part of the standard monthly rate.~~ Any  
1544 service or supplies provided by the facility which are charged  
1545 separately to the individual or the account may be provided only  
1546 with the specific written consent of the individual, who shall  
1547 be furnished in advance of the provision of the services or  
1548 supplies with an itemized written statement to be attached to  
1549 the contract setting forth the charges for the services or  
1550 supplies.

1551 (6) (a) In addition to any damages or civil penalties to  
1552 which a person is subject, any person who:

1553 1. Intentionally withholds a resident's personal funds,  
1554 personal property, or personal needs allowance, or who demands,  
1555 beneficially receives, or contracts for payment of all or any  
1556 part of a resident's personal property or personal needs  
1557 allowance in satisfaction of the facility rate for supplies and  
1558 services; or

1559 2. Borrows from or pledges any personal funds of a  
1560 resident, other than the amount agreed to by written contract  
1561 under s. 429.24,

1562  
1563 commits a misdemeanor of the first degree, punishable as  
1564 provided in s. 775.082 or s. 775.083.

1565 (b) Any licensee, facility owner, administrator, or staff,  
1566 or representative thereof, who is granted power of attorney for

588-03820A-11

20111458c1

1567 any resident of the facility and who misuses or misappropriates  
1568 funds obtained through this power commits a felony of the third  
1569 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1570 775.084.

1571 (7) In the event of the death of a resident, a licensee  
1572 shall return all refunds, funds, and property held in trust to  
1573 the resident's personal representative, if one has been  
1574 appointed at the time the facility disburses such funds, and, if  
1575 not, to the resident's spouse or adult next of kin named in a  
1576 beneficiary designation form provided by the licensee ~~facility~~  
1577 to the resident. If the resident has no spouse or adult next of  
1578 kin or such person cannot be located, funds due the resident  
1579 shall be placed in an interest-bearing account, and all property  
1580 held in trust by the licensee ~~facility~~ shall be safeguarded  
1581 until such time as the funds and property are disbursed pursuant  
1582 to the Florida Probate Code. Such funds shall be kept separate  
1583 from the funds and property of the facility and other residents  
1584 of the facility. If the funds of the deceased resident are not  
1585 disbursed pursuant to the Florida Probate Code within 2 years  
1586 after the resident's death, the funds shall be deposited in the  
1587 Health Care Trust Fund administered by the agency.

1588 (8) The department may by rule clarify terms and specify  
1589 procedures and documentation necessary to administer the  
1590 provisions of this section relating to the proper management of  
1591 residents' funds and personal property and the execution of  
1592 surety bonds.

1593 Section 22. Subsection (4) of section 429.275, Florida  
1594 Statutes, is repealed.

1595 Section 23. Paragraph (k) of subsection (1) and subsections

588-03820A-11

20111458c1

1596 (3), (4), (5), (6), and (7) of section 429.28, Florida Statutes,  
1597 are amended to read:

1598 429.28 Resident bill of rights.—

1599 (1) A ~~No~~ resident of a facility may not ~~shall~~ be deprived  
1600 of any civil or legal rights, benefits, or privileges guaranteed  
1601 by law, the Constitution of the State of Florida, or the  
1602 Constitution of the United States as a resident of a facility.  
1603 Every resident of a facility shall have the right to:

1604 (k) At least 30 ~~45~~ days' notice of relocation or  
1605 termination of residency from the facility unless, for medical  
1606 reasons, the resident is certified by a physician to require an  
1607 emergency relocation to a facility providing a more skilled  
1608 level of care or the resident engages in a pattern of conduct  
1609 that is harmful or offensive to other residents. In the case of  
1610 a resident who has been adjudicated mentally incapacitated, the  
1611 guardian shall be given at least 30 ~~45~~ days' notice of a  
1612 nonemergency relocation or residency termination. Reasons for  
1613 relocation shall be set forth in writing. ~~In order for a~~  
1614 ~~facility to terminate the residency of an individual without~~  
1615 ~~notice as provided herein, the facility shall show good cause in~~  
1616 ~~a court of competent jurisdiction.~~

1617 ~~(3)(a) The agency shall conduct a survey to determine~~  
1618 ~~general compliance with facility standards and compliance with~~  
1619 ~~residents' rights as a prerequisite to initial licensure or~~  
1620 ~~licensure renewal.~~

