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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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | to ownership interests, staffing ratios, and
 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
 58 or private, where ~~when~~ residence or detention is incidental to
 59 the 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~~

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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:

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

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

99 Section 4. Paragraph (g) of subsection (2) of section
100 400.0239, Florida Statutes, is amended to read:

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

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

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

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

112 400.0255 Resident transfer or discharge; requirements and

113 | procedures; hearings.—

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

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

118 | (b) The department shall, by rule, establish procedures to
119 | be used for ~~fair~~ hearings requested by residents. The ~~These~~
120 | procedures must ~~shall~~ be equivalent to the procedures used for
121 | ~~fair~~ hearings for other Medicaid cases brought pursuant to s.
122 | 409.285 and applicable rules, chapter 10-2, part VI, Florida
123 | ~~Administrative Code~~. The burden of proof must be clear and
124 | convincing evidence. A hearing decision must be rendered within
125 | 90 days after receipt of the request for hearing.

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

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

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

136 | 400.063 Resident protection.—

137 | (2) The agency ~~is authorized to establish for each~~
138 | ~~facility,~~ subject to intervention by the agency, may establish a
139 | separate bank account for the deposit to the credit of the
140 | agency of any moneys received from the Health Care Trust Fund or

141 any other moneys received for the maintenance and care of
 142 residents in the facility, and may ~~the agency is authorized to~~
 143 disburse moneys from such account to pay obligations incurred
 144 for the purposes of this section. The agency may ~~is authorized~~
 145 ~~to~~ requisition moneys from the Health Care Trust Fund in advance
 146 of an actual need for cash on the basis of an estimate by the
 147 agency of moneys to be spent under the authority of this
 148 section. A ~~Any~~ bank account established under this section need
 149 not be approved in advance of its creation as required by s.
 150 17.58, but must ~~shall~~ be secured by depository insurance equal
 151 to or greater than the balance of such account or by the pledge
 152 of collateral security ~~in conformance with criteria established~~
 153 ~~in s. 18.11~~. The agency shall notify the Chief Financial Officer
 154 of an ~~any such~~ account so established and ~~shall~~
 155 accounting to the Chief Financial Officer for all moneys
 156 deposited in such account.

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

159 400.071 Application for license.—

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

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

166 ~~(b) A signed affidavit disclosing any financial or~~
 167 ~~ownership interest that a controlling interest as defined in~~
 168 ~~part II of chapter 408 has held in the last 5 years in any~~

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169 ~~entity licensed by this state or any other state to provide~~
170 ~~health or residential care which has closed voluntarily or~~
171 ~~involuntarily; has filed for bankruptcy; has had a receiver~~
172 ~~appointed; has had a license denied, suspended, or revoked; or~~
173 ~~has had an injunction issued against it which was initiated by a~~
174 ~~regulatory agency. The affidavit must disclose the reason any~~
175 ~~such entity was closed, whether voluntarily or involuntarily.~~

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

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

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

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

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

199 400.0712 ~~Application for~~ Inactive license.—

200 ~~(1) As specified in this section, the agency may issue an~~
 201 ~~inactive license to a nursing home facility for all or a portion~~
 202 ~~of its beds. Any request by a licensee that a nursing home or~~
 203 ~~portion of a nursing home become inactive must be submitted to~~
 204 ~~the agency in the approved format. The facility may not initiate~~
 205 ~~any suspension of services, notify residents, or initiate~~
 206 ~~inactivity before receiving approval from the agency; and a~~
 207 ~~licensee that violates this provision may not be issued an~~
 208 ~~inactive license.~~

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

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

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

223 (c) A facility ~~Nursing homes~~ that receives ~~receive~~ an
 224 inactive license to provide alternative services may ~~shall~~ not

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225 be given ~~receive~~ preference for participation in the Assisted
 226 Living for the Elderly Medicaid waiver.

