

By Senator Latvala

16-00183C-12

2012482

1 A bill to be entitled
2 An act relating to nursing homes and related health
3 care facilities; amending s. 83.42, F.S.; clarifying
4 that the transfer and discharge of facility residents
5 are governed by nursing home law; amending s. 400.021,
6 F.S.; deleting a requirement that a resident care plan
7 be signed by certain persons; amending ss. 400.0234
8 and 400.0239, F.S.; conforming provisions to changes
9 made by the act; amending s. 400.0255, F.S.; revising
10 provisions relating to hearings on resident transfer
11 or discharge; amending s. 400.063, F.S.; deleting an
12 obsolete cross-reference; amending s. 400.071, F.S.;
13 deleting provisions requiring a license applicant to
14 submit a signed affidavit relating to financial or
15 ownership interests, the number of beds, copies of
16 civil verdicts or judgments involving the applicant,
17 and a plan for quality assurance and risk management;
18 amending s. 400.0712, F.S.; revising provisions
19 relating to the issuance of inactive licenses;
20 amending s. 400.111, F.S.; providing that a licensee
21 must provide certain information relating to financial
22 or ownership interests if requested by the Agency for
23 Health Care Administration; amending s. 400.1183,
24 F.S.; revising requirements relating to facility
25 grievance reports; amending s. 400.141, F.S.; revising
26 provisions relating to the provision of respite care
27 in a facility; deleting requirements for the
28 submission of certain reports to the agency relating
29 to ownership interests, staffing ratios, and

16-00183C-12

2012482

30 bankruptcy; deleting an obsolete provision; amending
31 s. 400.142, F.S.; deleting the agency's authority to
32 adopt rules relating to orders not to resuscitate;
33 repealing s. 400.145, F.S., relating to resident
34 records; amending s. 400.147, F.S.; revising
35 provisions relating to incident reports; deleting
36 certain reporting requirements; repealing s. 400.148,
37 F.S., relating to the Medicaid "Up-or-Out" Quality of
38 Care Contract Management Program; amending s. 400.19,
39 F.S.; revising provisions relating to agency
40 inspections; amending s. 400.191, F.S.; authorizing
41 the facility to charge a fee for copies of resident
42 records; amending s. 400.23, F.S.; specifying the
43 content of rules relating to staffing requirements for
44 residents under 21 years of age; amending s. 400.462,
45 F.S.; revising the definition of "remuneration" to
46 exclude items having a value of \$10 or less; amending
47 ss. 429.294, 430.80, 430.81, and 651.118, F.S.;

48 conforming cross-references; providing an effective
49 date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Subsection (1) of section 83.42, Florida
54 Statutes, is amended to read:

55 83.42 Exclusions from application of part.—This part does
56 not apply to:

57 (1) Residency or detention in a facility, whether public or
58 private, where ~~when~~ residence or detention is incidental to the

16-00183C-12

2012482

59 provision of medical, geriatric, educational, counseling,
60 religious, or similar services. For residents of a facility
61 licensed under part II of chapter 400, the procedures provided
62 under s. 400.0255 govern all transfers or discharges from such
63 facilities.

64 Section 2. Subsection (16) of section 400.021, Florida
65 Statutes, is amended to read:

66 400.021 Definitions.—When used in this part, unless the
67 context otherwise requires, the term:

68 (16) "Resident care plan" means a written plan developed,
69 maintained, and reviewed at least ~~not less than~~ quarterly by a
70 registered nurse, with participation from other facility staff
71 and the resident or his or her designee or legal representative,
72 which includes a comprehensive assessment of the needs of an
73 individual resident; the type and frequency of services required
74 to provide the necessary care for the resident to attain or
75 maintain the highest practicable physical, mental, and
76 psychosocial well-being; a listing of services provided within
77 or outside the facility to meet those needs; and an explanation
78 of service goals. ~~The resident care plan must be signed by the~~
79 ~~director of nursing or another registered nurse employed by the~~
80 ~~facility to whom institutional responsibilities have been~~
81 ~~delegated and by the resident, the resident's designee, or the~~
82 ~~resident's legal representative. The facility may not use an~~
83 ~~agency or temporary registered nurse to satisfy the foregoing~~
84 ~~requirement and must document the institutional responsibilities~~
85 ~~that have been delegated to the registered nurse.~~

86 Section 3. Subsection (1) of section 400.0234, Florida
87 Statutes, is amended to read:

16-00183C-12

2012482__

88 400.0234 Availability of facility records for investigation
89 of resident's rights violations and defenses; penalty.—

90 (1) Failure to provide complete copies of a resident's
91 records, including, but not limited to, all medical records and
92 the resident's chart, within the control or possession of the
93 facility is ~~in accordance with s. 400.145~~ shall constitute
94 evidence of failure of that party to comply with good faith
95 discovery requirements and waives ~~shall waive~~ the good faith
96 certificate and presuit notice requirements under this part by
97 the requesting party.

98 Section 4. Paragraph (g) of subsection (2) of section
99 400.0239, Florida Statutes, is amended to read:

100 400.0239 Quality of Long-Term Care Facility Improvement
101 Trust Fund.—

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

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

109 Section 5. Subsection (15) of section 400.0255, Florida
110 Statutes, is amended to read:

111 400.0255 Resident transfer or discharge; requirements and
112 procedures; hearings.—

113 (15) ~~(a)~~ The department's Office of Appeals Hearings shall
114 conduct hearings requested under this section.

115 (a) The office shall notify the facility of a resident's
116 request for a hearing.

