

1                                   A bill to be entitled  
2           An act relating to long-term care; amending s.  
3           400.0073, F.S., relating to state and local  
4           ombudsman council investigations; requiring  
5           ombudsman verification and reporting of nursing  
6           home staff on duty and the posting thereof;  
7           providing penalty for refusal of a nursing home  
8           or assisted living facility to allow entry to  
9           an ombudsman; amending s. 400.021, F.S.;  
10          revising definitions; defining "controlling  
11          interest" and "voluntary board member";  
12          creating s. 400.0223, F.S.; requiring nursing  
13          homes to allow electronic monitoring of  
14          residents in their rooms; requiring posting of  
15          notice; providing facility requirements;  
16          providing penalties; amending ss. 400.023 and  
17          400.429, F.S.; providing for civil actions to  
18          enforce nursing home and assisted living  
19          facility residents' rights; providing who may  
20          pursue such actions; providing the burden of  
21          proof; providing evidence of breach of duty;  
22          providing certain liability; limiting period  
23          for commencement of actions; providing  
24          definitions; providing for claims involving  
25          death of the resident; providing for punitive  
26          damages; providing nonenforceability of  
27          judgments or agreements concealing certain  
28          information; requiring facility report of a  
29          judgment or agreement to the Agency for Health  
30          Care Administration within a specified period;  
31          providing a penalty; providing agency

1 rulemaking authority; providing applicability;  
2 creating s. 400.0235, F.S.; providing  
3 requirements of the presuit process; creating  
4 s. 400.0236, F.S.; providing for presuit  
5 screening; creating s. 400.0237, F.S.;  
6 providing for presuit notice, review, and  
7 investigation; specifying timeframes; creating  
8 ss. 400.0238 and 400.430, F.S.; providing for  
9 voluntary binding arbitration; providing for  
10 selection of an arbitration panel; providing  
11 for compensation; providing obligations and  
12 procedures; providing rulemaking authority of  
13 the Division of Administrative Hearings;  
14 providing for the right to jury trial and for  
15 certain limitations on damages; providing  
16 procedures; creating s. 400.0239, F.S.;  
17 providing for binding arbitration to allocate  
18 responsibility among defendants; providing  
19 procedures; creating s. 400.024, F.S.;  
20 providing for misarbitration; creating s.  
21 400.0241, F.S.; providing for payment of an  
22 arbitration award; providing for interest;  
23 creating s. 400.0242, F.S.; providing for  
24 appeal of an arbitration award or allocation of  
25 financial responsibility; creating ss. 400.0245  
26 and 400.455, F.S.; creating the "Nursing Home  
27 Facility Whistleblower's Act" and the "Assisted  
28 Living Facility Whistleblower's Act,"  
29 respectively; prohibiting retaliatory actions  
30 from a facility or independent contractor  
31 against an employee for disclosure of certain

1 information; providing legislative intent;  
2 providing definitions; specifying the nature of  
3 information, to whom disclosed, and persons  
4 protected; authorizing civil actions for  
5 violation; providing forms of relief; providing  
6 a defense to such actions; protecting existing  
7 rights of employees; amending s. 400.071, F.S.;  
8 revising requirements and providing additional  
9 requirements for application for a nursing home  
10 license; amending s. 400.102, F.S.; providing  
11 additional grounds for administrative or other  
12 actions against a nursing home; amending s.  
13 400.118, F.S.; requiring agency staff to verify  
14 and report staff on duty at a nursing home;  
15 providing requirements for resident  
16 comprehensive assessment, plan of care, and  
17 treatment and services; providing for a  
18 resident's incapacity or refusal with regard to  
19 the plan of care; creating s. 400.1183, F.S.;  
20 requiring nursing homes to have a grievance  
21 procedure for residents; providing  
22 requirements; requiring recordkeeping and  
23 reports to the agency; providing for agency  
24 investigations; providing a penalty for  
25 noncompliance; amending s. 400.121, F.S.;  
26 revising a penalty for violations of pt. II of  
27 ch. 400, F.S.; providing additional grounds for  
28 denial of a nursing home licensure application;  
29 providing for review of administrative  
30 proceedings challenging agency licensure  
31 enforcement actions; amending s. 400.141, F.S.;

1 providing qualifications for nursing home  
2 medical directors and nursing personnel;  
3 requiring daily charting of certain care  
4 delivered; requiring report of management  
5 agreements; requiring report of staff ratios,  
6 turnover, and stability, and bed vacancies;  
7 creating s. 400.1413, F.S.; requiring nursing  
8 homes to establish internal risk management and  
9 quality assurance programs; providing  
10 requirements for implementation; defining  
11 "adverse incident"; requiring reports to the  
12 agency; providing agency access to facility  
13 records, review of incidents and programs, and  
14 report to regulatory boards; limiting liability  
15 of risk managers; amending s. 400.1415, F.S.;  
16 providing for administrative penalties or a  
17 moratorium on admissions for a nursing home  
18 where alteration of records has occurred;  
19 requiring reporting; requiring referral of  
20 personnel for disciplinary action; amending s.  
21 400.191, F.S.; requiring facility posting of  
22 the Florida Nursing Home Guide Watch List;  
23 amending s. 400.211, F.S.; revising  
24 qualifications for temporary employment of  
25 nursing assistants; providing performance  
26 review and inservice training requirements for  
27 certified nursing assistants; amending s.  
28 400.23, F.S.; deleting obsolete language and  
29 references; deleting requirement for review of  
30 local emergency management plans; providing for  
31 agency rules relating to consumer satisfaction

1 surveys, posting of reports and records, and  
2 quality assurance and risk management;  
3 specifying minimum nursing home staffing  
4 requirements; revising provisions relating to  
5 deficient practices and classifications  
6 thereof; revising penalties; requiring a  
7 report; amending s. 400.241, F.S.; providing a  
8 cross reference; providing a penalty; creating  
9 s. 400.27, F.S.; providing for training of  
10 agency nursing home survey team members;  
11 amending ss. 400.428 and 400.431, F.S.;  
12 revising requirement for notice of a resident's  
13 relocation or termination from a facility;  
14 providing a penalty; amending s. 409.908, F.S.;  
15 revising provisions relating to Medicaid  
16 reimbursement for long-term care; providing for  
17 direct care and indirect care subcomponents;  
18 providing for cost reporting; amending s.  
19 430.708, F.S.; deleting a provision relating to  
20 certificate-of-need calculations for nursing  
21 home beds pursuant to Medicaid community  
22 diversion pilot projects; amending s. 430.709,  
23 F.S.; providing requirements for contracts for  
24 independent evaluation of long-term care  
25 community diversion projects; transferring  
26 responsibility from the Department of Elderly  
27 Affairs to the agency; requiring reports to the  
28 agency and Legislature; amending s. 435.04,  
29 F.S.; deleting obsolete language; amending s.  
30 464.201, F.S.; revising definition of "approved  
31 training program" for nursing assistants;

1 amending s. 464.2085, F.S.; directing the  
2 Council on Certified Nursing Assistants to  
3 develop advanced competency designations for  
4 certified nursing assistants; amending ss.  
5 101.655, 397.405, and 400.0069, F.S.;  
6 correcting cross references; directing the  
7 Board of Nursing to provide for commendation of  
8 certain professional nurses; requiring the  
9 Auditor General develop a standard chart of  
10 accounts for Medicaid long-term care provider  
11 cost reporting; requiring implementation by the  
12 agency by a specified date; providing  
13 appropriations; providing effective dates.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Present subsection (6) of section 400.0073,  
18 Florida Statutes, is amended, present subsections (5) and (6)  
19 are renumbered as subsections (7) and (8), respectively, and  
20 new subsections (5) and (6) are added to said section, to  
21 read:

22 400.0073 State and local ombudsman council  
23 investigations.--

24 (5) Each time a member of an ombudsman council is in a  
25 nursing home facility, the ombudsman shall verify, record, and  
26 report to the Office of the State Long-Term Care Ombudsman the  
27 number of certified nursing assistants, the number of licensed  
28 practical nurses, and the number of registered nurses on duty,  
29 the date and time of the visit, and the facility census at  
30 that time. The Office of the State Long-Term Care Ombudsman  
31 shall maintain a record of each such ombudsman report in a

1 database, which record shall be reported to the Legislature  
2 quarterly beginning on October 1, 2001.

3 (6) Each time a member of an ombudsman council is in a  
4 nursing home facility, the ombudsman shall determine whether  
5 the facility is in compliance with s. 400.23(3)(a) relating to  
6 daily posting of staff on duty. The ombudsman shall  
7 immediately report to the agency failure by the nursing home  
8 to comply with this requirement.

9 (8)(6) An inspection may not be accomplished by  
10 forcible entry. Refusal of a long-term care facility to allow  
11 entry of any ombudsman council member constitutes a violation  
12 of part II, part III, or part VII of this chapter. Refusal to  
13 allow entry to any ombudsman council member constitutes a  
14 class I deficiency under part II or part III of this chapter.

15 Section 2. Section 400.021, Florida Statutes, is  
16 amended to read:

17 400.021 Definitions.--When used in this part, unless  
18 the context otherwise requires, the term:

19 (1) "Administrator" means the person licensed under  
20 part II of chapter 468 individual who has the general  
21 administrative charge of a facility.

22 (2) "Agency" means the Agency for Health Care  
23 Administration, which is the licensing agency under this part.