1621 ~~(b) In order to determine whether the facility is~~  
1622 ~~adequately protecting residents' rights, the biennial survey~~  
1623 ~~shall include private informal conversations with a sample of~~  
1624 ~~residents and consultation with the ombudsman council in the~~



588-03820A-11

20111458c1

1625 ~~planning and service area in which the facility is located to~~  
1626 ~~discuss residents' experiences within the facility.~~

1627 ~~(c) During any calendar year in which no survey is~~  
1628 ~~conducted, the agency shall conduct at least one monitoring~~  
1629 ~~visit of each facility cited in the previous year for a class I~~  
1630 ~~or class II violation, or more than three uncorrected class III~~  
1631 ~~violations.~~

1632 ~~(d) The agency may conduct periodic followup inspections as~~  
1633 ~~necessary to monitor the compliance of facilities with a history~~  
1634 ~~of any class I, class II, or class III violations that threaten~~  
1635 ~~the health, safety, or security of residents.~~

1636 ~~(e) The agency may conduct complaint investigations as~~  
1637 ~~warranted to investigate any allegations of noncompliance with~~  
1638 ~~requirements required under this part or rules adopted under~~  
1639 ~~this part.~~

1640 ~~(3)(4) The administrator shall ensure that facility shall~~  
1641 ~~not hamper or prevent residents may exercise from exercising~~  
1642 ~~their rights as specified in this section.~~

1643 ~~(4)(5) A staff member No facility or employee of a facility~~  
1644 ~~may not serve notice upon a resident to leave the premises or~~  
1645 ~~take any other retaliatory action against any person who:~~

1646 (a) Exercises any right set forth in this section.

1647 (b) Appears as a witness in any hearing, inside or outside  
1648 the facility.

1649 (c) Files a civil action alleging a violation of the  
1650 provisions of this part ~~or notifies a state attorney or the~~  
1651 ~~Attorney General of a possible violation of such provisions.~~

1652 ~~(5)(6) An administrator may not terminate Any facility~~  
1653 ~~which terminates the residency of an individual who participated~~

588-03820A-11

20111458c1

1654 in activities specified in subsection (4) ~~(5)~~ shall show good  
1655 cause in a court of competent jurisdiction.

1656 (6) ~~(7)~~ Any person who submits or reports a complaint  
1657 concerning a suspected violation of the provisions of this part  
1658 or concerning services and conditions in facilities, or who  
1659 testifies in any administrative or judicial proceeding arising  
1660 from such a complaint, shall have immunity from any civil or  
1661 criminal liability therefor, unless such person has acted in bad  
1662 faith or with malicious purpose or the court finds that there  
1663 was a complete absence of a justiciable issue of either law or  
1664 fact raised by the losing party.

1665 Section 24. Paragraphs (a), (d), (h), (i), (j), and (l) of  
1666 subsection (1) and subsection (5) of section 429.41, Florida  
1667 Statutes, are amended to read:

1668 429.41 Rules establishing standards.—

1669 (1) It is the intent of the Legislature that rules  
1670 published and enforced pursuant to this section shall include  
1671 criteria by which a reasonable and consistent quality of  
1672 resident care and quality of life may be ensured and the results  
1673 of such resident care may be demonstrated. Such rules shall also  
1674 ensure a safe and sanitary environment that is residential and  
1675 noninstitutional in design or nature. It is further intended  
1676 that reasonable efforts be made to accommodate the needs and  
1677 preferences of residents to enhance the quality of life in a  
1678 facility. The agency, in consultation with the department, may  
1679 adopt rules to administer the requirements of part II of chapter  
1680 408. In order to provide safe and sanitary facilities and the  
1681 highest quality of resident care accommodating the needs and  
1682 preferences of residents, the department, in consultation with

588-03820A-11

20111458c1

1683 the agency, the Department of Children and Family Services, and  
1684 the Department of Health, shall adopt rules, policies, and  
1685 procedures to administer this part, which must include  
1686 reasonable and fair minimum standards in relation to:

1687 (a) The requirements for and maintenance of facilities, not  
1688 in conflict with the provisions of chapter 553, relating to  
1689 plumbing, heating, cooling, lighting, ventilation, living space,  
1690 and other housing conditions, which will ensure the health,  
1691 safety, and comfort of residents and protection from fire  
1692 hazard, including adequate provisions for fire alarm and other  
1693 fire protection suitable to the size of the structure. Uniform  
1694 firesafety standards shall be established and enforced by the  
1695 State Fire Marshal in cooperation with the agency,~~the~~  
1696 ~~department, and the Department of Health.~~

1697 1. Evacuation capability determination.—

1698 a. The provisions of the National Fire Protection  
1699 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used  
1700 for determining the ability of the residents, with or without  
1701 staff assistance, to relocate from or within a licensed facility  
1702 to a point of safety as provided in the fire codes adopted  
1703 herein. An evacuation capability evaluation for initial  
1704 licensure shall be conducted within 6 months after the date of  
1705 licensure. For existing licensed facilities that are not  
1706 equipped with an automatic fire sprinkler system, the  
1707 administrator shall evaluate the evacuation capability of  
1708 residents at least annually. The evacuation capability  
1709 evaluation for each facility not equipped with an automatic fire  
1710 sprinkler system shall be validated, without liability, by the  
1711 State Fire Marshal, by the local fire marshal, or by the local

588-03820A-11

20111458c1

1712 authority having jurisdiction over firesafety, before the  
1713 license renewal date. If the State Fire Marshal, local fire  
1714 marshal, or local authority having jurisdiction over firesafety  
1715 has reason to believe that the evacuation capability of a  
1716 facility as reported by the administrator may have changed, it  
1717 may, with assistance from the facility administrator, reevaluate  
1718 the evacuation capability through timed exiting drills.

1719 Translation of timed fire exiting drills to evacuation  
1720 capability may be determined:

1721 (I) Three minutes or less: prompt.

1722 (II) More than 3 minutes, but not more than 13 minutes:  
1723 slow.

1724 (III) More than 13 minutes: impractical.

1725 b. The Office of the State Fire Marshal shall provide or  
1726 cause the provision of training and education on the proper  
1727 application of Chapter 5, NFPA 101A, 1995 edition, to its  
1728 employees, to staff of the Agency for Health Care Administration  
1729 who are responsible for regulating facilities under this part,  
1730 and to local governmental inspectors. The Office of the State  
1731 Fire Marshal shall provide or cause the provision of this  
1732 training within its existing budget, but may charge a fee for  
1733 this training to offset its costs. The initial training must be  
1734 delivered within 6 months after July 1, 1995, and as needed  
1735 thereafter.

1736 c. The Office of the State Fire Marshal, in cooperation  
1737 with provider associations, shall provide or cause the provision  
1738 of a training program designed to inform facility operators on  
1739 how to properly review bid documents relating to the  
1740 installation of automatic fire sprinklers. The Office of the

588-03820A-11

20111458c1

1741 State Fire Marshal shall provide or cause the provision of this  
1742 training within its existing budget, but may charge a fee for  
1743 this training to offset its costs. The initial training must be  
1744 delivered within 6 months after July 1, 1995, and as needed  
1745 thereafter.

1746 d. The administrator of a licensed facility shall sign an  
1747 affidavit verifying the number of residents occupying the  
1748 facility at the time of the evacuation capability evaluation.

1749 2. Firesafety requirements.-

1750 a. Except for the special applications provided herein,  
1751 effective January 1, 1996, the provisions of the National Fire  
1752 Protection Association, Life Safety Code, NFPA 101, 1994  
1753 edition, Chapter 22 for new facilities and Chapter 23 for  
1754 existing facilities shall be the uniform fire code applied by  
1755 the State Fire Marshal for assisted living facilities, pursuant  
1756 to s. 633.022.

1757 b. Any new facility, regardless of size, that applies for a  
1758 license on or after January 1, 1996, must be equipped with an  
1759 automatic fire sprinkler system. The exceptions as provided in  
1760 s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply  
1761 to any new facility housing eight or fewer residents. On July 1,  
1762 1995, local governmental entities responsible for the issuance  
1763 of permits for construction shall inform, without liability, any  
1764 facility whose permit for construction is obtained prior to  
1765 January 1, 1996, of this automatic fire sprinkler requirement.  
1766 As used in this part, the term "a new facility" does not mean an  
1767 existing facility that has undergone change of ownership.