16-00183C-12

2012482

117 (b) The department shall, by rule, establish procedures to
118 be used for ~~fair~~ hearings requested by residents. The ~~These~~
119 procedures must ~~shall~~ be equivalent to the procedures used for
120 ~~fair~~ hearings for other Medicaid cases brought pursuant to s.
121 409.285 and applicable rules, chapter 10-2, part VI, Florida
122 Administrative Code. The burden of proof must be clear and
123 convincing evidence. A hearing decision must be rendered within
124 90 days after receipt of the request for hearing.

125 (c) If the hearing decision is favorable to the resident
126 who has been transferred or discharged, the resident must be
127 readmitted to the facility's first available bed.

128 (d) The decision of the hearing officer is ~~shall be~~ final.
129 Any aggrieved party may appeal the decision to the district
130 court of appeal in the appellate district where the facility is
131 located. Review procedures shall be conducted in accordance with
132 the Florida Rules of Appellate Procedure.

133 Section 6. Subsection (2) of section 400.063, Florida
134 Statutes, is amended to read:

135 400.063 Resident protection.—

136 (2) The agency ~~is authorized to establish for each~~
137 ~~facility,~~ subject to intervention by the agency, may establish a
138 separate bank account for the deposit to the credit of the
139 agency of any moneys received from the Health Care Trust Fund or
140 any other moneys received for the maintenance and care of
141 residents in the facility, and may ~~the agency is authorized to~~
142 disburse moneys from such account to pay obligations incurred
143 for the purposes of this section. The agency may ~~is authorized~~
144 ~~to~~ requisition moneys from the Health Care Trust Fund in advance
145 of an actual need for cash on the basis of an estimate by the

16-00183C-12

2012482

146 agency of moneys to be spent under the authority of this
147 section. A ~~Any~~ bank account established under this section need
148 not be approved in advance of its creation as required by s.
149 17.58, but must ~~shall~~ be secured by depository insurance equal
150 to or greater than the balance of such account or by the pledge
151 of collateral security ~~in conformance with criteria established~~
152 ~~in s. 18.11~~. The agency shall notify the Chief Financial Officer
153 of an ~~any such~~ account so established and ~~shall~~ make a quarterly
154 accounting to the Chief Financial Officer for all moneys
155 deposited in such account.

156 Section 7. Subsections (1) and (5) of section 400.071,
157 Florida Statutes, are amended to read:

158 400.071 Application for license.—

159 (1) In addition to the requirements of part II of chapter
160 408, the application for a license must ~~shall~~ be under oath and
161 ~~must~~ contain the following:

162 (a) The location of the facility for which a license is
163 sought and an indication, as in the original application, that
164 such location conforms to ~~the~~ local zoning ordinances.

165 ~~(b) A signed affidavit disclosing any financial or~~
166 ~~ownership interest that a controlling interest as defined in~~
167 ~~part II of chapter 408 has held in the last 5 years in any~~
168 ~~entity licensed by this state or any other state to provide~~
169 ~~health or residential care which has closed voluntarily or~~
170 ~~involuntarily; has filed for bankruptcy; has had a receiver~~
171 ~~appointed; has had a license denied, suspended, or revoked; or~~
172 ~~has had an injunction issued against it which was initiated by a~~
173 ~~regulatory agency. The affidavit must disclose the reason any~~
174 ~~such entity was closed, whether voluntarily or involuntarily.~~

16-00183C-12

2012482

175 ~~(c) The total number of beds and the total number of~~
176 ~~Medicare and Medicaid certified beds.~~

177 ~~(b)(d)~~ Information relating to the applicant and employees
178 which the agency requires by rule. The applicant must
179 demonstrate that sufficient numbers of qualified staff, by
180 training or experience, will be employed to properly care for
181 the type and number of residents who will reside in the
182 facility.

183 ~~(c) Copies of any civil verdict or judgment involving the~~
184 ~~applicant rendered within the 10 years preceding the~~
185 ~~application, relating to medical negligence, violation of~~
186 ~~residents' rights, or wrongful death. As a condition of~~
187 ~~licensure, the licensee agrees to provide to the agency copies~~
188 ~~of any new verdict or judgment involving the applicant, relating~~
189 ~~to such matters, within 30 days after filing with the clerk of~~
190 ~~the court. The information required in this paragraph shall be~~
191 ~~maintained in the facility's licensure file and in an agency~~
192 ~~database which is available as a public record.~~

193 (5) As a condition of licensure, each facility must
194 establish and ~~submit with its application~~ a plan for quality
195 assurance and for conducting risk management.

196 Section 8. Section 400.0712, Florida Statutes, is amended
197 to read:

198 400.0712 ~~Application for~~ Inactive license.-

199 ~~(1) As specified in this section, the agency may issue an~~
200 ~~inactive license to a nursing home facility for all or a portion~~
201 ~~of its beds. Any request by a licensee that a nursing home or~~
202 ~~portion of a nursing home become inactive must be submitted to~~
203 ~~the agency in the approved format. The facility may not initiate~~

16-00183C-12

2012482

204 ~~any suspension of services, notify residents, or initiate~~
205 ~~inactivity before receiving approval from the agency; and a~~
206 ~~licensee that violates this provision may not be issued an~~
207 ~~inactive license.~~

208 (1)~~(2)~~ In addition to the powers granted under part II of
209 chapter 408, the agency may issue an inactive license for a
210 portion of the total beds of ~~to~~ a nursing home facility that
211 chooses to use an unoccupied contiguous portion of the facility
212 for an alternative use to meet the needs of elderly persons
213 through the use of less restrictive, less institutional
214 services.

215 (a) The ~~An~~ inactive license ~~issued under this subsection~~
216 may be granted for a period not to exceed the current licensure
217 expiration date but may be renewed by the agency at the time of
218 licensure renewal.

219 (b) A request to extend the inactive license must be
220 submitted to the agency in the approved format and approved by
221 the agency in writing.