24 (3) "Bed reservation policy" means the number of  
25 consecutive days and the number of days per year that a  
26 resident may leave the nursing home facility for overnight  
27 therapeutic visits with family or friends or for  
28 hospitalization for an acute condition before the licensee may  
29 discharge the resident due to his or her absence from the  
30 facility.

31

1           (4) "Board" means the Board of Nursing Home  
2 Administrators.

3           (5) "Controlling interest" means the license  
4 applicant; any person or entity who serves as an officer, is  
5 on the board of directors, or has a 5 percent or greater  
6 ownership interest in the applicant; or any person or entity  
7 who serves as an officer, is on the board of directors, or has  
8 a 5 percent or greater ownership interest in a management  
9 company or other entity, related or unrelated, that the  
10 applicant may contract with to operate the facility.  
11 Controlling interest does not include a voluntary board  
12 member.

13           ~~(6)(5)~~ "Custodial service" means care for a person  
14 which entails observation of diet and sleeping habits and  
15 maintenance of a watchfulness over the general health, safety,  
16 and well-being of the aged or infirm.

17           ~~(7)(6)~~ "Department" means the Department of Children  
18 and Family Services.

19           ~~(8)(7)~~ "Facility" means any institution, building,  
20 residence, private home, or other place, whether operated for  
21 profit or not, including a place operated by a county or  
22 municipality, which undertakes through its ownership or  
23 management to provide for a period exceeding 24-hour nursing  
24 care, personal care, or custodial care for three or more  
25 persons not related to the owner or manager by blood or  
26 marriage, who by reason of illness, physical infirmity, or  
27 advanced age require such services, but does not include any  
28 place providing care and treatment primarily for the acutely  
29 ill. A facility offering services for fewer than three persons  
30 is within the meaning of this definition if it holds itself  
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1 out to the public to be an establishment which regularly  
2 provides such services.

3 ~~(9)(8)~~ "Geriatric outpatient clinic" means a site for  
4 providing outpatient health care to persons 60 years of age or  
5 older, which is staffed by a registered nurse or a physician  
6 assistant.

7 ~~(10)(9)~~ "Geriatric patient" means any patient who is  
8 60 years of age or older.

9 ~~(11)(10)~~ "Local ombudsman council" means a local  
10 long-term care ombudsman council established pursuant to s.  
11 400.0069, ~~located within the Older Americans Act planning and~~  
12 ~~service areas.~~

13 (12) "Nursing home ~~facility~~" means any facility which  
14 provides nursing services ~~as defined in part I of chapter 464~~  
15 and which is licensed according to this part.

16 ~~(13)(11)~~ "Nursing home bed" or "bed" means an  
17 accommodation which is ready for immediate occupancy, or is  
18 capable of being made ready for occupancy within 48 hours,  
19 excluding provision of staffing; and which conforms to minimum  
20 space requirements, including the availability of appropriate  
21 equipment and furnishings within the 48 hours, as specified by  
22 rule of the agency, for the provision of services specified in  
23 this part to a single resident.

24 ~~(14)(13)~~ "Nursing service" means such services or acts  
25 as may be rendered, directly or indirectly, to and in behalf  
26 of a person by individuals licensed under part I of chapter  
27 464 as defined in s. 464.003.

28 ~~(15)(14)~~ "Planning and service area" means the  
29 geographic area in which the Older Americans Act programs are  
30 administered and services are delivered by the Department of  
31 Elderly Affairs.

1           ~~(16)(15)~~ "Respite care" means admission to a nursing  
2 home for the purpose of providing a short period of rest or  
3 relief or emergency alternative care for the primary caregiver  
4 of an individual receiving care at home who, without  
5 home-based care, would otherwise require institutional care.

6           ~~(17)(16)~~ "Resident care plan" means a written plan  
7 developed, maintained, and reviewed not less than quarterly by  
8 a registered nurse, with participation from other facility  
9 staff and the resident or his or her designee or legal  
10 representative, which includes a comprehensive assessment of  
11 the needs of an individual resident, a listing of services  
12 provided within or outside the facility to meet those needs,  
13 and an explanation of service goals.

14           ~~(18)(17)~~ "Resident designee" means a person, other  
15 than the owner, administrator, or employee of the facility,  
16 designated in writing by a resident or a resident's guardian,  
17 if the resident is adjudicated incompetent, to be the  
18 resident's representative for a specific, limited purpose.

19           ~~(19)(18)~~ "State ombudsman council" means the State  
20 Long-Term Care Ombudsman Council established pursuant to s.  
21 400.0067.

22           ~~(20)~~ "Voluntary board member" means a director of a  
23 not-for-profit corporation or organization who serves solely  
24 in a voluntary capacity for the corporation or organization,  
25 receives no remuneration for his or her services on the board  
26 of directors, and has no financial interest in the corporation  
27 or organization. A person shall be recognized by the agency as  
28 a voluntary board member upon submission of a statement, on a  
29 form provided by the agency, affirming that the requirements  
30 of this subsection are satisfied by the director and the  
31 not-for-profit corporation or organization.

1           Section 3. Effective January 1, 2002, section  
2 400.0223, Florida Statutes, is created to read:

3           400.0223 Resident's right to have electronic  
4 monitoring devices; requirements; penalties.--

5           (1) A nursing home facility shall permit a resident or  
6 legal representative of the resident to monitor the resident  
7 through the use of electronic monitoring devices in the  
8 resident's room. For the purposes of this section, "electronic  
9 monitoring device" includes a video surveillance camera, an  
10 audio device, a video telephone, and an Internet video  
11 surveillance device.

12           (2) A nursing home facility shall require the resident  
13 or legal representative to post a notice on the door of the  
14 resident's room where an electronic monitoring device is in  
15 use. The notice must state that the room is being monitored by  
16 an electronic monitoring device.

17           (3) Monitoring conducted under this section shall:

18           (a) Be noncompulsory and at the election of the  
19 resident or legal representative of the resident.

20           (b) Be funded by the resident or legal representative  
21 of the resident.

22           (c) Protect the privacy rights of other residents and  
23 visitors to the nursing home facility to the extent reasonably  
24 possible.

25           (4) It shall be a violation of this part for a nursing  
26 home facility to refuse to admit an individual to the facility  
27 or to remove a resident from the facility because of a request  
28 for electronic monitoring.

29           (5) A nursing home facility shall make reasonable  
30 physical accommodation for electronic monitoring by providing  
31

1 a reasonably secure place to mount the electronic monitoring  
2 device and access to power sources.

3 (6) A nursing home facility shall inform a resident or  
4 legal representative of the resident's right to electronic  
5 monitoring.

6 (7) A nursing home facility may request a resident or  
7 legal representative to conduct electronic monitoring within  
8 plain view.

9 (8) The facility administrator may require a resident  
10 or legal representative who wishes to install an electronic  
11 monitoring device to make the request in writing.

12 (9) Subject to the Florida Rules of Evidence, a tape  
13 created through the use of electronic monitoring shall be  
14 admissible in either a civil or criminal action brought in a  
15 Florida court.

16 (10)(a) A licensee who operates a nursing home  
17 facility in violation of this section is subject to a fine not  
18 exceeding \$500 per violation per day pursuant to s. 400.102.

19 (b) A person who willfully and without the consent of  
20 a resident or legal representative hampers, obstructs, tampers  
21 with, or destroys an electronic monitoring device or tape  
22 commits a misdemeanor of the first degree, punishable as  
23 provided in s. 775.082 or s. 775.083.

24 Section 4. Effective October 1, 2001, section 400.023,  
25 Florida Statutes, is amended to read:

26 (Substantial rewording of section. See  
27 s. 400.023, F.S., for present text.)

28 400.023 Civil actions to enforce nursing home  
29 residents' rights.--

30 (1)(a) Sections 400.023-400.0242 provide the exclusive  
31 remedy for any civil action against a nursing home licensee,

1 facility owner, facility administrator, or facility staff for  
2 recovery of damages for a nursing home resident's personal  
3 injury, death, or deprivation of the rights specified in s.  
4 400.022, whether based on the common law or on statutory law,  
5 including, but not limited to, an action founded on  
6 negligence, abuse, neglect, exploitation, or a deprivation of  
7 rights specified in s. 400.022. This exclusivity applies to  
8 and includes any claim against an employee, agent, or other  
9 person for whose actions the licensee is alleged to be  
10 vicariously liable and to any management company, parent  
11 corporation, subsidiary, lessor, or other person alleged to be  
12 directly liable to the resident or vicariously liable for the  
13 actions of the licensee or its agent.

14 (b) However, ss. 400.023-400.0242 do not prohibit a  
15 resident or a resident's legal guardian from pursuing any  
16 administrative remedy or injunctive relief available to a  
17 resident as a result of a deprivation of the rights specified  
18 in s. 400.022, whether or not the deprivation of rights  
19 resulted in personal injury to, or the death of, the resident.

20 (c) In addition to the remedies provided in ss.  
21 400.023-400.0242, a resident, a resident's legal guardian, or  
22 the personal representative of the estate of a deceased  
23 resident may pursue an action under s. 415.1111 against a  
24 perpetrator who has been found guilty of, or entered a plea of  
25 guilty or nolo contendere to, any criminal offense set forth  
26 in s. 825.102, s. 825.1025, or s. 825.103.

27 (2) A claim pursuant to ss. 400.023-400.0242 may be  
28 brought by the resident or his or her legal guardian, by a  
29 person or organization acting on behalf of a resident with the  
30 consent of the resident or his or her guardian, or, if the  
31

1 resident has died, the personal representative of the estate  
2 of the deceased resident.