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

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

232 400.111 Disclosure of controlling interest.—In addition to
 233 the requirements of part II of chapter 408, the nursing home
 234 facility, if requested by the agency, ~~licensee~~ shall submit a
 235 signed affidavit disclosing any financial or ownership interest
 236 that a controlling interest has held within the last 5 years in
 237 any entity licensed by the state or any other state to provide
 238 health or residential care which ~~entity~~ has closed voluntarily
 239 or involuntarily; has filed for bankruptcy; has had a receiver
 240 appointed; has had a license denied, suspended, or revoked; or
 241 has had an injunction issued against it which was initiated by a
 242 regulatory agency. The affidavit must disclose the reason such
 243 entity was closed, whether voluntarily or involuntarily.

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

246 400.1183 Resident grievance procedures.—

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

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

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

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

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

262 (b) Appoint a medical director licensed pursuant to
 263 chapter 458 or chapter 459. The agency may establish by rule
 264 more specific criteria for the appointment of a medical
 265 director.

266 (c) Have available the regular, consultative, and
 267 emergency services of state licensed physicians ~~licensed by the~~
 268 ~~state~~.

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

279 1. In order to be eligible for the repackaging, a resident
 280 or the resident's spouse must receive prescription medication

281 benefits provided through a former employer as part of his or
 282 her retirement benefits, a qualified pension plan as specified
 283 in s. 4972 of the Internal Revenue Code, a federal retirement
 284 program as specified under 5 C.F.R. s. 831, or a long-term care
 285 policy as defined in s. 627.9404(1).

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

291 3. In order to be eligible for the repackaging, a ~~nursing~~
 292 ~~facility~~ resident for whom the medication is to be repackaged
 293 must ~~shall~~ sign an informed consent form provided by the
 294 facility which includes an explanation of the repackaging
 295 process and ~~which~~ notifies the resident of the immunities from
 296 liability provided under ~~in~~ this paragraph.

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

301 (e) Provide ~~for the access of the facility residents~~ with
 302 access to dental and other health-related services, recreational
 303 services, rehabilitative services, and social work services
 304 appropriate to their needs and conditions and not directly
 305 furnished by the licensee. If ~~When~~ a geriatric outpatient nurse
 306 clinic is conducted in accordance with rules adopted by the
 307 agency, outpatients attending such clinic may ~~shall~~ not be
 308 counted as part of the general resident population of the

309 ~~nursing home~~ facility, nor may ~~shall~~ the nursing staff of the
 310 geriatric outpatient clinic be counted as part of the nursing
 311 staff of the facility, until the outpatient clinic load exceeds
 312 15 a day.

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

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

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

333 b. Has a written abbreviated plan of care that, at a
 334 minimum, includes nutritional requirements, medication orders,
 335 physician assessments and orders, nursing assessments, and
 336 dietary preferences. The physician or nursing assessments may

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337 take the place of all other assessments required for full-time
338 residents; and

339 c. Ensures that each respite resident is released to his
340 or her caregiver or an individual designated in writing by the
341 caregiver.

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

343 a. Covered by the residents' rights set forth in s.
344 400.022(1)(a)-(o) and (r)-(t). Funds or property of the respite
345 resident are not considered trust funds subject to s.
346 400.022(1)(h) until the resident has been in the facility for
347 more than 14 consecutive days;

348 b. Allowed to use his or her personal medications for the
349 respite stay if permitted by facility policy. The facility must
350 obtain a physician's order for the medications. The caregiver
351 may provide information regarding the medications as part of the
352 nursing assessment which must agree with the physician's order.
353 Medications shall be released with the respite resident upon
354 discharge in accordance with current physician's orders; and

355 c. Exempt from rule requirements related to discharge
356 planning.

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

364 4. The respite resident provided medical information from

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

374 5. A person receiving respite care resides in a licensed
 375 nursing home bed.

376 6. The facility assumes the duties of the primary
 377 caregiver. To ensure continuity of care and services, the
 378 respite resident is entitled to retain his or her personal
 379 physician and must have access to medically necessary services
 380 such as physical therapy, occupational therapy, or speech
 381 therapy, as needed. The facility must arrange for transportation
 382 to these services if necessary. ~~Respite care must be provided in~~
 383 ~~accordance with this part and rules adopted by the agency.~~
 384 ~~However, the agency shall, by rule, adopt modified requirements~~
 385 ~~for resident assessment, resident care plans, resident~~
 386 ~~contracts, physician orders, and other provisions, as~~
 387 ~~appropriate, for short-term or temporary nursing home services.~~