222 (c) A facility ~~Nursing homes~~ that receives ~~receive~~ an
223 inactive license to provide alternative services may ~~shall~~ not
224 be given ~~receive~~ preference for participation in the Assisted
225 Living for the Elderly Medicaid waiver.

226 (2)~~(3)~~ The agency shall adopt rules ~~pursuant to ss.~~
227 ~~120.536(1) and 120.54~~ necessary to administer ~~implement~~ this
228 section.

229 Section 9. Section 400.111, Florida Statutes, is amended to
230 read:

231 400.111 Disclosure of controlling interest.—In addition to
232 the requirements of part II of chapter 408, the nursing home

16-00183C-12

2012482

233 facility, if requested by the agency, ~~licensee~~ shall submit a
234 signed affidavit disclosing any financial or ownership interest
235 that a controlling interest has held within the last 5 years in
236 any entity licensed by the state or any other state to provide
237 health or residential care which ~~entity~~ has closed voluntarily
238 or involuntarily; has filed for bankruptcy; has had a receiver
239 appointed; has had a license denied, suspended, or revoked; or
240 has had an injunction issued against it which was initiated by a
241 regulatory agency. The affidavit must disclose the reason such
242 entity was closed, whether voluntarily or involuntarily.

243 Section 10. Subsection (2) of section 400.1183, Florida
244 Statutes, is amended to read:

245 400.1183 Resident grievance procedures.—

246 (2) Each nursing home facility shall maintain records of
247 all grievances and a shall report, subject to agency inspection,
248 ~~of to the agency at the time of relicensure~~ the total number of
249 grievances handled ~~during the prior licensure period,~~ a
250 categorization of the cases underlying the grievances, and the
251 final disposition of the grievances.

252 Section 11. Section 400.141, Florida Statutes, is amended
253 to read:

254 400.141 Administration and management of nursing home
255 facilities.—

256 (1) A nursing home facility must ~~Every licensed facility~~
257 ~~shall~~ comply with all applicable standards and rules of the
258 agency and must shall:

259 (a) Be under the administrative direction and charge of a
260 licensed administrator.

261 (b) Appoint a medical director licensed pursuant to chapter

16-00183C-12

2012482

262 458 or chapter 459. The agency may establish by rule more
263 specific criteria for the appointment of a medical director.

264 (c) Have available the regular, consultative, and emergency
265 services of state licensed physicians ~~licensed by the state~~.

266 (d) Provide for resident use of a community pharmacy as
267 specified in s. 400.022(1)(q). ~~Any other law to the contrary~~
268 Notwithstanding any other law, a registered pharmacist licensed
269 in this state who in Florida, that is under contract with a
270 facility licensed under this chapter or chapter 429 must, ~~shall~~
271 repackage a nursing facility resident's bulk prescription
272 medication, which was ~~has been~~ packaged by another pharmacist
273 licensed in any state, ~~in the United States~~ into a unit dose
274 system compatible with the system used by the nursing home
275 facility, ~~if~~ if the pharmacist is requested to offer such service.

276 1. In order to be eligible for the repackaging, a resident
277 or the resident's spouse must receive prescription medication
278 benefits provided through a former employer as part of his or
279 her retirement benefits, a qualified pension plan as specified
280 in s. 4972 of the Internal Revenue Code, a federal retirement
281 program as specified under 5 C.F.R. s. 831, or a long-term care
282 policy as defined in s. 627.9404(1).

283 2. A pharmacist who correctly repackages and relabels the
284 medication and the ~~nursing~~ facility that ~~which~~ correctly
285 administers such repackaged medication ~~under this paragraph~~ may
286 not be held liable in any civil or administrative action arising
287 from the repackaging.

288 3. In order to be eligible for the repackaging, a ~~nursing~~
289 ~~facility~~ resident for whom the medication is to be repackaged
290 must ~~shall~~ sign an informed consent form provided by the

16-00183C-12

2012482

291 facility which includes an explanation of the repackaging
292 process and ~~which~~ notifies the resident of the immunities from
293 liability provided under ~~in~~ this paragraph.

294 4. A pharmacist who repackages and relabels the
295 prescription medications, ~~as authorized under this paragraph,~~
296 may charge a reasonable fee for costs resulting from the
297 implementation of this provision.

298 (e) Provide ~~for the access of the facility~~ residents with
299 access to dental and other health-related services, recreational
300 services, rehabilitative services, and social work services
301 appropriate to their needs and conditions and not directly
302 furnished by the licensee. If ~~When~~ a geriatric outpatient nurse
303 clinic is conducted in accordance with rules adopted by the
304 agency, outpatients attending such clinic may ~~shall~~ not be
305 counted as part of the general resident population of the
306 ~~nursing home~~ facility, nor may ~~shall~~ the nursing staff of the
307 geriatric outpatient clinic be counted as part of the nursing
308 staff of the facility, until the outpatient clinic load exceeds
309 15 a day.

310 (f) Be allowed and encouraged by the agency to provide
311 other needed services under certain conditions. If the facility
312 has a standard licensure status, ~~and has had no class I or class~~
313 ~~II deficiencies during the past 2 years or has been awarded a~~
314 ~~Gold Seal under the program established in s. 400.235,~~ it may be
315 encouraged ~~by the agency~~ to provide services, including, but not
316 limited to, respite and adult day services, which enable
317 individuals to move in and out of the facility. A facility is
318 not subject to any additional licensure requirements for
319 providing these services, under the following conditions:-

16-00183C-12

2012482__

320 1. Respite care may be offered to persons in need of short-
321 term or temporary nursing home services, if for each person
322 admitted under the respite care program, the licensee:-

323 a. Has a contract that, at a minimum, specifies the
324 services to be provided to the respite resident, and includes
325 the charges for services, activities, equipment, emergency
326 medical services, and the administration of medications. If
327 multiple respite admissions for a single individual are
328 anticipated, the original contract is valid for 1 year after the
329 date of execution;

330 b. Has a written abbreviated plan of care that, at a
331 minimum, includes nutritional requirements, medication orders,
332 physician assessments and orders, nursing assessments, and
333 dietary preferences. The physician or nursing assessments may
334 take the place of all other assessments required for full-time
335 residents; and

336 c. Ensures that each respite resident is released to his or
337 her caregiver or an individual designated in writing by the
338 caregiver.