3 (3) In any claim brought pursuant to ss.  
4 400.023-400.0242, the claimant has the burden of proving by a  
5 preponderance of the evidence that:

6 (a) Each defendant had an established duty to the  
7 resident;

8 (b) Each defendant breached that duty;

9 (c) The breach of that duty is the proximate cause of  
10 the personal injury to, or the death of, the resident, or the  
11 proximate cause of the deprivation of the resident's rights  
12 specified in s. 400.022; and

13 (d) The proximate cause of the personal injury, death,  
14 or deprivation of the resident's rights resulted in damages.

15 (4) For purposes of ss. 400.023-400.0242, a licensee  
16 breaches its established duty to the resident when it fails to  
17 provide a standard of care that a reasonably prudent licensee  
18 licensed under this part would have provided to the resident  
19 under similar circumstances. A deprivation of the rights  
20 specified in s. 400.022 or failure to comply with the quality  
21 assurances standards specified in s. 400.118 or s. 400.1413 or  
22 with any other standard or guidelines specified in this part  
23 or any administrative standard or guideline of any state or  
24 federal regulatory agency are evidence of a breach of duty by  
25 the licensee.

26 (5) A licensee shall not be liable for the medical  
27 negligence of any physician rendering care or treatment to the  
28 resident except for the services of a medical director as  
29 required in this part. Nothing in this subsection shall be  
30 construed to protect a licensee from liability for failure to  
31 provide a resident with appropriate observation, assessment,

1 nursing diagnosis, planning, intervention, and evaluation of  
2 care by nursing staff.

3 (6) An action for damages brought under ss.  
4 400.023-400.0242 must be commenced within 2 years after the  
5 date on which the incident giving rise to the action occurred  
6 or within 2 years after the date on which the incident is  
7 discovered, or should have been discovered with the exercise  
8 of due diligence. However, the action may not be commenced  
9 later than 4 years after the date of the incident or  
10 occurrence out of which the cause of action accrued. In any  
11 action covered by this subsection in which it is shown that  
12 fraud, concealment, or intentional misrepresentation of fact  
13 prevented the discovery of the injury, the period of  
14 limitation is extended forward 2 years from the time that the  
15 injury is discovered, or should have been discovered with the  
16 exercise of due diligence, but such period may not in any  
17 event exceed 7 years after the date that the incident giving  
18 rise to the injury occurred.

19 (7) As used in ss. 400.023-400.0242, the term:

20 (a) "Claimant" means any person who is entitled to  
21 recover damages under this part.

22 (b) "Licensee" means the legal entity identified in  
23 the application for licensure under this part which entity is  
24 the licensed operator of the facility. The term also includes  
25 the facility owner, facility administrator, and facility  
26 staff.

27 (c) "Medical expert" means a person duly and regularly  
28 engaged in the practice of his or her profession who holds a  
29 health care professional degree from a university or college  
30 and has had special professional training and experience, or a  
31 person who possesses special health care knowledge or skill,

1 concerning the subject upon which he or she is called to  
2 testify or provide an opinion.

3 (d) "Resident" means a person who occupies a licensed  
4 bed in a facility licensed under this part.

5 (8) Sections 768.16-768.26 apply to a claim in which  
6 the resident has died as a result of the facility's breach of  
7 an established duty to the resident. In addition to any other  
8 damages, the personal representative may recover on behalf of  
9 the estate pursuant to ss. 768.16-768.26. The personal  
10 representative may also recover on behalf of the estate  
11 noneconomic damages for the resident's pain and suffering from  
12 the time of injury until the time of death.

13 (9) For the purpose of this section, punitive damages  
14 may be awarded for conduct which is willful, wanton, gross or  
15 flagrant, reckless, or consciously indifferent to the rights  
16 of the resident.

17 (10) Discovery of financial information for the  
18 purpose of determining the value of punitive damages may not  
19 be had unless the plaintiff shows the court by proffer or  
20 evidence in the record that a reasonable basis exists to  
21 support a claim for punitive damages.

22 (11) In addition to any other standards for punitive  
23 damages, any award of punitive damages must be reasonable in  
24 light of the actual harm suffered by the resident and the  
25 egregiousness of the conduct that caused the actual harm to  
26 the resident.

27 (12) Any portion of an order, judgment, arbitration  
28 decision, mediation agreement, or other type of agreement,  
29 contract, or settlement that has the purpose or effect of  
30 concealing information relating to the settlement or  
31 resolution of any claim or action brought pursuant to this



1 part is void, contrary to public policy, and may not be  
2 enforced. No court shall enter an order or judgment that has  
3 the purpose or effect of concealing any information pertaining  
4 to the resolution or settlement of any claim or action brought  
5 pursuant to ss. 400.023-400.0242. Any person or governmental  
6 entity has standing to contest an order, judgment, arbitration  
7 decision, mediation agreement, or other type of agreement,  
8 contract, or settlement that violates this subsection. A  
9 contest pursuant to this subsection may be brought by a motion  
10 or an action for a declaratory judgment filed in the circuit  
11 court of the circuit where the violation of this subsection  
12 occurred.

13 (13) The defendant must provide to the agency a copy  
14 of any resolution of a claim or civil action brought pursuant  
15 to ss. 400.023-400.0242 within 90 days after such resolution,  
16 including, but not limited to, any final judgment, arbitration  
17 decision, order, mediation agreement, or settlement. Failure  
18 to provide the copy to the agency shall result in a fine of  
19 \$500 for each day it is overdue. The agency shall develop  
20 forms and adopt rules necessary to administer this subsection.

21 Section 5. Subsections (1) through (11) of section  
22 400.023, Florida Statutes, as amended by this act, shall apply  
23 to causes of action accruing on or after October 1, 2001.  
24 Subsections (12) and (13) of section 400.023, Florida  
25 Statutes, as amended by this act, shall apply to causes of  
26 action in existence on October 1, 2001.

27 Section 6. Effective October 1, 2001, and applicable  
28 to causes of action accruing on or after that date, section  
29 400.0235, Florida Statutes, is created to read:

30 400.0235 Requirements of the presuit process.--Before  
31 filing an action in circuit court under this part, the

1 claimant must engage in the presuit screening process  
2 prescribed in s. 400.0236. If the claim meets the requirements  
3 of s. 400.0236, the claimant must notify each potential  
4 defendant of the claimant's intent to initiate litigation  
5 under this part, at which time the claimant and each potential  
6 defendant must engage in the presuit investigation process  
7 prescribed in s. 400.0237. Upon completion of the presuit  
8 investigation process, either party may offer to engage in  
9 binding arbitration as described in s. 400.0238. If the  
10 parties do not engage in binding arbitration, the claimant may  
11 file an action in circuit court and the provisions of s.  
12 400.0238 shall apply at trial.

13 Section 7. Effective October 1, 2001, and applicable  
14 to causes of action accruing on or after that date, section  
15 400.0236, Florida Statutes, is created to read:

16 400.0236 Presuit screening.--Before issuing a  
17 notification of intent to initiate litigation under s.  
18 400.0237, the claimant must engage in presuit screening to  
19 ascertain that there are reasonable grounds for believing that  
20 a defendant violated the provisions of s. 400.022. If the  
21 claim involves personal injury to, or death of, the resident,  
22 the claimant must obtain a verified written medical opinion  
23 from a medical expert which provides corroboration of  
24 reasonable grounds to initiate litigation under ss.  
25 400.023-400.0242.

26 Section 8. Effective October 1, 2001, and applicable  
27 to causes of action accruing on or after that date, section  
28 400.0237, Florida Statutes, is created to read:

29 400.0237 Presuit investigation.--

30 (1) Upon completing the presuit requirements in s.  
31 400.0236, the claimant shall notify each prospective defendant

1 by certified mail, return receipt requested, of the claimant's  
2 intent to initiate litigation. If the claim involves personal  
3 injury to, or death of, the resident, the notice of intent to  
4 initiate litigation must contain the verified written medical  
5 opinion described in s. 400.0236. Upon receipt of the  
6 claimant's notice of intent to initiate litigation, the  
7 defendant, the defendant's insurer, or the defendant's  
8 self-insurer must conduct a review to determine the liability  
9 of the defendant. The review must be completed within 90 days  
10 after receipt of the notice to initiate litigation and the  
11 suit may not be filed until at least 90 days after the date  
12 the defendant receives notice.

13 (2) The notice of intent to initiate litigation must  
14 be served during the time limits set forth in s. 400.023(6);  
15 however, during the 90-day period the statute of limitations  
16 is tolled as to all potential defendants and, upon written  
17 stipulation by the parties, the 90-day period may be extended,  
18 and the statute of limitations is tolled during any such  
19 extension. Upon completion of the 90-day period, or upon  
20 receiving notice of termination of negotiations during an  
21 extended period, the claimant has 60 days or the remainder of  
22 the period of the statute of limitations, whichever is  
23 greater, within which to file suit.

24 (3) Each defendant, and each insurer or self-insurer  
25 of each defendant, must have a procedure for promptly  
26 investigating, reviewing, and evaluating a claim during the  
27 90-day period. If the defendant rejects the claim and the  
28 claim involves personal injury to, or death of, the resident,  
29 corroboration of lack of reasonable grounds for litigation  
30 under ss. 400.023-400.0242 must be provided by submitting a  
31

1 verified written medical opinion from a medical expert at the  
2 time the response rejecting the claim is mailed.