388 7. The agency allows ~~shall allow~~ for shared programming
 389 and staff in a facility that ~~which~~ meets minimum standards and
 390 offers services pursuant to this paragraph, but, if the facility
 391 is cited for deficiencies in patient care, the agency may
 392 require additional staff and programs appropriate to the needs

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393 of service recipients. A person who receives respite care may
394 not be counted as a resident of the facility for purposes of the
395 facility's licensed capacity unless that person receives 24-hour
396 respite care. A person receiving ~~either~~ respite care for 24
397 hours or longer or adult day services must be included when
398 calculating minimum staffing for the facility. Any costs and
399 revenues generated by a ~~nursing home~~ facility from
400 nonresidential programs or services must ~~shall~~ be excluded from
401 the calculations of Medicaid per diems for nursing home
402 institutional care reimbursement.

403 (g) If the facility has a standard license ~~or is a Gold~~
404 ~~Seal facility~~, exceeds the minimum required hours of licensed
405 nursing and certified nursing assistant direct care per resident
406 per day, and is part of a continuing care facility licensed
407 under chapter 651 or a retirement community that offers other
408 services pursuant to part III of this chapter or part I or part
409 III of chapter 429 on a single campus, be allowed to share
410 programming and staff. At the time of inspection ~~and in the~~
411 ~~semiannual report required pursuant to paragraph (e)~~, a
412 continuing care facility or retirement community that uses this
413 option must demonstrate through staffing records that minimum
414 staffing requirements for the facility were met. Licensed nurses
415 and certified nursing assistants who work in the ~~nursing home~~
416 facility may be used to provide services elsewhere on campus if
417 the facility exceeds the minimum number of direct care hours
418 required per resident per day and the total number of residents
419 receiving direct care services from a licensed nurse or a
420 certified nursing assistant does not cause the facility to

421 violate the staffing ratios required under s. 400.23(3)(a).
 422 Compliance with the minimum staffing ratios must ~~shall~~ be based
 423 on the total number of residents receiving direct care services,
 424 regardless of where they reside on campus. If the facility
 425 receives a conditional license, it may not share staff until the
 426 conditional license status ends. This paragraph does not
 427 restrict the agency's authority under federal or state law to
 428 require additional staff if a facility is cited for deficiencies
 429 in care which are caused by an insufficient number of certified
 430 nursing assistants or licensed nurses. The agency may adopt
 431 rules for the documentation necessary to determine compliance
 432 with this provision.

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

435 (i) If the licensee furnishes food service, provide a
 436 wholesome and nourishing diet sufficient to meet generally
 437 accepted standards of proper nutrition for its residents and
 438 provide such therapeutic diets as may be prescribed by attending
 439 physicians. In adopting ~~making~~ rules to implement this
 440 paragraph, the agency shall be guided by standards recommended
 441 by nationally recognized professional groups and associations
 442 with knowledge of dietetics.

443 (j) Keep full records of resident admissions and
 444 discharges; medical and general health status, including medical
 445 records, personal and social history, and identity and address
 446 of next of kin or other persons who may have responsibility for
 447 the affairs of the resident ~~residents~~; and individual resident
 448 care plans, including, but not limited to, prescribed services,

449 service frequency and duration, and service goals. The records
 450 must ~~shall~~ be open to agency inspection ~~by the agency~~. The
 451 licensee shall maintain clinical records on each resident in
 452 accordance with accepted professional standards and practices,
 453 which must be complete, accurately documented, readily
 454 accessible, and systematically organized.

455 (k) Keep such fiscal records of its operations and
 456 conditions as may be necessary to provide information pursuant
 457 to this part.