339 2. A person admitted under a respite care program is:

340 a. Covered by the residents' rights set forth in s.
341 400.022(1)(a)-(o) and (r)-(t). Funds or property of the respite
342 resident are not considered trust funds subject to s.
343 400.022(1)(h) until the resident has been in the facility for
344 more than 14 consecutive days;

345 b. Allowed to use his or her personal medications for the
346 respite stay if permitted by facility policy. The facility must
347 obtain a physician's order for the medications. The caregiver
348 may provide information regarding the medications as part of the

16-00183C-12

2012482

349 nursing assessment which must agree with the physician's order.
350 Medications shall be released with the respite resident upon
351 discharge in accordance with current physician's orders; and

352 c. Exempt from rule requirements related to discharge
353 planning.

354 3. A person receiving respite care is entitled to reside in
355 the facility for a total of 60 days within a contract year or
356 calendar year if the contract is for less than 12 months.
357 However, each single stay may not exceed 14 days. If a stay
358 exceeds 14 consecutive days, the facility must comply with all
359 assessment and care planning requirements applicable to nursing
360 home residents.

361 4. The respite resident provided medical information from a
362 physician, physician assistant, or nurse practitioner and other
363 information from the primary caregiver as may be required by the
364 facility before or at the time of admission. The medical
365 information must include a physician's order for respite care
366 and proof of a physical examination by a licensed physician,
367 physician assistant, or nurse practitioner. The physician's
368 order and physical examination may be used to provide
369 intermittent respite care for up to 12 months after the date the
370 order is written.

371 5. A person receiving respite care resides in a licensed
372 nursing home bed.

373 6. The facility assumes the duties of the primary
374 caregiver. To ensure continuity of care and services, the
375 respite resident is entitled to retain his or her personal
376 physician and must have access to medically necessary services
377 such as physical therapy, occupational therapy, or speech

16-00183C-12

2012482__

378 therapy, as needed. The facility must arrange for transportation
379 to these services if necessary. ~~Respite care must be provided in~~
380 ~~accordance with this part and rules adopted by the agency.~~
381 ~~However, the agency shall, by rule, adopt modified requirements~~
382 ~~for resident assessment, resident care plans, resident~~
383 ~~contracts, physician orders, and other provisions, as~~
384 ~~appropriate, for short-term or temporary nursing home services.~~

385 7. The agency allows ~~shall allow~~ for shared programming and
386 staff in a facility that ~~which~~ meets minimum standards and
387 offers services pursuant to this paragraph, but, if the facility
388 is cited for deficiencies in patient care, the agency may
389 require additional staff and programs appropriate to the needs
390 of service recipients. A person who receives respite care may
391 not be counted as a resident of the facility for purposes of the
392 facility's licensed capacity unless that person receives 24-hour
393 respite care. A person receiving ~~either~~ respite care for 24
394 hours or longer or adult day services must be included when
395 calculating minimum staffing for the facility. Any costs and
396 revenues generated by a ~~nursing home~~ facility from
397 nonresidential programs or services must ~~shall~~ be excluded from
398 the calculations of Medicaid per diems for nursing home
399 institutional care reimbursement.

400 (g) If the facility has a standard license ~~or is a Gold~~
401 ~~Seal facility~~, exceeds the minimum required hours of licensed
402 nursing and certified nursing assistant direct care per resident
403 per day, and is part of a continuing care facility licensed
404 under chapter 651 or a retirement community that offers other
405 services pursuant to part III of this chapter or part I or part
406 III of chapter 429 on a single campus, be allowed to share

16-00183C-12

2012482

407 programming and staff. At the time of inspection ~~and in the~~
408 ~~semiannual report required pursuant to paragraph (e), a~~
409 continuing care facility or retirement community that uses this
410 option must demonstrate through staffing records that minimum
411 staffing requirements for the facility were met. Licensed nurses
412 and certified nursing assistants who work in the ~~nursing home~~
413 facility may be used to provide services elsewhere on campus if
414 the facility exceeds the minimum number of direct care hours
415 required per resident per day and the total number of residents
416 receiving direct care services from a licensed nurse or a
417 certified nursing assistant does not cause the facility to
418 violate the staffing ratios required under s. 400.23(3)(a).
419 Compliance with the minimum staffing ratios must ~~shall~~ be based
420 on the total number of residents receiving direct care services,
421 regardless of where they reside on campus. If the facility
422 receives a conditional license, it may not share staff until the
423 conditional license status ends. This paragraph does not
424 restrict the agency's authority under federal or state law to
425 require additional staff if a facility is cited for deficiencies
426 in care which are caused by an insufficient number of certified
427 nursing assistants or licensed nurses. The agency may adopt
428 rules for the documentation necessary to determine compliance
429 with this provision.

430 (h) Maintain the facility premises and equipment and
431 conduct its operations in a safe and sanitary manner.

432 (i) If the licensee furnishes food service, provide a
433 wholesome and nourishing diet sufficient to meet generally
434 accepted standards of proper nutrition for its residents and
435 provide such therapeutic diets as may be prescribed by attending

16-00183C-12

2012482

436 physicians. In adopting ~~making~~ rules to implement this
437 paragraph, the agency shall be guided by standards recommended
438 by nationally recognized professional groups and associations
439 with knowledge of dietetics.