3 (4) During the 90-day investigation period, each party  
4 shall provide to the other party reasonable access to  
5 information within its possession or control in order to  
6 facilitate evaluation of the claim. Such access shall be  
7 provided without formal discovery, pursuant to s.  
8 766.106(5)-(9), and failure to provide such information is  
9 grounds for dismissal of any applicable claim or defense  
10 ultimately asserted.

11 Section 9. Effective October 1, 2001, and applicable  
12 to causes of action accruing on or after that date, section  
13 400.0238, Florida Statutes, is created to read:

14 400.0238 Voluntary binding arbitration.--

15 (1)(a) Upon the filing of a complaint pursuant to this  
16 section, the parties may elect to have damages determined by  
17 an arbitration panel. Such election may be initiated by  
18 either party by serving a request for voluntary binding  
19 arbitration of damages within 90 days after service of the  
20 complaint upon the defendant. The evidentiary standards for  
21 voluntary binding arbitration as authorized herein shall be as  
22 provided in ss. 120.569(2)(g) and 120.57(1)(c).

23 (b) Upon receipt of a party's request for such  
24 arbitration, the opposing party may accept the offer of  
25 voluntary binding arbitration within 30 days. However, in no  
26 event shall the defendant be required to respond to the  
27 request for arbitration sooner than 90 days after service of  
28 the complaint. Such acceptance within the time period  
29 provided by this paragraph shall be a binding commitment to  
30 comply with the decision of the arbitration panel. The  
31

1 liability of any insurer shall be subject to any applicable  
2 insurance policy limits.

3 (c) The arbitration panel shall be composed of three  
4 arbitrators, one selected by the claimant, one selected by the  
5 defendant, and one an administrative law judge furnished by  
6 the Division of Administrative Hearings who shall serve as the  
7 chief arbitrator. In the event of multiple plaintiffs or  
8 multiple defendants, the arbitrator selected by the side with  
9 multiple parties shall be the choice of those parties. If the  
10 multiple parties cannot reach agreement as to their  
11 arbitrator, each of the multiple parties shall submit a  
12 nominee, and the director of the Division of Administrative  
13 Hearings shall appoint the arbitrator from among such  
14 nominees.

15 (d) The arbitrators shall be independent of all  
16 parties, witnesses, and legal counsel, and no officer,  
17 director, affiliate, subsidiary, or employee of a party,  
18 witness, or legal counsel may serve as an arbitrator in the  
19 proceeding.

20 (e) The rate of compensation for arbitrators other  
21 than the administrative law judge shall be set by the chief  
22 judge of the appropriate circuit court by schedule or as  
23 agreed by the parties. In setting the schedule, the chief  
24 judge shall consider the prevailing rates charged for the  
25 delivery of professional services in the community.

26 (f) Arbitration pursuant to this section shall  
27 preclude recourse to any other remedy by the claimant against  
28 any participating defendant, and shall be undertaken with the  
29 understanding that:

30 1. Net economic damages shall be awardable, including,  
31 but not limited to, past and future medical expenses and 80

1 percent of wage loss and loss of earning capacity, offset by  
2 any collateral source payments.

3 2. Noneconomic damages shall be limited to a maximum  
4 of \$1.5 million per incident.

5 3. Damages for future economic losses shall be awarded  
6 to be paid by periodic payments pursuant to s. 766.202(8) and  
7 shall be offset by future collateral source payments.

8 4. Punitive damages may be awarded by the arbitration  
9 panel for conduct which is willful, wanton, gross or flagrant,  
10 reckless, or consciously indifferent to the rights of the  
11 resident. Upon such finding, the judgment for the total amount  
12 of punitive damages awarded to a claimant may not exceed three  
13 times the amount of compensatory damages awarded to each  
14 person entitled thereto by the arbitrators. Any award of  
15 punitive damages shall be equally divided between the claimant  
16 and the Quality of Long Term Care Facility Improvement Trust  
17 Fund and awarded pursuant to paragraphs (3)(b)-(e).

18 5. The defendant shall be responsible for the payment  
19 of interest on all accrued damages with respect to which  
20 interest would be awarded at trial.

21 6. The defendant shall pay the claimant's reasonable  
22 attorney's fees and costs, as determined by the arbitration  
23 panel, but in no event more than 15 percent of the award,  
24 reduced to present value.

25 7. The defendant shall pay all the costs of the  
26 arbitration proceeding and the fees of all the arbitrators  
27 other than the administrative law judge.

28 8. Each defendant who submits to arbitration under  
29 this section shall be jointly and severally liable for all  
30 damages assessed pursuant to this section.

31

1           9. The defendant's obligation to pay the claimant's  
2 damages shall be for the purpose of arbitration under this  
3 section only. A defendant's or claimant's offer to arbitrate  
4 shall not be used in evidence or in argument during any  
5 subsequent litigation of the claim following the rejection  
6 thereof.

7           10. The fact of making or accepting an offer to  
8 arbitrate shall not be admissible as evidence of liability in  
9 any collateral or subsequent proceeding on the claim.

10           11. Any offer by a claimant to arbitrate must be made  
11 to each defendant against whom the claimant has made a claim.  
12 Any offer by a defendant to arbitrate must be made to each  
13 claimant who has joined in the litigation. A defendant who  
14 rejects a claimant's offer to arbitrate shall be subject to  
15 the provisions of paragraph (2)(c). A claimant who rejects a  
16 defendant's offer to arbitrate shall be subject to the  
17 provisions of paragraph (2)(d).

18           12. The hearing shall be conducted by all of the  
19 arbitrators, but a majority may determine any question of fact  
20 and render a final decision. The chief arbitrator shall  
21 decide all evidentiary matters.

22  
23 The provisions of this paragraph shall not preclude settlement  
24 at any time by mutual agreement of the parties.

25           (g) Any issue between the defendant and the  
26 defendant's insurer or self-insurer as to who shall control  
27 the defense of the claim and any responsibility for payment of  
28 an arbitration award shall be determined under existing  
29 principles of law; provided that the insurer or self-insurer  
30 shall not offer to arbitrate or accept a claimant's offer to  
31 arbitrate without the written consent of the defendant.

1           (h) The Division of Administrative Hearings is  
2 authorized to promulgate rules to effect the orderly and  
3 efficient processing of the arbitration procedures of this  
4 section.

5           (i) Rules promulgated by the Division of  
6 Administrative Hearings pursuant to this section, s. 120.54,  
7 or s. 120.65 may authorize any reasonable sanctions except  
8 contempt for violation of the rules of the division or failure  
9 to comply with a reasonable order issued by an administrative  
10 law judge, which is not under judicial review.

11           (2) The following provisions shall govern when  
12 voluntary binding arbitration is not offered or accepted:

13           (a) A proceeding for voluntary binding arbitration is  
14 an alternative to jury trial and shall not supersede the right  
15 of any party to a jury trial.

16           (b) If neither party requests or agrees to voluntary  
17 binding arbitration, the claim shall proceed to trial or to  
18 any available legal alternative such as offer of and demand  
19 for judgment under s. 768.79 or offer of settlement under s.  
20 45.061.

21           (c) If the defendant refuses a claimant's offer of  
22 voluntary binding arbitration:

23           1. The claim shall proceed to trial without limitation  
24 on damages, and the claimant, upon proving a violation of s.  
25 400.022, shall be entitled to recover prejudgment interest,  
26 and reasonable attorney's fees up to 25 percent of the award  
27 reduced to present value.

28           2. The claimant's award at trial shall be reduced by  
29 any damages recovered by the claimant from arbitrating  
30 codefendants following arbitration.

31



1           (d) If the claimant rejects a defendant's offer to  
2 enter voluntary binding arbitration:

3           1. The damages awardable at trial shall be limited to  
4 net economic damages, plus noneconomic damages not to exceed  
5 \$2 million per incident and to punitive damages pursuant to s.  
6 768.735(1) and (2)(a), (c), and (d). The Legislature expressly  
7 finds that such conditional limit on noneconomic damages is  
8 warranted by the claimant's refusal to accept arbitration, and  
9 represents an appropriate balance between the interests of all  
10 residents who ultimately pay for nursing home facility  
11 liability losses and the interests of those residents who are  
12 injured as a result of nursing home facility liability.

13           2. Net economic damages reduced to present value shall  
14 be awardable, including, but not limited to, past and future  
15 medical expenses and 80 percent of wage loss and loss of  
16 earning capacity, offset by any collateral source payments.

17           3. Damages for future economic losses shall be awarded  
18 to be paid by periodic payments pursuant to s. 766.202(8), and  
19 shall be offset by future collateral source payments.

20           (e) Jury trial shall proceed in accordance with  
21 existing principles of law.

22           (3) Notwithstanding any other law to the contrary,  
23 punitive damages may not exceed three times the amount of  
24 compensatory damages awarded to each person entitled thereto  
25 by the trier of fact and the amount shall be equally divided  
26 between the claimant and the Quality of Long-Term Care  
27 Facility Improvement Trust Fund, in accordance with the  
28 following provisions:

29           (a) The clerk of the court shall transmit a copy of  
30 the jury verdict to the State Treasurer by certified mail. In  
31

1 the final judgment the court shall order the percentages of  
2 the award, payable as provided herein.