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

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

476 ~~(n) Submit to the agency the information specified in s.~~

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477 ~~400.071(1)(b) for a management company within 30 days after the~~
478 ~~effective date of the management agreement.~~

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

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

489 ~~b. Staff turnover must be reported for the most recent 12-~~
490 ~~month period ending on the last workday of the most recent~~
491 ~~calendar quarter prior to the date the information is submitted.~~
492 ~~The turnover rate must be computed quarterly, with the annual~~
493 ~~rate being the cumulative sum of the quarterly rates. The~~
494 ~~turnover rate is the total number of terminations or separations~~
495 ~~experienced during the quarter, excluding any employee~~
496 ~~terminated during a probationary period of 3 months or less,~~
497 ~~divided by the total number of staff employed at the end of the~~
498 ~~period for which the rate is computed, and expressed as a~~
499 ~~percentage.~~

500 ~~e. The formula for determining staff stability is the~~
501 ~~total number of employees that have been employed for more than~~
502 ~~12 months, divided by the total number of employees employed at~~
503 ~~the end of the most recent calendar quarter, and expressed as a~~
504 ~~percentage.~~

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

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

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

525 ~~2. This paragraph does not limit the agency's ability to~~
526 ~~impose a deficiency or take other actions if a facility does not~~
527 ~~have enough staff to meet the residents' needs.~~

528 (o) ~~(p)~~ Notify a licensed physician when a resident
529 exhibits signs of dementia or cognitive impairment or has a
530 change of condition in order to rule out the presence of an
531 underlying physiological condition that may be contributing to
532 such dementia or impairment. The notification must occur within

533 30 days after the acknowledgment of such signs by facility
 534 staff. If an underlying condition is determined to exist, the
 535 facility shall ~~arrange~~, with the appropriate health care
 536 provider, arrange for the necessary care and services to treat
 537 the condition.

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

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

551 (q) ~~(s)~~ Maintain general and professional liability
 552 insurance coverage that is in force at all times. In lieu of
 553 such ~~general and professional liability insurance~~ coverage, a
 554 state-designated teaching nursing home and its affiliated
 555 assisted living facilities created under s. 430.80 may
 556 demonstrate proof of financial responsibility as provided in s.
 557 430.80(3)(g).

558 (r) ~~(t)~~ Maintain in the medical record for each resident a
 559 daily chart of certified nursing assistant services provided to
 560 the resident. The certified nursing assistant who is caring for

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561 the resident must complete this record by the end of his or her
562 shift. The ~~This~~ record must indicate assistance with activities
563 of daily living, assistance with eating, and assistance with
564 drinking, and must record each offering of nutrition and
565 hydration for those residents whose plan of care or assessment
566 indicates a risk for malnutrition or dehydration.

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

586 (t) ~~(v)~~ Assess all residents for eligibility for
587 pneumococcal polysaccharide vaccination (PPV) ~~and vaccinate~~
588 ~~residents when indicated within 60 days after the effective date~~

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

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

614
615 This subsection does not limit the agency's ability to impose a
616 deficiency or take other actions if a facility does not have

617 enough staff to meet residents' needs.

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

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

625 400.142 Emergency medication kits; orders not to
 626 resuscitate.—

627 (3) Facility staff may withhold or withdraw
 628 cardiopulmonary resuscitation if presented with an order not to
 629 resuscitate executed pursuant to s. 401.45. ~~The agency shall~~
 630 ~~adopt rules providing for the implementation of such orders.~~
 631 Facility staff and facilities are ~~shall~~ not ~~be~~ subject to
 632 criminal prosecution or civil liability, or ~~nor~~ be considered to
 633 have engaged in negligent or unprofessional conduct, for
 634 withholding or withdrawing cardiopulmonary resuscitation
 635 pursuant to such ~~an order and rules adopted by the agency.~~ The
 636 absence of an order not to resuscitate executed pursuant to s.
 637 401.45 does not preclude a physician from withholding or
 638 withdrawing cardiopulmonary resuscitation as otherwise permitted
 639 by law.

640 Section 13. Section 400.145, Florida Statutes, is
 641 repealed.

642 Section 14. Subsections (7) through (10) of section
 643 400.147, Florida Statutes, are amended, and present subsections
 644 (11) through (15) of that section are redesignated as

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645 subsections (9) through (13), respectively, to read:

646 400.147 Internal risk management and quality assurance
647 program.—

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

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

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

679 ~~(b) The information reported to the agency pursuant to~~
680 ~~paragraph (a) which relates to persons licensed under chapter~~
681 ~~458, chapter 459, chapter 461, or chapter 466 shall be reviewed~~
682 ~~by the agency. The agency shall determine whether any of the~~
683 ~~incidents potentially involved conduct by a health care~~
684 ~~professional who is subject to disciplinary action, in which~~
685 ~~case the provisions of s. 456.073 shall apply.~~