1768 c. Notwithstanding any provision of s. 633.022 or of the  
1769 National Fire Protection Association, NFPA 101A, Chapter 5, 1995

588-03820A-11

20111458c1

1770 edition, to the contrary, any existing facility housing eight or  
1771 fewer residents is not required to install an automatic fire  
1772 sprinkler system, nor to comply with any other requirement in  
1773 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety  
1774 requirements of NFPA 101, 1988 edition, that applies to this  
1775 size facility, unless the facility has been classified as  
1776 impractical to evacuate. Any existing facility housing eight or  
1777 fewer residents that is classified as impractical to evacuate  
1778 must install an automatic fire sprinkler system within the  
1779 timeframes granted in this section.

1780 d. Any existing facility that is required to install an  
1781 automatic fire sprinkler system under this paragraph need not  
1782 meet other firesafety requirements of Chapter 23, NFPA 101, 1994  
1783 edition, which exceed the provisions of NFPA 101, 1988 edition.  
1784 The mandate contained in this paragraph which requires certain  
1785 facilities to install an automatic fire sprinkler system  
1786 supersedes any other requirement.

1787 e. This paragraph does not supersede the exceptions granted  
1788 in NFPA 101, 1988 edition or 1994 edition.

1789 f. This paragraph does not exempt a facility ~~facilities~~  
1790 from other firesafety provisions adopted under s. 633.022 and  
1791 local building code requirements in effect before July 1, 1995.

1792 g. A local government may charge fees only in an amount not  
1793 to exceed the actual expenses incurred by local government  
1794 relating to the installation and maintenance of an automatic  
1795 fire sprinkler system in an existing and properly licensed  
1796 assisted living facility structure as of January 1, 1996.

1797 h. If a licensed facility undergoes major reconstruction or  
1798 addition to an existing building on or after January 1, 1996,

588-03820A-11

20111458c1

1799 the entire building must be equipped with an automatic fire  
1800 sprinkler system. Major reconstruction of a building means  
1801 repair or restoration that costs in excess of 50 percent of the  
1802 value of the building as reported on the tax rolls, excluding  
1803 land, before reconstruction. Multiple reconstruction projects  
1804 within a 5-year period the total costs of which exceed 50  
1805 percent of the initial value of the building at the time the  
1806 first reconstruction project was permitted are to be considered  
1807 as major reconstruction. Application for a permit for an  
1808 automatic fire sprinkler system is required upon application for  
1809 a permit for a reconstruction project that creates costs that go  
1810 over the 50 percent ~~50-percent~~ threshold.

1811 i. Any facility licensed before January 1, 1996, that is  
1812 required to install an automatic fire sprinkler system shall  
1813 ensure that the installation is completed within the following  
1814 timeframes based upon evacuation capability of the facility as  
1815 determined under subparagraph 1.:

1816 (I) Impractical evacuation capability, 24 months.

1817 (II) Slow evacuation capability, 48 months.

1818 (III) Prompt evacuation capability, 60 months.

1819

1820 The beginning date from which the deadline for the automatic  
1821 fire sprinkler installation requirement must be calculated is  
1822 upon receipt of written notice from the local fire official that  
1823 an automatic fire sprinkler system must be installed. The local  
1824 fire official shall send a copy of the document indicating the  
1825 requirement of a fire sprinkler system to the Agency for Health  
1826 Care Administration.

1827 j. It is recognized that the installation of an automatic

588-03820A-11

20111458c1

1828 fire sprinkler system may create financial hardship for some  
1829 facilities. The appropriate local fire official shall, without  
1830 liability, grant two 1-year extensions to the timeframes for  
1831 installation established herein, if an automatic fire sprinkler  
1832 installation cost estimate and proof of denial from two  
1833 financial institutions for a construction loan to install the  
1834 automatic fire sprinkler system are submitted. However, for any  
1835 facility with a class I or class II, or a history of uncorrected  
1836 class III, firesafety deficiencies, an extension must not be  
1837 granted. The local fire official shall send a copy of the  
1838 document granting the time extension to the Agency for Health  
1839 Care Administration.

1840 k. A facility owner whose facility is required to be  
1841 equipped with an automatic fire sprinkler system under Chapter  
1842 23, NFPA 101, 1994 edition, as adopted herein, must disclose to  
1843 any potential buyer of the facility that an installation of an  
1844 automatic fire sprinkler requirement exists. The sale of the  
1845 facility does not alter the timeframe for the installation of  
1846 the automatic fire sprinkler system.