3 (b) A settlement agreement entered into between the  
4 original parties to the action after a verdict has been  
5 returned must provide a proportionate share payable to the  
6 Quality of Long-Term Care Facility Improvement Trust Fund  
7 specified herein. For purposes of this subsection, a  
8 proportionate share is a 50-percent share of that percentage  
9 of the settlement amount which the punitive damages portion of  
10 the verdict bore to the total of the compensatory and punitive  
11 damages in the verdict.

12 (c) The Department of Banking and Finance shall  
13 collect or cause to be collected all payments due the state  
14 under this section. Such payments are made to the Comptroller  
15 and deposited in the appropriate fund specified in this  
16 subsection.

17 (d) If the full amount of punitive damages awarded  
18 cannot be collected, the claimant and the other recipient  
19 designated pursuant to this subsection are each entitled to a  
20 proportionate share of the punitive damages collected.

21 (e) Claimant's attorney's fees, if payable from the  
22 judgment, are, to the extent that they are based on the  
23 punitive damages, calculated based only on the portion of the  
24 judgment payable to the claimant as provided in this  
25 subsection. Nothing herein limits the payment of attorney's  
26 fees based upon the award of damages other than punitive  
27 damages.

28 Section 10. Effective October 1, 2001, and applicable  
29 to causes of action accruing on or after that date, section  
30 400.0239, Florida Statutes, is created to read:

31 400.0239 Arbitration to allocate responsibility.--

1       (1) This section applies when more than one defendant  
2 has participated in voluntary binding arbitration pursuant to  
3 s. 400.0238.

4       (2) Within 20 days after the determination of damages  
5 by the arbitration panel in the first arbitration proceeding,  
6 those defendants who have agreed to voluntary binding  
7 arbitration shall submit any dispute among them regarding the  
8 apportionment of financial responsibility to a separate  
9 binding arbitration proceeding. Such proceeding shall be with  
10 a panel of three arbitrators, which panel shall consist of the  
11 chief arbitrator who presided in the first arbitration  
12 proceeding, who shall serve as the chief arbitrator, and two  
13 arbitrators appointed by the defendants. If the defendants  
14 cannot agree on their selection of arbitrators within 20 days  
15 after the determination of damages by the arbitration panel in  
16 the first arbitration proceeding, selection of the arbitrators  
17 shall be in accordance with chapter 682.

18       (3) The chief arbitrator shall convene the arbitrators  
19 for the purpose of determining allocation of responsibility  
20 among multiple defendants within 65 days after the  
21 determination of damages by the arbitration panel in the first  
22 arbitration proceeding.

23       (4) The arbitration panel shall allocate financial  
24 responsibility among all defendants named in the notice of  
25 intent to initiate litigation, regardless of whether the  
26 defendant has submitted to arbitration. The defendants in the  
27 arbitration proceeding shall pay their proportionate share of  
28 the economic and noneconomic damages awarded by the  
29 arbitration panel. All defendants in the arbitration  
30 proceeding shall be jointly and severally liable for any  
31 damages assessed in arbitration. The determination of the

1 percentage of fault of any defendant not in the arbitration  
2 proceeding is not binding against the plaintiff or that  
3 defendant, and is not admissible in any subsequent legal  
4 proceeding.

5 (5) Payment by the defendants of the damages awarded  
6 by the arbitration panel in the first arbitration proceeding  
7 shall extinguish those defendants' liability to the claimant  
8 and shall also extinguish those defendants' liability for  
9 contribution to any defendants who did not participate in  
10 arbitration.

11 (6) Any defendant paying damages assessed under this  
12 section or s. 400.0238 shall have an action for contribution  
13 against any nonarbitrating person whose negligence contributed  
14 to the injury.

15 Section 11. Effective October 1, 2001, and applicable  
16 to causes of action accruing on or after that date, section  
17 400.024, Florida Statutes, is created to read:

18 400.024 Misarbitration.--

19 (1) At any time during the course of voluntary binding  
20 arbitration of a claim under s. 400.0238, the chief arbitrator  
21 on the arbitration panel, if he or she determines that  
22 agreement cannot be reached, may dissolve the arbitration  
23 panel and appoint two new arbitrators from lists of three to  
24 five names provided by each party to the arbitration. Not more  
25 than one arbitrator shall be appointed from the list provided  
26 by any party.

27 (2) Upon appointment of the new arbitrators,  
28 arbitration shall proceed at the direction of the chief  
29 arbitrator in accordance with ss. 400.0238-400.0242.

30 (3) At any time after the allocation arbitration  
31 hearing under s. 400.0239 has concluded, the chief arbitrator

1 on the arbitration panel may dissolve the arbitration panel  
2 and declare the proceedings concluded if he or she determines  
3 that agreement cannot be reached.

4 Section 12. Effective October 1, 2001, and applicable  
5 to causes of action accruing on or after that date, section  
6 400.0241, Florida Statutes, is created to read:

7 400.0241 Payment of arbitration award.--

8 (1) Within 20 days after the determination of damages  
9 by the arbitration panel pursuant to s. 400.0238, the  
10 defendant shall:

11 (a) Pay the arbitration award, including interest at  
12 the legal rate, to the claimant; or

13 (b) Submit any dispute among multiple defendants to  
14 arbitration as provided in s. 400.0239.

15 (2) Commencing 90 days after the award rendered in the  
16 arbitration procedure under s. 400.0238, such award shall  
17 accrue interest at the rate of 18 percent per year.

18 Section 13. Effective October 1, 2001, and applicable  
19 to causes of action accruing on or after that date, section  
20 400.0242, Florida Statutes, is created to read:

21 400.0242 Appeal of arbitration award.--

22 (1) An arbitration award and an allocation of  
23 financial responsibility are final agency action for purposes  
24 of s. 120.68. Any appeal must be filed in the district court  
25 of appeal for the district in which the arbitration took  
26 place, is limited to review of the record, and must otherwise  
27 proceed in accordance with s. 120.68. The amount of an  
28 arbitration award or an order allocating financial  
29 responsibility, the evidence in support of either, and the  
30 procedure by which either is determined are subject to

31

1 judicial scrutiny only in a proceeding instituted under this  
2 subsection.

3 (2) An appeal does not operate to stay an arbitration  
4 award, and an arbitration panel, member of an arbitration  
5 panel, or circuit court shall not stay an arbitration award.  
6 The district court of appeal may order a stay to prevent  
7 manifest injustice, but the court shall not abrogate the  
8 provisions of s. 400.0241(2).

9 (3) Any party to an arbitration proceeding may enforce  
10 an arbitration award or an allocation of financial  
11 responsibility by filing a petition in the circuit court for  
12 the circuit in which the arbitration took place. A petition  
13 may not be granted unless the time for appeal has expired. If  
14 an appeal has been taken, a petition may not be granted with  
15 respect to an arbitration award or an allocation of financial  
16 responsibility which has been stayed.

17 (4) If the petitioner establishes the authenticity of  
18 the arbitration award or the allocation of financial  
19 responsibility, shows that the time for appeal has expired,  
20 and demonstrates that no stay is in place, the court shall  
21 enter such orders and judgments as are required to carry out  
22 the terms of the arbitration award or allocation of financial  
23 responsibility. Such orders are enforceable by the contempt  
24 powers of the court, and execution will issue, upon the  
25 request of a party, for such judgments.

26 Section 14. Section 400.0245, Florida Statutes, is  
27 created to read:

28 400.0245 Adverse action against employee for  
29 disclosing information of specified nature prohibited;  
30 employee remedy and relief.--

31

1           (1) SHORT TITLE.--This section may be cited as the  
2 "Nursing Home Facility Whistleblower's Act."

3           (2) LEGISLATIVE INTENT.--It is the intent of the  
4 Legislature to prevent nursing home facilities or independent  
5 contractors from taking retaliatory action against an employee  
6 who reports to an appropriate person or agency violations of  
7 law on the part of a facility or independent contractor that  
8 create a substantial and specific danger to a nursing home  
9 facility resident's health, safety, or welfare. It is further  
10 the intent of the Legislature to prevent nursing home  
11 facilities or independent contractors from taking retaliatory  
12 action against any person who discloses information to an  
13 appropriate agency alleging improper use of or gross waste of  
14 governmental funds, or any other abuse or gross neglect of  
15 duty on the part of a nursing home facility.

16           (3) DEFINITIONS.--As used in this section, unless  
17 otherwise specified, the following words or terms shall have  
18 the meanings indicated:

19           (a) "Adverse personnel action" means the discharge,  
20 suspension, transfer, or demotion of any employee or the  
21 withholding of bonuses, the reduction in salary or benefits,  
22 or any other adverse action taken against an employee within  
23 the terms and conditions of employment by a nursing home  
24 facility or independent contractor.

25           (b) "Agency" means any state, regional, county, local,  
26 or municipal government entity, whether executive, judicial,  
27 or legislative; or any official, officer, department,  
28 division, bureau, commission, authority, or political  
29 subdivision thereof.

30           (c) "Employee" means a person who performs services  
31 for, and under the control and direction of, or contracts

1 with, a nursing home facility or independent contractor for  
2 wages or other remuneration.

3 (d) "Gross mismanagement" means a continuous pattern  
4 of managerial abuses, wrongful or arbitrary and capricious  
5 actions, or fraudulent or criminal conduct which may have a  
6 substantial adverse economic impact.

7 (e) "Independent contractor" means a person who is  
8 engaged in any business and enters into a contract with a  
9 nursing home facility.