440 (j) Keep full records of resident admissions and
441 discharges; medical and general health status, including medical
442 records, personal and social history, and identity and address
443 of next of kin or other persons who may have responsibility for
444 the affairs of the resident ~~residents~~; and individual resident
445 care plans, including, but not limited to, prescribed services,
446 service frequency and duration, and service goals. The records
447 must ~~shall~~ be open to agency inspection ~~by the agency~~. The
448 licensee shall maintain clinical records on each resident in
449 accordance with accepted professional standards and practices,
450 which must be complete, accurately documented, readily
451 accessible, and systematically organized.

452 (k) Keep such fiscal records of its operations and
453 conditions as may be necessary to provide information pursuant
454 to this part.

455 (l) Furnish copies of personnel records for employees
456 affiliated with such facility, ~~to any other facility licensed by~~
457 this state requesting this information pursuant to this part.
458 Such information contained in the records may include, but is
459 not limited to, disciplinary matters and reasons ~~any reason~~ for
460 termination. A ~~Any~~ facility releasing such records pursuant to
461 this part is ~~shall be~~ considered to be acting in good faith and
462 may not be held liable for information contained in such
463 records, absent a showing that the facility maliciously
464 falsified such records.

16-00183C-12

2012482

465 (m) Publicly display a poster provided by the agency
466 containing the names, addresses, and telephone numbers for the
467 state's abuse hotline, the State Long-Term Care Ombudsman, the
468 Agency for Health Care Administration consumer hotline, the
469 Advocacy Center for Persons with Disabilities, the Florida
470 Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
471 with a clear description of the assistance to be expected from
472 each.

473 ~~(n) Submit to the agency the information specified in s.~~
474 ~~400.071(1)(b) for a management company within 30 days after the~~
475 ~~effective date of the management agreement.~~

476 ~~(o)1. Submit semiannually to the agency, or more frequently~~
477 ~~if requested by the agency, information regarding facility~~
478 ~~staff-to-resident ratios, staff turnover, and staff stability,~~
479 ~~including information regarding certified nursing assistants,~~
480 ~~licensed nurses, the director of nursing, and the facility~~
481 ~~administrator. For purposes of this reporting:~~

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

486 ~~b. Staff turnover must be reported for the most recent 12-~~
487 ~~month period ending on the last workday of the most recent~~
488 ~~calendar quarter prior to the date the information is submitted.~~
489 ~~The turnover rate must be computed quarterly, with the annual~~
490 ~~rate being the cumulative sum of the quarterly rates. The~~
491 ~~turnover rate is the total number of terminations or separations~~
492 ~~experienced during the quarter, excluding any employee~~
493 ~~terminated during a probationary period of 3 months or less,~~

16-00183C-12

2012482

494 ~~divided by the total number of staff employed at the end of the~~
495 ~~period for which the rate is computed, and expressed as a~~
496 ~~percentage.~~

497 ~~e. The formula for determining staff stability is the total~~
498 ~~number of employees that have been employed for more than 12~~
499 ~~months, divided by the total number of employees employed at the~~
500 ~~end of the most recent calendar quarter, and expressed as a~~
501 ~~percentage.~~

502 (n) Comply with state minimum-staffing requirements:

503 1.d. A ~~nursing~~ facility that has failed to comply with
504 state minimum-staffing requirements for 2 consecutive days is
505 prohibited from accepting new admissions until the facility has
506 achieved the minimum-staffing requirements for ~~a period of 6~~
507 consecutive days. For the purposes of this subparagraph ~~sub-~~
508 ~~subparagraph~~, any person who was a resident of the facility and
509 was absent from the facility for the purpose of receiving
510 medical care at a separate location or was on a leave of absence
511 is not considered a new admission. Failure by the facility to
512 impose such an admissions moratorium is subject to a \$1,000 fine
513 ~~constitutes a class II deficiency.~~

514 2.e. A ~~nursing~~ facility that ~~which~~ does not have a
515 conditional license may be cited for failure to comply with the
516 standards in s. 400.23(3)(a)1.b. and c. only if it has failed to
517 meet those standards on 2 consecutive days or if it has failed
518 to meet at least 97 percent of those standards on any one day.

519 3.f. A facility that ~~which~~ has a conditional license must
520 be in compliance with the standards in s. 400.23(3)(a) at all
521 times.

522 ~~2. This paragraph does not limit the agency's ability to~~

16-00183C-12

2012482__

523 ~~impose a deficiency or take other actions if a facility does not~~
524 ~~have enough staff to meet the residents' needs.~~

525 (o) ~~(p)~~ Notify a licensed physician when a resident exhibits
526 signs of dementia or cognitive impairment or has a change of
527 condition in order to rule out the presence of an underlying
528 physiological condition that may be contributing to such
529 dementia or impairment. The notification must occur within 30
530 days after the acknowledgment of such signs by facility staff.
531 If an underlying condition is determined to exist, the facility
532 shall ~~arrange~~, with the appropriate health care provider,
533 arrange for the necessary care and services to treat the
534 condition.

535 (p) ~~(q)~~ If the facility implements a dining and hospitality
536 attendant program, ensure that the program is developed and
537 implemented under the supervision of the facility director of
538 nursing. A licensed nurse, licensed speech or occupational
539 therapist, or a registered dietitian must conduct training of
540 dining and hospitality attendants. A person employed by a
541 facility as a dining and hospitality attendant must perform
542 tasks under the direct supervision of a licensed nurse.