1847 l. An existing facility ~~facilities~~ required to install an  
1848 automatic fire sprinkler system as a result of construction-type  
1849 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted  
1850 herein, or evacuation capability requirements shall be notified  
1851 by the local fire official in writing of the automatic fire  
1852 sprinkler requirement, as well as the appropriate date for final  
1853 compliance as provided in this subparagraph. The local fire  
1854 official shall send a copy of the document to the Agency for  
1855 Health Care Administration.

1856 m. Except in cases of life-threatening fire hazards, if an



588-03820A-11

20111458c1

1857 existing facility experiences a change in the evacuation  
1858 capability, or if the local authority having jurisdiction  
1859 identifies a construction-type restriction, such that an  
1860 automatic fire sprinkler system is required, it shall be  
1861 afforded time for installation as provided in this subparagraph.  
1862

1863 Facilities that are fully sprinkled and in compliance with other  
1864 firesafety standards are not required to conduct more than one  
1865 of the required fire drills between the hours of 11 p.m. and 7  
1866 a.m., per year. In lieu of the remaining drills, staff  
1867 responsible for residents during such hours may be required to  
1868 participate in a mock drill that includes a review of evacuation  
1869 procedures. Such standards must be included or referenced in the  
1870 rules adopted by the State Fire Marshal. Pursuant to s.  
1871 633.022(1)(b), the State Fire Marshal is the final  
1872 administrative authority for firesafety standards established  
1873 and enforced pursuant to this section. All licensed facilities  
1874 must have an annual fire inspection conducted by the local fire  
1875 marshal or authority having jurisdiction.

1876 3. Resident elopement requirements.—Facilities are required  
1877 to conduct a minimum of two resident elopement prevention and  
1878 response drills per year. All administrators and direct care  
1879 staff must participate in the drills which shall include a  
1880 review of procedures to address resident elopement. Facilities  
1881 must document the implementation of the drills and ensure that  
1882 the drills are conducted in a manner consistent with the  
1883 facility's resident elopement policies and procedures.

1884 (d) All sanitary conditions within the facility and its  
1885 surroundings which will ensure the health and comfort of

588-03820A-11

20111458c1

1886 residents. To ensure that inspections are not duplicative, the  
 1887 rules must clearly delineate the responsibilities of the agency  
 1888 regarding agency's licensure and survey inspections ~~staff,~~ the  
 1889 county health departments regarding food safety and sanitary  
 1890 inspections, and the local fire marshal regarding firesafety  
 1891 inspections ~~authority having jurisdiction over firesafety and~~  
 1892 ~~ensure that inspections are not duplicative. The agency may~~  
 1893 ~~collect fees for food service inspections conducted by the~~  
 1894 ~~county health departments and transfer such fees to the~~  
 1895 ~~Department of Health.~~

1896 (h) The care ~~and maintenance~~ of residents, which must  
 1897 include, but is not limited to:

- 1898 1. The supervision of residents;
- 1899 2. The provision of personal services;
- 1900 3. The provision of, or arrangement for, social and leisure  
 1901 activities;
- 1902 4. The arrangement for appointments and transportation to  
 1903 appropriate medical, dental, nursing, or mental health services,  
 1904 as needed by residents;
- 1905 5. The management of medication;
- 1906 6. The food service ~~nutritional~~ needs of residents; and
- 1907 7. Resident records. ~~;~~ and
- 1908 ~~8. Internal risk management and quality assurance.~~

1909 (i) Facilities holding an a limited nursing, extended  
 1910 congregate care, ~~or limited mental health license.~~

1911 (j) The establishment of specific criteria to define  
 1912 appropriateness of resident admission and continued residency in  
 1913 a facility holding a standard, ~~limited nursing,~~ extended  
 1914 congregate care, and limited mental health license.