10 (4) ACTIONS PROHIBITED.--

11 (a) A nursing home facility or an independent  
12 contractor shall not dismiss, discipline, or take any other  
13 adverse personnel action against an employee for disclosing  
14 information pursuant to the provisions of this section.

15 (b) A nursing home facility or an independent  
16 contractor shall not take any adverse action that affects the  
17 rights or interests of a person in retaliation for the  
18 person's disclosure of information under this section.

19 (c) The provisions of this subsection shall not be  
20 applicable when an employee or person discloses information  
21 known by the employee or person to be false.

22 (5) NATURE OF INFORMATION DISCLOSED.--The information  
23 disclosed under this section must include:

24 (a) Any violation or suspected violation of any  
25 federal, state, or local law, rule, or regulation committed by  
26 an employee or agent of a nursing home facility or independent  
27 contractor which creates and presents a substantial and  
28 specific danger to the nursing home facility resident's  
29 health, safety, or welfare.

30 (b) Any act or suspected act of gross mismanagement,  
31 malfeasance, misfeasance, gross waste of public funds, or



1 gross neglect of duty committed by an employee or agent of a  
2 nursing home facility or independent contractor.

3 (6) TO WHOM INFORMATION DISCLOSED.--The information  
4 disclosed under this section must be disclosed to any agency  
5 or Federal Government entity or person designated in s.  
6 400.022(1)(c) having the authority to investigate, police,  
7 manage, or otherwise remedy the violation or act.

8 (7) EMPLOYEES AND PERSONS PROTECTED.--This section  
9 protects employees and persons who disclose information on  
10 their own initiative in a written and signed complaint; who  
11 are requested to participate in an investigation, hearing, or  
12 other inquiry conducted by any agency or Federal Government  
13 entity; who refuse to participate in any adverse action  
14 prohibited by this section; or who initiate a complaint  
15 through any appropriate complaint hotline. No remedy or other  
16 protection under this section applies to any person who has  
17 committed or intentionally participated in committing the  
18 violation or suspected violation for which protection under  
19 this section is being sought.

20 (8) REMEDIES.--Any person protected by this section  
21 may bring a civil action in any court of competent  
22 jurisdiction against a nursing home facility for any action  
23 prohibited by this section.

24 (9) RELIEF.--In any action brought under this section,  
25 the relief may include the following:

26 (a) Reinstatement of the employee to the same position  
27 held before the adverse action was commenced or to an  
28 equivalent position, or reasonable front pay as alternative  
29 relief.

30 (b) Reinstatement of the employee's full fringe  
31 benefits and seniority rights, as appropriate.

1        (c) Compensation, if appropriate, for lost wages, lost  
2 benefits, or other lost remuneration caused by the adverse  
3 action.

4        (d) Payment of reasonable costs, including attorney's  
5 fees, to a substantially prevailing employee, or to the  
6 prevailing employer if the employee filed a frivolous action  
7 in bad faith.

8        (e) Issuance of an injunction, if appropriate, by a  
9 court of competent jurisdiction.

10       (f) Temporary reinstatement to the employee's former  
11 position or to an equivalent position, pending the final  
12 outcome on the complaint, if an employee complains of being  
13 discharged in retaliation for a protected disclosure and if a  
14 court of competent jurisdiction determines that the disclosure  
15 was not made in bad faith or for a wrongful purpose or  
16 occurred after a nursing home facility's or independent  
17 contractor's initiation of a personnel action against the  
18 employee which includes documentation of the employee's  
19 violation of a disciplinary standard or performance  
20 deficiency.

21       (10) DEFENSES.--It shall be an affirmative defense to  
22 any action brought pursuant to this section that the adverse  
23 action was predicated upon grounds other than, and would have  
24 been taken absent, the employee's or person's exercise of  
25 rights protected by this section.

26       (11) EXISTING RIGHTS.--This section does not diminish  
27 the rights, privileges, or remedies of an employee under any  
28 other law or rule or under any collective bargaining agreement  
29 or employment contract.

30       Section 15. Subsections (2) and (5) of section  
31 400.071, Florida Statutes, are amended, subsections (9) and

1 (10) are renumbered as subsections (10) and (11),  
2 respectively, and a new subsection (9) is added to said  
3 section, to read:

4 400.071 Application for license.--

5 (2) The application shall be under oath and shall  
6 contain the following:

7 (a) The name, address, and social security number of  
8 the applicant if an individual; if the applicant is a firm,  
9 partnership, or association, its name, address, and employer  
10 identification number (EIN), and the name and address of any  
11 controlling interest ~~every member; if the applicant is a~~  
12 ~~corporation, its name, address, and employer identification~~  
13 ~~number (EIN), and the name and address of its director and~~  
14 ~~officers and of each person having at least a 5 percent~~  
15 ~~interest in the corporation; and the name by which the~~  
16 facility is to be known.

17 (b) The name of any person whose name is required on  
18 the application under the provisions of paragraph (a) and who  
19 owns at least a 10 percent interest in any professional  
20 service, firm, association, partnership, or corporation  
21 providing goods, leases, or services to the facility for which  
22 the application is made, and the name and address of the  
23 professional service, firm, association, partnership, or  
24 corporation in which such interest is held.

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

28 (d) The name of the person or persons under whose  
29 management or supervision the facility will be conducted and  
30 the name of its licensed administrator.

31

1        (e) A signed affidavit disclosing any financial or  
2 ownership interest that a person or entity described in  
3 paragraph (a) or paragraph (d) has held in the last 5 years in  
4 any entity licensed by this state or any other state to  
5 provide health or residential care, which entity has closed  
6 voluntarily or involuntarily, and the reason for the closure;  
7 has filed bankruptcy; has had a receiver appointed or a  
8 license denied, suspended, or revoked; or has had an  
9 injunction issued against it which was initiated by a  
10 regulatory agency.

11        ~~(f)(e)~~ The total number of beds and the total number  
12 of Medicare and Medicaid certified beds.

13        ~~(g)(f)~~ Information relating to the number, experience,  
14 and training of the employees of the facility ~~and of the moral~~  
15 ~~character of the applicant and employees which the agency~~  
16 ~~requires by rule, including the name and address of any~~  
17 nursing home with which the applicant or employees have been  
18 affiliated through ownership or employment within 5 years of  
19 the date of the application for a license ~~and the record of~~  
20 ~~any criminal convictions involving the applicant and any~~  
21 ~~criminal convictions involving an employee if known by the~~  
22 ~~applicant after inquiring of the employee.~~ The applicant must  
23 demonstrate that sufficient numbers of qualified staff, by  
24 training or experience, will be employed to properly care for  
25 the type and number of residents who will reside in the  
26 facility.

27        ~~(h)(g)~~ Copies of any settlement entered into by the  
28 applicant or any civil verdict or judgment involving the  
29 applicant, rendered within the 10 years preceding the  
30 application, relating to medical negligence, violation of  
31 residents' rights, or wrongful death. As a condition of

1 licensure, the licensee agrees to provide to the agency copies  
2 of any new ~~settlement, verdict, or~~ judgment involving the  
3 applicant, relating to such matters, within 30 days after  
4 filing with the clerk of the court. The information required  
5 in this paragraph shall be maintained in the facility's  
6 licensure file and in an agency database which is available as  
7 a public record.

8 (5) The applicant shall furnish satisfactory proof of  
9 financial ability to operate ~~and conduct~~ the nursing home in  
10 accordance with the requirements of this part and all rules  
11 adopted under this part, and the agency shall establish  
12 standards for this purpose, including standards for the  
13 information required to be reported pursuant to paragraph  
14 (2)(e). The agency also shall establish documentation  
15 requirements, to be completed by each applicant, that show  
16 anticipated facility revenues and expenditures, the basis for  
17 financing the anticipated cash-flow requirements of the  
18 facility, and an applicant's access to contingency financing.

19 (9) Effective on the effective date of this section,  
20 as a condition of licensure, each facility must establish and  
21 submit with its application a plan for quality assurance and  
22 for conducting risk management.

23 Section 16. Subsection (1) of section 400.102, Florida  
24 Statutes, is amended to read:

25 400.102 Action by agency against licensee; grounds.--

26 (1) Any of the following conditions shall be grounds  
27 for action by the agency against a licensee:

28 (a) An intentional or negligent act materially  
29 affecting the health or safety of residents of the facility;

30 (b) Misappropriation or conversion of the property of  
31 a resident of the facility;

1 (c) Failure to follow the criteria and procedures  
2 provided under part I of chapter 394 relating to the  
3 transportation, voluntary admission, and involuntary  
4 examination of a nursing home resident;

5 (d) Violation of provisions of this part or rules  
6 adopted under this part; ~~or~~

7 (e) Fraudulent altering, defacing, or falsifying any  
8 medical or other nursing home record, or causing or procuring  
9 any of these offenses to be committed;

10 (f) A demonstrated pattern of deficient practices;

11 (g) Failure to pay any outstanding fines assessed by  
12 final agency order or fines assessed by the Health Care  
13 Financing Administration pursuant to requirements for federal  
14 Medicare certification;

15 (h) Exclusion from the Medicare or Medicaid programs;  
16 or

17 (i)~~(e)~~ Any act constituting a ground upon which  
18 application for a license may be denied.

19 (2) If the agency has reasonable belief that any of  
20 such conditions exist, it shall take the following action:

21 (a) In the case of an applicant for original  
22 licensure, denial action as provided in s. 400.121.