543 ~~(r) Report to the agency any filing for bankruptcy~~
544 ~~protection by the facility or its parent corporation,~~
545 ~~divestiture or spin-off of its assets, or corporate~~
546 ~~reorganization within 30 days after the completion of such~~
547 ~~activity.~~

548 (q) ~~(s)~~ Maintain general and professional liability
549 insurance coverage that is in force at all times. In lieu of
550 such ~~general and professional liability insurance~~ coverage, a
551 state-designated teaching nursing home and its affiliated

16-00183C-12

2012482

552 assisted living facilities created under s. 430.80 may
553 demonstrate proof of financial responsibility as provided in s.
554 430.80(3)(g).

555 (r)~~(t)~~ Maintain in the medical record for each resident a
556 daily chart of certified nursing assistant services provided to
557 the resident. The certified nursing assistant who is caring for
558 the resident must complete this record by the end of his or her
559 shift. The ~~This~~ record must indicate assistance with activities
560 of daily living, assistance with eating, and assistance with
561 drinking, and must record each offering of nutrition and
562 hydration for those residents whose plan of care or assessment
563 indicates a risk for malnutrition or dehydration.

564 (s)~~(u)~~ Before November 30 of each year, subject to the
565 availability of an adequate supply of the necessary vaccine,
566 provide for immunizations against influenza viruses to all its
567 consenting residents in accordance with the recommendations of
568 the United States Centers for Disease Control and Prevention,
569 subject to exemptions for medical contraindications and
570 religious or personal beliefs. Subject to these exemptions, any
571 consenting person who becomes a resident of the facility after
572 November 30 but before March 31 of the following year must be
573 immunized within 5 working days after becoming a resident.
574 Immunization may ~~shall~~ not be provided to any resident who
575 provides documentation that he or she has been immunized as
576 required by this paragraph. This paragraph does not prohibit a
577 resident from receiving the immunization from his or her
578 personal physician if he or she so chooses. A resident who
579 chooses to receive the immunization from his or her personal
580 physician shall provide proof of immunization to the facility.

16-00183C-12

2012482__

581 The agency may adopt and enforce any rules necessary to
582 administer ~~comply with or implement~~ this paragraph.

583 ~~(t)(v)~~ Assess all residents for eligibility for
584 pneumococcal polysaccharide vaccination (PPV) ~~and vaccinate~~
585 ~~residents when indicated within 60 days after the effective date~~
586 ~~of this act in accordance with the recommendations of the United~~
587 ~~States Centers for Disease Control and Prevention, subject to~~
588 ~~exemptions for medical contraindications and religious or~~
589 ~~personal beliefs. Residents admitted after the effective date of~~
590 ~~this act shall be assessed~~ within 5 working days after ~~of~~
591 admission and, if ~~when~~ indicated, vaccinate such residents
592 ~~vaccinated~~ within 60 days in accordance with the recommendations
593 of the United States Centers for Disease Control and Prevention,
594 subject to exemptions for medical contraindications and
595 religious or personal beliefs. Immunization may ~~shall~~ not be
596 provided to any resident who provides documentation that he or
597 she has been immunized as required by this paragraph. This
598 paragraph does not prohibit a resident from receiving the
599 immunization from his or her personal physician if he or she so
600 chooses. A resident who chooses to receive the immunization from
601 his or her personal physician shall provide proof of
602 immunization to the facility. The agency may adopt and enforce
603 any rules necessary to administer ~~comply with or implement~~ this
604 paragraph.

605 ~~(u)(w)~~ Annually encourage and promote to its employees the
606 benefits associated with immunizations against influenza viruses
607 in accordance with the recommendations of the United States
608 Centers for Disease Control and Prevention. The agency may adopt
609 and enforce any rules necessary to administer ~~comply with or~~

16-00183C-12

2012482

610 ~~implement~~ this paragraph.

611

612 This subsection does not limit the agency's ability to impose a
613 deficiency or take other actions if a facility does not have
614 enough staff to meet residents' needs.

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

620 Section 12. Subsection (3) of section 400.142, Florida
621 Statutes, is amended to read:

622 400.142 Emergency medication kits; orders not to
623 resuscitate.—

624 (3) Facility staff may withhold or withdraw cardiopulmonary
625 resuscitation if presented with an order not to resuscitate
626 executed pursuant to s. 401.45. ~~The agency shall adopt rules~~
627 ~~providing for the implementation of such orders.~~ Facility staff
628 and facilities are ~~shall~~ not ~~be~~ subject to criminal prosecution
629 or civil liability, or ~~nor~~ ~~be~~ considered to have engaged in
630 negligent or unprofessional conduct, for withholding or
631 withdrawing cardiopulmonary resuscitation pursuant to such ~~an~~
632 order ~~and rules adopted by the agency.~~ The absence of an order
633 not to resuscitate executed pursuant to s. 401.45 does not
634 preclude a physician from withholding or withdrawing
635 cardiopulmonary resuscitation as otherwise permitted by law.