588-03820A-11

20111458c1

1915           ~~(1) The establishment of specific policies and procedures~~  
1916 ~~on resident elopement. Facilities shall conduct a minimum of two~~  
1917 ~~resident elopement drills each year. All administrators and~~  
1918 ~~direct care staff shall participate in the drills. Facilities~~  
1919 ~~shall document the drills.~~

1920           (5) Beginning January 1, 2012, the agency shall ~~may~~ use an  
1921 abbreviated biennial standard licensure inspection that consists  
1922 of a review of key quality-of-care standards in lieu of a full  
1923 inspection in a facility that has a good record of past  
1924 performance. However, a full inspection must be conducted in a  
1925 facility that has a history of class I or class II violations,  
1926 uncorrected class III violations, confirmed ombudsman council  
1927 complaints, or confirmed licensure complaints, within the  
1928 previous licensure period immediately preceding the inspection  
1929 or if a potentially serious problem is identified during the  
1930 abbreviated inspection. The agency, in consultation with the  
1931 department, shall develop, maintain, and update the key quality-  
1932 of-care standards with input from the State Long-Term Care  
1933 Ombudsman Council and representatives of associations and  
1934 organizations representing assisted living facilities ~~provider~~  
1935 ~~groups~~ for incorporation into its rules.

1936           Section 25. Section 429.42, Florida Statutes, is amended to  
1937 read:

1938           429.42 Pharmacy and dietary services.—

1939           (1) Any assisted living facility in which the agency has  
1940 documented a class I or class II violation ~~deficiency~~ or  
1941 uncorrected class III violations ~~deficiencies~~ regarding  
1942 medicinal drugs or over-the-counter preparations, including  
1943 their storage, use, delivery, or administration, or dietary

588-03820A-11

20111458c1

1944 services, or both, during a biennial survey or a monitoring  
1945 visit or an investigation in response to a complaint, shall, in  
1946 addition to or as an alternative to any penalties imposed under  
1947 s. 429.19, be required to employ the consultant services of a  
1948 licensed pharmacist, a licensed registered nurse, or a  
1949 registered or licensed dietitian, as applicable. The consultant  
1950 shall, at a minimum, provide onsite quarterly consultation until  
1951 the inspection team from the agency determines that such  
1952 consultation services are no longer required.

1953 ~~(2) A corrective action plan for deficiencies related to~~  
1954 ~~assistance with the self-administration of medication or the~~  
1955 ~~administration of medication must be developed and implemented~~  
1956 ~~by the facility within 48 hours after notification of such~~  
1957 ~~deficiency, or sooner if the deficiency is determined by the~~  
1958 ~~agency to be life-threatening.~~

1959 ~~(3) The agency shall employ at least two pharmacists~~  
1960 ~~licensed pursuant to chapter 465 among its personnel who~~  
1961 ~~biennially inspect assisted living facilities licensed under~~  
1962 ~~this part, to participate in biennial inspections or consult~~  
1963 ~~with the agency regarding deficiencies relating to medicinal~~  
1964 ~~drugs or over-the-counter preparations.~~

1965 (2)~~(4)~~ The department may by rule establish procedures and  
1966 specify documentation as necessary to implement this section.

1967 Section 26. Section 429.445, Florida Statutes, is amended  
1968 to read:

1969 429.445 Compliance with local zoning requirements. ~~No~~  
1970 ~~facility licensed under this part may commence any construction~~  
1971 ~~which will expand the size of the existing structure unless the~~  
1972 ~~licensee first submits to the agency proof that such~~

588-03820A-11

20111458c1

1973 ~~construction will be in compliance with applicable local zoning~~  
1974 ~~requirements.~~ Facilities with a licensed capacity of less than  
1975 15 persons shall comply with the provisions of chapter 419.

1976 Section 27. Section 429.47, Florida Statutes, is amended to  
1977 read:

1978 429.47 Prohibited acts; ~~penalties for violation.~~

1979 (1) While an assisted living a facility is under  
1980 construction or is seeking licensure, the owner may advertise to  
1981 the public prior to obtaining a license. Facilities that are  
1982 certified under chapter 651 shall comply with the advertising  
1983 provisions of s. 651.095 rather than those provided for in this  
1984 subsection.

1985 ~~(2) A freestanding facility shall not advertise or imply~~  
1986 ~~that any part of it is a nursing home. For the purpose of this~~  
1987 ~~subsection, "freestanding facility" means a facility that is not~~  
1988 ~~operated in conjunction with a nursing home to which residents~~  
1989 ~~of the facility are given priority when nursing care is~~  
1990 ~~required. A person who violates this subsection is subject to~~  
1991 ~~fine as specified in s. 429.19.~~

1992 ~~(2)(3)~~ Any facility that ~~which~~ is affiliated with any  
1993 religious organization or which has a name implying religious  
1994 affiliation shall include in its advertising whether or not it  
1995 is affiliated with any religious organization and, if so, which  
1996 organization.