23 (b) In the case of an applicant for relicensure or a  
24 current licensee, administrative action as provided in s.  
25 400.121 or injunctive action as authorized by s. 400.125.

26 (c) In the case of a facility operating without a  
27 license, injunctive action as authorized in s. 400.125.

28 Section 17. Subsections (2) and (3) of section  
29 400.118, Florida Statutes, are renumbered as subsections (3)  
30 and (4), respectively, a new subsection (2) is added to said  
31

1 section, and subsections (5) through (11) are added to said  
2 section, to read:

3 400.118 Quality assurance; early warning system;  
4 monitoring; rapid response teams.--

5 (2) Each time a staff person of the agency is in a  
6 nursing home facility, the staff person shall verify, record,  
7 and report to the agency the number of certified nursing  
8 assistants, the number of licensed practical nurses, and the  
9 number of registered nurses on duty. The staff person shall  
10 report the date and time of the visit, and the facility census  
11 at that time, to the agency.

12 (5) Each resident must have a comprehensive  
13 assessment, and a plan of care developed by a  
14 multidisciplinary team based on that assessment. The plan of  
15 care must specify the type and frequency of services required  
16 to provide the necessary care to attain or maintain the  
17 highest practicable physical, mental, and psychosocial well  
18 being, in accordance with the comprehensive assessment. The  
19 plan of care must be reviewed and signed by the director of  
20 nursing, who shall attest to its adequacy and appropriateness.

21 (6) The nursing home must ensure that:

22 (a) A resident's abilities in activities of daily  
23 living do not diminish unless circumstances of the  
24 individual's clinical condition demonstrate that diminution  
25 was unavoidable. These abilities include the resident's  
26 ability to bathe, dress, and groom; transfer and ambulate;  
27 toilet; eat; and use speech, language, or other functional  
28 communication systems.

29 (b) A resident is given the appropriate treatment and  
30 services to maintain or improve his or her abilities as  
31 specified in paragraph (a).

1        (c) A resident who is unable to carry out activities  
2 of daily living receives the necessary services to maintain  
3 good nutrition, grooming, and personal and oral hygiene.

4        (d) A resident who enters the facility without  
5 pressure sores does not develop pressure sores, unless the  
6 individual's clinical condition demonstrates that they were  
7 unavoidable; and that a resident who has pressure sores  
8 receives the treatment necessary to promote healing, prevent  
9 infection, and prevent new sores from developing.

10       (e) A resident who enters the facility without an  
11 indwelling catheter is not catheterized, unless the resident's  
12 clinical condition demonstrates that catheterization was  
13 necessary; and that a resident who is incontinent of bladder  
14 receives appropriate treatment and services to prevent urinary  
15 tract infections and to restore as much normal bladder  
16 function as possible.

17       (f) A resident who enters the facility without a  
18 limited range of motion does not experience reduction in range  
19 of motion, unless the resident's clinical condition  
20 demonstrates that a reduction in range of motion is  
21 unavoidable; and a resident with a limited range of motion  
22 receives appropriate treatment and services to increase range  
23 of motion or to prevent further decrease in range of motion.

24       (g) A resident who displays mental or psychosocial  
25 adjustment difficulty receives appropriate treatment and  
26 services to correct the assessed problem; and that a resident  
27 whose assessment did not reveal a mental or psychosocial  
28 adjustment difficulty does not display a pattern of decreased  
29 social interaction or increased withdrawn, angry, or  
30 depressive behaviors, unless the resident's clinical condition  
31 demonstrates that such a pattern was unavoidable.



1       (h) A resident who has been able to eat enough alone  
2 or with assistance is not fed by nasogastric tube, unless the  
3 resident's clinical condition demonstrates that use of a  
4 nasogastric tube was unavoidable; and that a resident who is  
5 fed by a nasogastric or gastrostomy tube receives the  
6 appropriate treatment and services to prevent aspiration  
7 pneumonia, diarrhea, vomiting, dehydration, metabolic  
8 abnormalities, and nasal-pharyngeal ulcers and to restore, if  
9 possible, normal eating skills.

10       (i) Each resident receives adequate supervision and  
11 assistance devices to prevent accidents.

12       (j) A resident maintains acceptable parameters of  
13 nutritional status, such as body weight and protein levels,  
14 unless the resident's clinical condition demonstrates that  
15 this is not possible, and receives a therapeutic diet when  
16 there is a nutritional problem.

17       (k) Each resident is provided sufficient fluid intake  
18 to maintain proper hydration and health.

19       (l) Each resident who exhibits any signs of dementia  
20 or cognitive impairment is examined by a licensed physician to  
21 rule out the presence of an underlying physiological condition  
22 that may be contributing to such signs. The examination must  
23 occur within 7 days after admission of the resident to the  
24 facility or within 7 days after such signs have first been  
25 observed by any facility staff. If an underlying physical  
26 condition is determined to exist, it is the facility's  
27 responsibility to provide the necessary care and services to  
28 treat the condition.

29       (7) A resident who has not been adjudged incapacitated  
30 shall be assisted to participate in the planning of all  
31 medical treatment and in the development of the plan of care.

1       (8) A resident who refuses medication, treatment, or  
2 other components of the plan of care shall be advised of the  
3 potential consequences of such actions. The resident's refusal  
4 shall be documented in the medical record.

5       (9) The legal representative of a resident who has  
6 been adjudged incapacitated and unable to make decisions about  
7 medication, treatment, or other components of the plan of care  
8 must be informed in writing of the resident's proposed plan of  
9 care and the consequences of refusal of medication, treatment,  
10 or other components of the plan of care.

11       (10) If a resident refuses medication, treatment, or  
12 other components of the plan of care, the nursing home  
13 facility must continue to provide other services that the  
14 resident agrees to, in accordance with the resident's plan of  
15 care.

16       (11) All refusals of medication, treatment, or other  
17 components of the plan of care by the resident or his or her  
18 legal representative shall be acknowledged in writing and  
19 signed by the resident's physician.

20       Section 18. Section 400.1183, Florida Statutes, is  
21 created to read:

22       400.1183 Resident grievance and complaint procedures.--

23       (1) Every nursing home must have a grievance procedure  
24 available to its residents and their families. The grievance  
25 procedure must include:

26       (a) An explanation of how to pursue redress of a  
27 grievance or complaint.

28       (b) The names, job titles, and telephone numbers of  
29 the employees responsible for implementing the organization's  
30 grievance procedure. The list must include the address and the  
31 toll-free telephone numbers of the ombudsman and the agency.

1           (c) A simple description of the process through which  
2 a resident may, at any time, contact the toll-free telephone  
3 hotline of the ombudsman or the agency to report the  
4 unresolved grievance.

5           (d) A procedure for providing assistance to residents  
6 who cannot prepare a written grievance or complaint without  
7 help.

8           (2) Each facility shall maintain records of all  
9 grievances and shall report annually to the agency the total  
10 number of grievances handled, a categorization of the cases  
11 underlying the grievances, and the final disposition of the  
12 grievances.

13           (3) Each facility must respond to the complaint or  
14 grievance within a reasonable time after its submission.

15           (4) The agency may investigate any complaint or  
16 grievance at any time.

17           (5) The agency may impose an administrative fine, in  
18 accordance with s. 400.121, against a nursing home facility  
19 for noncompliance with this section.

20           Section 19. Subsections (2) and (5) of section  
21 400.121, Florida Statutes, are amended, and subsections (7)  
22 and (8) are added to said section, to read:

23           400.121 Denial, suspension, revocation of license;  
24 moratorium on admissions; administrative fines; procedure;  
25 order to increase staffing.--

26           (1) The agency may deny, revoke, or suspend a license  
27 or impose an administrative fine, not to exceed \$500 per  
28 violation per day, for a violation of any provision of s.  
29 400.102(1). All hearings shall be held within the county in  
30 which the licensee or applicant operates or applies for a  
31 license to operate a facility as defined herein.

1           (2) Except as provided in s. 400.23(8), a \$500 fine  
2 shall be imposed for each violation of this part ~~The agency,~~  
3 ~~as a part of any final order issued by it under this part, may~~  
4 ~~impose such fine as it deems proper, except that such fine may~~  
5 ~~not exceed \$500 for each violation.~~ Each day a violation of  
6 this part occurs constitutes a separate violation and is  
7 subject to a separate fine, but in no event may any fine  
8 aggregate more than \$5,000. A fine may be levied pursuant to  
9 this section in lieu of and notwithstanding the provisions of  
10 s. 400.23. Fines paid ~~by any nursing home facility licensee~~  
11 ~~under this subsection~~ shall be deposited in the Resident  
12 Protection Trust Fund and expended as provided in s. 400.063.

13           (5) An action taken by the agency to deny, suspend, or  
14 revoke a facility's license ~~under this part~~, in which the  
15 agency claims that the facility owner or an employee of the  
16 facility has threatened the health, safety, or welfare of a  
17 resident of the facility, shall be heard by the Division of  
18 Administrative Hearings of the Department of Management  
19 Services within 120 days after receipt of the facility's  
20 request for a hearing, unless the time limitation is waived by  
21 both parties. The administrative law judge must render a  
22 decision within 30 days after receipt of a proposed  
23 recommended order. This subsection does not modify the  
24 requirement that an administrative hearing be held within 90  
25 days after a license is suspended under paragraph (4)(b).