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

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

692 ~~(8)(9) Abuse, neglect, or exploitation must be reported to~~
693 ~~the agency as required by 42 C.F.R. s. 483.13(c) and to the~~
694 ~~department as required by chapters 39 and 415.~~

695 ~~(10) By the 10th of each month, each facility subject to~~
696 ~~this section shall report any notice received pursuant to s.~~
697 ~~400.0233(2) and each initial complaint that was filed with the~~
698 ~~clerk of the court and served on the facility during the~~
699 ~~previous month by a resident or a resident's family member,~~
700 ~~guardian, conservator, or personal legal representative. The~~

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

713 Section 15. Section 400.148, Florida Statutes, is
 714 repealed.

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

717 400.19 Right of entry and inspection.—

718 (3) The agency shall ~~every 15 months~~ conduct at least one
 719 unannounced inspection every 15 months to determine the
 720 licensee's compliance ~~by the licensee~~ with statutes, and related
 721 ~~with rules promulgated under the provisions of those statutes,~~
 722 governing minimum standards of construction, quality and
 723 adequacy of care, and rights of residents. The survey must ~~shall~~
 724 be conducted every 6 months for the next 2-year period if the
 725 nursing home facility has been cited for a class I deficiency,
 726 has been cited for two or more class II deficiencies arising
 727 from separate surveys or investigations within a 60-day period,
 728 or has had three or more substantiated complaints within a 6-

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

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

752 400.191 Availability, distribution, and posting of reports
753 and records.—

754 (6) A nursing home facility may charge a reasonable fee
755 for copying resident records. The fee may not exceed \$1 per page
756 for the first 25 pages and 25 cents per page for each page in

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757 excess of 25 pages.

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

760 400.23 Rules; evaluation and deficiencies; licensure
761 status.—

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

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

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

776 1. For persons under 21 years of age who require skilled
777 care, the requirements must include a minimum combined average
778 of 3.9 hours of direct care per resident per day provided by
779 licensed nurses, respiratory therapists, respiratory care
780 practitioners, and certified nursing assistants.

781 2. For persons under 21 years of age who are medically
782 fragile, the requirements must include a minimum combined
783 average of 5 hours of direct care per resident per day provided
784 by licensed nurses, respiratory therapists, respiratory care

785 practitioners, and certified nursing assistants.

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

788 400.462 Definitions.—As used in this part, the term:

789 (27) "Remuneration" means any payment or other benefit
790 made directly or indirectly, overtly or covertly, in cash or in
791 kind. However, if the term is used in any provision of law
792 relating to health care providers, the term does not apply to an
793 item that has an individual value of up to \$15, including, but
794 not limited to, a plaque, a certificate, a trophy, or a novelty
795 item that is intended solely for presentation or is customarily
796 given away solely for promotional, recognition, or advertising
797 purposes.

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

800 429.294 Availability of facility records for investigation
801 of resident's rights violations and defenses; penalty.—

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

810 Section 21. Paragraph (g) of subsection (3) of section
811 430.80, Florida Statutes, is amended to read:

812 430.80 Implementation of a teaching nursing home pilot

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813 project.—

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

816 (g) Maintain insurance coverage pursuant to s.
817 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility
818 in a minimum amount of \$750,000. Such proof of financial
819 responsibility may include:

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

836 Section 22. Paragraph (h) of subsection (2) of section
837 430.81, Florida Statutes, is amended to read:

838 430.81 Implementation of a teaching agency for home and
839 community-based care.—

840 (2) The Department of Elderly Affairs may designate a home

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841 health agency as a teaching agency for home and community-based
 842 care if the home health agency:

843 (h) Maintains insurance coverage pursuant to s.
 844 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility
 845 in a minimum amount of \$750,000. Such proof of financial
 846 responsibility may include:

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

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

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

861 651.118 Agency for Health Care Administration;
 862 certificates of need; sheltered beds; community beds.—

863 (13) Residents, as defined in this chapter, are not
 864 considered new admissions for the purpose of s. 400.141(1)(n)
 865 ~~400.141(1)(e)~~1.d.

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