1997 ~~(3)(4)~~ A facility licensed under this part which is not  
1998 part of a facility authorized under chapter 651 shall include  
1999 the facility's license number as given by the agency in all  
2000 advertising. A company or person owning more than one facility  
2001 shall include at least one license number per advertisement. All

588-03820A-11

20111458c1

2002 advertising shall include the term "assisted living facility" or  
2003 the abbreviation "ALF" before the license number.

2004 Section 28. Subsection (1) of section 429.49, Florida  
2005 Statutes, is amended to read:

2006 429.49 Resident records; penalties for alteration.—

2007 (1) Any person who fraudulently alters, defaces, or  
2008 falsifies any medical record or any resident's ~~other~~ record of  
2009 an assisted living facility, or causes or procures any such  
2010 offense to be committed, commits a misdemeanor of the second  
2011 degree, punishable as provided in s. 775.082 or s. 775.083.

2012 Section 29. Subsections (3), (5), and (8) of section  
2013 429.52, Florida Statutes, are amended, present subsection (11)  
2014 of that section is redesignated as subsection (12), and a new  
2015 subsection (11) is added to that section, read:

2016 429.52 Staff training and educational programs; core  
2017 educational requirement.—

2018 (3) Effective January 1, 2004, a new facility administrator  
2019 must complete the required training and education, including the  
2020 competency test, within a reasonable time after being employed  
2021 as an administrator, as determined by the department. Failure to  
2022 do so is a violation of this part and subjects the violator to  
2023 an administrative fine as prescribed in s. 429.19.

2024 Administrators licensed in accordance with part II of chapter  
2025 468 are exempt from this requirement. ~~Other licensed~~  
2026 ~~professionals may be exempted, as determined by the department~~  
2027 ~~by rule.~~

2028 (5) Staff involved with the management of medications and  
2029 assisting with the self-administration of medications under s.  
2030 429.256 must complete a minimum of 4 additional hours of

588-03820A-11

20111458c1

2031 training provided by a registered nurse, licensed pharmacist, or  
 2032 department staff and must complete 2 hours of continuing  
 2033 education training annually. ~~The department shall establish by~~  
 2034 ~~rule the minimum requirements of this additional training.~~

2035 (8) The department shall adopt rules related to these  
 2036 training requirements, the competency test, necessary  
 2037 procedures, and competency test fees and shall adopt or contract  
 2038 with another entity to develop a curriculum, which shall be used  
 2039 as the minimum core training requirements. The department shall  
 2040 consult with representatives of ~~stakeholder~~ associations,  
 2041 organizations representing assisted living facilities, and  
 2042 agencies in the development of the curriculum.

2043 (11) A training provider certified by the department must  
 2044 continue to meet continuing education requirements and other  
 2045 standards as set forth in rules adopted by the department. A  
 2046 training provider or trainee may be sanctioned pursuant to s.  
 2047 430.081 for failing to comply with the standards set forth in  
 2048 the rules.

2049 Section 30. Subsections (1) and (2) of section 429.53,  
 2050 Florida Statutes, are amended to read:

2051 429.53 Consultation by the agency.—

2052 (1) ~~The area offices of licensure and certification of the~~  
 2053 agency shall provide consultation to the following upon request:

2054 (a) A licensee of a facility.

2055 (b) A person interested in obtaining a license to operate a  
 2056 facility under this part.

2057 (2) As used in this section, "consultation" includes:

2058 (a) An explanation of the requirements of this part and  
 2059 rules adopted pursuant thereto;

588-03820A-11

20111458c1

2060 (b) An explanation of the license application and renewal  
2061 procedures; and

2062 ~~(c) The provision of a checklist of general local and state~~  
2063 ~~approvals required prior to constructing or developing a~~  
2064 ~~facility and a listing of the types of agencies responsible for~~  
2065 ~~such approvals;~~

2066 ~~(d) An explanation of benefits and financial assistance~~  
2067 ~~available to a recipient of supplemental security income~~  
2068 ~~residing in a facility;~~