636 Section 13. Section 400.145, Florida Statutes, is repealed.

637 Section 14. Subsections (7) through (10) of section
638 400.147, Florida Statutes, are amended, and present subsections

16-00183C-12

2012482

639 (11) through (15) of that section are redesignated as
640 subsections (9) through (13), respectively, to read:

641 400.147 Internal risk management and quality assurance
642 program.—

643 (7) The nursing home facility shall initiate an
644 investigation ~~and shall notify the agency~~ within 1 business day
645 after the risk manager or his or her designee has received a
646 report pursuant to paragraph (1) (d). The facility must complete
647 the investigation and submit a report to the agency within 15
648 calendar days after an incident is determined to be an adverse
649 incident. ~~The notification must be made in writing and be~~
650 ~~provided electronically, by facsimile device or overnight mail~~
651 ~~delivery.~~ The agency shall develop a form for the report which
652 ~~notification~~ must include the name of the risk manager,
653 information regarding the identity of the affected resident, the
654 type of adverse incident, the initiation of an investigation by
655 the facility, and whether the events causing or resulting in the
656 adverse incident represent a potential risk to any other
657 resident. The report ~~notification~~ is confidential as provided by
658 law and is not discoverable or admissible in any civil or
659 administrative action, except in disciplinary proceedings by the
660 agency or the appropriate regulatory board. The agency may
661 investigate, as it deems appropriate, any such incident and
662 prescribe measures that must or may be taken in response to the
663 incident. The agency shall review each report ~~incident~~ and
664 determine whether it potentially involved conduct by the health
665 care professional who is subject to disciplinary action, in
666 which case the provisions of s. 456.073 shall apply.

667 ~~(8) (a) Each facility shall complete the investigation and~~

16-00183C-12

2012482__

668 ~~submit an adverse incident report to the agency for each adverse~~
669 ~~incident within 15 calendar days after its occurrence. If, after~~
670 ~~a complete investigation, the risk manager determines that the~~
671 ~~incident was not an adverse incident as defined in subsection~~
672 ~~(5), the facility shall include this information in the report.~~
673 ~~The agency shall develop a form for reporting this information.~~

674 ~~(b) The information reported to the agency pursuant to~~
675 ~~paragraph (a) which relates to persons licensed under chapter~~
676 ~~458, chapter 459, chapter 461, or chapter 466 shall be reviewed~~
677 ~~by the agency. The agency shall determine whether any of the~~
678 ~~incidents potentially involved conduct by a health care~~
679 ~~professional who is subject to disciplinary action, in which~~
680 ~~case the provisions of s. 456.073 shall apply.~~

681 ~~(c) The report submitted to the agency must also contain~~
682 ~~the name of the risk manager of the facility.~~

683 ~~(d) The adverse incident report is confidential as provided~~
684 ~~by law and is not discoverable or admissible in any civil or~~
685 ~~administrative action, except in disciplinary proceedings by the~~
686 ~~agency or the appropriate regulatory board.~~

687 ~~(8)(9) Abuse, neglect, or exploitation must be reported to~~
688 ~~the agency as required by 42 C.F.R. s. 483.13(c) and to the~~
689 ~~department as required by chapters 39 and 415.~~

690 ~~(10) By the 10th of each month, each facility subject to~~
691 ~~this section shall report any notice received pursuant to s.~~
692 ~~400.0233(2) and each initial complaint that was filed with the~~
693 ~~clerk of the court and served on the facility during the~~
694 ~~previous month by a resident or a resident's family member,~~
695 ~~guardian, conservator, or personal legal representative. The~~
696 ~~report must include the name of the resident, the resident's~~

16-00183C-12

2012482__

697 ~~date of birth and social security number, the Medicaid~~
698 ~~identification number for Medicaid-eligible persons, the date or~~
699 ~~dates of the incident leading to the claim or dates of~~
700 ~~residency, if applicable, and the type of injury or violation of~~
701 ~~rights alleged to have occurred. Each facility shall also submit~~
702 ~~a copy of the notices received pursuant to s. 400.0233(2) and~~
703 ~~complaints filed with the clerk of the court. This report is~~
704 ~~confidential as provided by law and is not discoverable or~~
705 ~~admissible in any civil or administrative action, except in such~~
706 ~~actions brought by the agency to enforce the provisions of this~~
707 ~~part.~~

708 Section 15. Section 400.148, Florida Statutes, is repealed.

709 Section 16. Subsection (3) of section 400.19, Florida
710 Statutes, is amended to read:

711 400.19 Right of entry and inspection.-

712 (3) The agency shall ~~every 15 months~~ conduct at least one
713 unannounced inspection every 15 months to determine the
714 licensee's compliance ~~by the licensee with statutes,~~ and related
715 ~~with rules promulgated under the provisions of those statutes,~~
716 governing minimum standards of construction, quality and
717 adequacy of care, and rights of residents. The survey must ~~shall~~
718 be conducted every 6 months for the next 2-year period if the
719 nursing home facility has been cited for a class I deficiency,
720 has been cited for two or more class II deficiencies arising
721 from separate surveys or investigations within a 60-day period,
722 or has had three or more substantiated complaints within a 6-
723 month period, each resulting in at least one class I or class II
724 deficiency. In addition to any other fees or fines under ~~in~~ this
725 part, the agency shall assess a fine for each facility that is

16-00183C-12

2012482__

726 subject to the 6-month survey cycle. The fine for the 2-year
727 period is ~~shall be~~ \$6,000, one-half to be paid at the completion
728 of each survey. The agency may adjust this fine by the change in
729 the Consumer Price Index, based on the 12 months immediately
730 preceding the increase, to cover the cost of the additional
731 surveys. The agency shall verify through subsequent inspection
732 that any deficiency identified during inspection is corrected.
733 However, the agency may verify the correction of a class III or
734 class IV deficiency ~~unrelated to resident rights or resident~~
735 ~~care~~ without reinspecting the facility if adequate written
736 documentation has been received from the facility, ~~which~~
737 provides assurance that the deficiency has been corrected. The
738 giving or causing to be given of advance notice of such
739 unannounced inspections by an employee of the agency to any
740 unauthorized person shall constitute cause for suspension of at
741 least ~~not fewer than~~ 5 working days according to the provisions
742 of chapter 110.

743 Section 17. Present subsection (6) of section 400.191,
744 Florida Statutes, is renumbered as subsection (7), and a new
745 subsection (6) is added to that section, to read:

746 400.191 Availability, distribution, and posting of reports
747 and records.—

748 (6) A nursing home facility may charge a reasonable fee for
749 copying resident records. The fee may not exceed \$1 per page for
750 the first 25 pages and 25 cents per page for each page in excess
751 of 25 pages.