2069 (c) ~~(e)~~ Any other information which the agency deems  
2070 necessary to promote compliance with the requirements of this  
2071 part. ~~;~~ and

2072 ~~(f) A preconstruction review of a facility to ensure~~  
2073 ~~compliance with agency rules and this part.~~

2074 Section 31. Section 429.54, Florida Statutes, is repealed.

2075 Section 32. Paragraph (a) of subsection (1) and subsections  
2076 (5) and (6) of section 429.71, Florida Statutes, are amended to  
2077 read:

2078 429.71 Classification of deficiencies; administrative  
2079 fines.—

2080 (1) In addition to the requirements of part II of chapter  
2081 408 and ~~in addition to~~ any other liability or penalty provided  
2082 by law, the agency may impose an administrative fine on a  
2083 provider according to the following classification:

2084 (a) Class I violations are those conditions or practices  
2085 related to the operation and maintenance of an adult family-care  
2086 home or to the care of residents which the agency determines  
2087 present an imminent danger to the residents or guests of the  
2088 adult family-care home facility or a substantial probability



588-03820A-11

20111458c1

2089 that death or serious physical or emotional harm would result  
2090 therefrom. The condition or practice that constitutes a class I  
2091 violation must be abated or eliminated within 24 hours, unless a  
2092 fixed period, as determined by the agency, is required for  
2093 correction. A class I violation ~~deficiency~~ is subject to an  
2094 administrative fine in an amount not less than \$500 and not  
2095 exceeding \$1,000 for each violation. A fine may be levied  
2096 notwithstanding the correction of the violation ~~deficiency~~.

2097 ~~(5) As an alternative to or in conjunction with an~~  
2098 ~~administrative action against a provider, the agency may request~~  
2099 ~~a plan of corrective action that demonstrates a good faith~~  
2100 ~~effort to remedy each violation by a specific date, subject to~~  
2101 ~~the approval of the agency.~~

2102 (5) ~~(6)~~ The department shall set forth, by rule, notice  
2103 requirements and procedures for correction of violations  
2104 ~~deficiencies~~.

2105 Section 33. Subsection (3) is added to section 429.81,  
2106 Florida Statutes, to read:

2107 429.81 Residency agreements.—

2108 (3) Each residency agreement must specify that the resident  
2109 must give the provider a 30 days' written notice of intent to  
2110 terminate his or her residency from the adult family-care home.

2111 Section 34. Section 430.081, Florida Statutes, is created  
2112 to read:

2113 430.081 Sanctioning of training providers and trainees.—The  
2114 Department of Elderly Affairs may sanction training providers  
2115 and trainees for infractions involving any required training  
2116 that the department has the authority to regulate under chapter  
2117 400, chapter 429, or chapter 430 in order to ensure that such

588-03820A-11

20111458c1

2118 training providers and trainees satisfy specific qualification  
2119 requirements and adhere to training curricula that is approved  
2120 by the department. Training infractions include, but are not  
2121 limited to, falsification of training records, falsification of  
2122 training certificates, falsification of a training provider's  
2123 qualifications, failure to adhere to the required number of  
2124 training hours, failure to use the required curriculum, failure  
2125 to maintain the continuing education for the training provider's  
2126 recertification, failure to obtain reapproval of a curriculum  
2127 when required, providing false or inaccurate information,  
2128 misrepresentation of the required materials, and use of a false  
2129 identification as a training provider or trainee. Sanctions may  
2130 be progressive in nature and may consist of corrective action  
2131 measures; suspension or termination from participation as an  
2132 approved training provider or trainee, including sitting for any  
2133 required examination; and administrative fines not to exceed  
2134 \$1,000 per incident. One or more sanctions may be levied per  
2135 incident.

2136 Section 35. Paragraph (j) is added to subsection (3) of  
2137 section 817.505, Florida Statutes, to read:

2138 817.505 Patient brokering prohibited; exceptions;  
2139 penalties.—

2140 (3) This section shall not apply to:

2141 (j) Any payments by an assisted living facility, as defined  
2142 in s. 429.02, which are permitted under s. 429.195(3).

2143 Section 36. Licensure fees adjusted by consumer price index  
2144 increases prior to the effective date of this act are not  
2145 intended to be reset by this act and may continue to accrue as  
2146 authorized by law.

588-03820A-11

20111458c1

2147

Section 37. This act shall take effect July 1, 2011.