752 Section 18. Subsection (5) of section 400.23, Florida
753 Statutes, is amended to read:

754 400.23 Rules; evaluation and deficiencies; licensure

16-00183C-12

2012482

755 status.—

756 (5) The agency, in collaboration with the Division of
757 Children's Medical Services of the Department of Health, must
758 ~~no later than December 31, 1993,~~ adopt rules for:

759 (a) Minimum standards of care for persons under 21 years of
760 age who reside in nursing home facilities. The rules must
761 include a methodology for reviewing a nursing home facility
762 under ss. 408.031-408.045 which serves only persons under 21
763 years of age. A facility may be exempted ~~exempt~~ from these
764 standards for specific persons between 18 and 21 years of age,
765 if the person's physician agrees that minimum standards of care
766 based on age are not necessary.

767 (b) Minimum staffing requirements for each nursing home
768 facility that serves persons under 21 years of age, which apply
769 in lieu of the standards contained in subsection (3).

770 1. For persons under 21 years of age who require skilled
771 care, the requirements must include a minimum combined average
772 of 3.9 hours of direct care per resident per day provided by
773 licensed nurses, respiratory therapists, respiratory care
774 practitioners, and certified nursing assistants.

775 2. For persons under 21 years of age who are medically
776 fragile, the requirements must include a minimum combined
777 average of 5 hours of direct care per resident per day provided
778 by licensed nurses, respiratory therapists, respiratory care
779 practitioners, and certified nursing assistants.

780 Section 19. Subsection (27) of section 400.462, Florida
781 Statutes, is amended to read:

782 400.462 Definitions.—As used in this part, the term:

783 (27) "Remuneration" means any payment or other benefit made

16-00183C-12

2012482

784 directly or indirectly, overtly or covertly, in cash or in kind.
785 However, if the term is used in any provision of law relating to
786 health care providers, the term does not apply to an item that
787 has an individual value of up to \$15, including, but not limited
788 to, a plaque, a certificate, a trophy, or a novelty item that is
789 intended solely for presentation or is customarily given away
790 solely for promotional, recognition, or advertising purposes.

791 Section 20. Subsection (1) of section 429.294, Florida
792 Statutes, is amended to read:

793 429.294 Availability of facility records for investigation
794 of resident's rights violations and defenses; penalty.—

795 (1) Failure to provide complete copies of a resident's
796 records, including, but not limited to, all medical records and
797 the resident's chart, within the control or possession of the
798 facility within 10 days, ~~is in accordance with the provisions of~~
799 ~~s. 400.145, shall constitute~~ evidence of failure of that party
800 to comply with good faith discovery requirements and waives
801 ~~shall waive~~ the good faith certificate and presuit notice
802 requirements under this part by the requesting party.

803 Section 21. Paragraph (g) of subsection (3) of section
804 430.80, Florida Statutes, is amended to read:

805 430.80 Implementation of a teaching nursing home pilot
806 project.—

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

809 (g) Maintain insurance coverage pursuant to s.
810 400.141(1)(g) ~~400.141(1)(s)~~ or proof of financial responsibility
811 in a minimum amount of \$750,000. Such proof of financial
812 responsibility may include:

16-00183C-12

2012482

813 1. Maintaining an escrow account consisting of cash or
814 assets eligible for deposit in accordance with s. 625.52; or
815 2. Obtaining and maintaining pursuant to chapter 675 an
816 unexpired, irrevocable, nontransferable and nonassignable letter
817 of credit issued by any bank or savings association organized
818 and existing under the laws of this state or any bank or savings
819 association organized under the laws of the United States which
820 ~~that~~ has its principal place of business in this state or has a
821 branch office that ~~which~~ is authorized to receive deposits in
822 this state. The letter of credit shall be used to satisfy the
823 obligation of the facility to the claimant upon presentment of a
824 final judgment indicating liability and awarding damages to be
825 paid by the facility or upon presentment of a settlement
826 agreement signed by all parties to the agreement if ~~when~~ such
827 final judgment or settlement is a result of a liability claim
828 against the facility.

829 Section 22. Paragraph (h) of subsection (2) of section
830 430.81, Florida Statutes, is amended to read:

831 430.81 Implementation of a teaching agency for home and
832 community-based care.—

833 (2) The Department of Elderly Affairs may designate a home
834 health agency as a teaching agency for home and community-based
835 care if the home health agency:

836 (h) Maintains insurance coverage pursuant to s.
837 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility
838 in a minimum amount of \$750,000. Such proof of financial
839 responsibility may include:

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

16-00183C-12

2012482

842 2. Obtaining and maintaining, pursuant to chapter 675, an
843 unexpired, irrevocable, nontransferable, and nonassignable
844 letter of credit issued by any bank or savings association
845 authorized to do business in this state. This letter of credit
846 shall be used to satisfy the obligation of the agency to the
847 claimant upon presentation of a final judgment indicating
848 liability and awarding damages to be paid by the facility or
849 upon presentment of a settlement agreement signed by all parties
850 to the agreement if ~~when~~ such final judgment or settlement is a
851 result of a liability claim against the agency.

852 Section 23. Subsection (13) of section 651.118, Florida
853 Statutes, is amended to read:

854 651.118 Agency for Health Care Administration; certificates
855 of need; sheltered beds; community beds.—

856 (13) Residents, as defined in this chapter, are not
857 considered new admissions for the purpose of s. 400.141(1)(n)
858 ~~400.141(1)(e)~~1.d.

859 Section 24. This act shall take effect July 1, 2012.