26           (7) The agency shall deny an application based upon  
27 the disclosure of information required in s. 400.071(2)(e) if  
28 such information demonstrates that any controlling interest  
29 has been the subject of adverse action by a regulatory agency,  
30 including the appointment of a receiver, denial, suspension,  
31 or revocation of a license, or the issuance of an injunction

1 by a regulatory agency. If the adverse action solely involves  
2 the management company, the applicant shall be given 30 days  
3 to replace the management company with a company that has not  
4 been the subject of an adverse action as described in this  
5 subsection.

6 (8) Administrative proceedings challenging agency  
7 licensure enforcement actions shall be reviewed on the basis  
8 of the facts and conditions that resulted in the agency  
9 action.

10 Section 20. Section 400.141, Florida Statutes, is  
11 amended to read:

12 400.141 Administration and management of nursing home  
13 facilities.--Every licensed facility shall comply with all  
14 applicable standards and rules of the agency and shall:

15 (1) Be under the administrative direction and charge  
16 of a licensed administrator.

17 (2) Appoint a medical director licensed pursuant to  
18 chapter 458 or chapter 459 who meets the criteria established  
19 by the Florida Medical Directors Association. The agency may  
20 establish by rule more specific criteria for the appointment  
21 of a medical director.

22 (3) Have available the regular, consultative, and  
23 emergency services of physicians licensed by the state.

24 (4) Employ registered nurses and licensed practical  
25 nurses who are responsible for the proper practice of  
26 professional nursing and practical nursing, respectively, in  
27 accordance with chapter 464.

28 (5) Designate as the director of nursing or the  
29 assistant director of nursing persons who have had a least 12  
30 months of experience in nursing service supervision or  
31 administration, and education or work experience beyond the

1 minimum required for licensure in rehabilitative or geriatric  
2 nursing, before assuming responsibility for the total nursing  
3 service program in a nursing home.

4 (6) Designate as the charge nurse on duty a person who  
5 has the ability to recognize and respond to significant  
6 changes in a resident's condition.

7 ~~(7)(4)~~ Provide for resident use of a community  
8 pharmacy as specified in s. 400.022(1)(g). Any other law to  
9 the contrary notwithstanding, a registered pharmacist licensed  
10 in Florida, that is under contract with a facility licensed  
11 under this chapter, shall repackage a nursing facility  
12 resident's bulk prescription medication which has been  
13 packaged by another pharmacist licensed in any state in the  
14 United States into a unit dose system compatible with the  
15 system used by the nursing facility, if the pharmacist is  
16 requested to offer such service. To be eligible for  
17 repackaging, a resident or the resident's spouse must receive  
18 prescription medication benefits provided through a former  
19 employer as part of his or her retirement benefits a qualified  
20 pension plan as specified in s. 4972 of the Internal Revenue  
21 Code, a federal retirement program as specified under 5 C.F.R.  
22 s. 831, or a long-term care policy as defined in s.  
23 627.9404(1). A pharmacist who correctly repackages and  
24 relabels the medication and the nursing facility which  
25 correctly administers such repackaged medication under the  
26 provisions of this subsection shall not be held liable in any  
27 civil or administrative action arising from the repackaging.  
28 In order to be eligible for the repackaging, a nursing  
29 facility resident for whom the medication is to be repackaged  
30 shall sign an informed consent form provided by the facility  
31 which includes an explanation of the repackaging process and

1 which notifies the resident of the immunities from liability  
2 provided herein. A pharmacist who repackages and relabels  
3 prescription medications, as authorized under this subsection,  
4 may charge a reasonable fee for costs resulting from the  
5 implementation of this provision.

6 ~~(8)(5)~~ Provide for the access of the facility  
7 residents to dental and other health-related services,  
8 recreational services, rehabilitative services, and social  
9 work services appropriate to their needs and conditions and  
10 not directly furnished by the licensee. When a geriatric  
11 outpatient nurse clinic is conducted in accordance with rules  
12 adopted by the agency, outpatients attending such clinic shall  
13 not be counted as part of the general resident population of  
14 the nursing home facility, nor shall the nursing staff of the  
15 geriatric outpatient clinic be counted as part of the nursing  
16 staff of the facility, until the outpatient clinic load  
17 exceeds 15 a day.

18 ~~(9)(6)~~ Be allowed and encouraged by the agency to  
19 provide other needed services under certain conditions. If the  
20 facility has a standard licensure status, and has had no class  
21 I or class II deficiencies during the past 2 years or has been  
22 awarded a Gold Seal under the program established in s.  
23 400.235, it may be encouraged by the agency to provide  
24 services, including, but not limited to, respite and adult day  
25 services, which enable individuals to move in and out of the  
26 facility. A facility is not subject to any additional  
27 licensure requirements for providing these services. Respite  
28 care may be offered to persons in need of short-term or  
29 temporary nursing home services. Respite care must be provided  
30 in accordance with this part and rules adopted by the agency.  
31 However, the agency shall, by rule, adopt modified

1 requirements for resident assessment, resident care plans,  
2 resident contracts, physician orders, and other provisions, as  
3 appropriate, for short-term or temporary nursing home  
4 services. The agency shall allow for shared programming and  
5 staff in a facility which meets minimum standards and offers  
6 services pursuant to this subsection, but, if the facility is  
7 cited for deficiencies in patient care, may require additional  
8 staff and programs appropriate to the needs of service  
9 recipients. A person who receives respite care may not be  
10 counted as a resident of the facility for purposes of the  
11 facility's licensed capacity unless that person receives  
12 24-hour respite care. A person receiving either respite care  
13 for 24 hours or longer or adult day services must be included  
14 when calculating minimum staffing for the facility. Any costs  
15 and revenues generated by a nursing home facility from  
16 nonresidential programs or services shall be excluded from the  
17 calculations of Medicaid per diems for nursing home  
18 institutional care reimbursement.

19 (10)~~(7)~~ If the facility has a standard licensure  
20 status or is a Gold Seal facility, exceeds minimum staffing  
21 standards, and is part of a retirement community that offers  
22 other services pursuant to part III, part IV, or part V, be  
23 allowed to share programming and staff. At the time of  
24 relicensure, a retirement community that uses this option must  
25 demonstrate through staffing records that minimum staffing  
26 requirements for the facility were exceeded.

27 (11)~~(8)~~ Maintain the facility premises and equipment  
28 and conduct its operations in a safe and sanitary manner.

29 (12)~~(9)~~ If the licensee furnishes food service,  
30 provide a wholesome and nourishing diet sufficient to meet  
31 generally accepted standards of proper nutrition for its



1 residents and provide such therapeutic diets as may be  
2 prescribed by attending physicians. In making rules to  
3 implement this subsection, the agency shall be guided by  
4 standards recommended by nationally recognized professional  
5 groups and associations with knowledge of dietetics.

6 ~~(13)(10)~~ Keep full records of resident admissions and  
7 discharges; medical and general health status, including  
8 medical records, personal and social history, and identity and  
9 address of next of kin or other persons who may have  
10 responsibility for the affairs of the residents; and  
11 individual resident care plans including, but not limited to,  
12 prescribed services, service frequency and duration, and  
13 service goals. The records shall be open to inspection by the  
14 agency.

15 (14) Maintain in the medical record for each resident  
16 a daily chart of certified nursing assistant services provided  
17 to the resident. This record must be completed  
18 contemporaneously with the delivery of care, by the certified  
19 nursing assistant caring for the resident. This record must  
20 indicate assistance with activities of daily living,  
21 assistance with eating, and assistance with drinking, and must  
22 record each offering of nutrition and hydration for those  
23 residents whose plan of care or assessment indicates a risk  
24 for malnutrition or dehydration.

25 ~~(15)(11)~~ Keep such fiscal records of its operations  
26 and conditions as may be necessary to provide information  
27 pursuant to this part.

28 ~~(16)(12)~~ Furnish copies of personnel records for  
29 employees affiliated with such facility, to any other facility  
30 licensed by this state requesting this information pursuant to  
31 this part. Such information contained in the records may

1 include, but is not limited to, disciplinary matters and any  
2 reason for termination. Any facility releasing such records  
3 pursuant to this part shall be considered to be acting in good  
4 faith and may not be held liable for information contained in  
5 such records, absent a showing that the facility maliciously  
6 falsified such records.

7 ~~(17)(13)~~ Publicly display a poster provided by the  
8 agency containing the names, addresses, and telephone numbers  
9 for the state's abuse hotline, the State Long-Term Care  
10 Ombudsman, the Agency for Health Care Administration consumer  
11 hotline, the Advocacy Center for Persons with Disabilities,  
12 the Florida Statewide Advocacy Council, and the Medicaid Fraud  
13 Control Unit, with a clear description of the assistance to be  
14 expected from each.

15 (18) Submit to the agency information specified in s.  
16 400.071(2) relating to management companies within 30 days  
17 after the effective date of a management agreement.

18 (19) Submit to the agency on February 1 and August 1  
19 of each year and as otherwise requested by the agency  
20 information regarding staff-to-resident ratios, staff  
21 turnover, and staff stability of the facility, with respect to  
22 certified nursing assistants, registered nurses, licensed  
23 nurses, the director of nursing, and the facility  
24 administrator. For purposes of this reporting:

25 (a) Staff-to-resident ratio is based on the  
26 requirements established pursuant to s. 400.23(3)(a) and  
27 applicable rules.

28 (b) Staff turnover shall be calculated from the most  
29 recent 12-month period ending on the 1st workday of the most  
30 recent calendar quarter prior to submission of the  
31 information. The turnover rate must be computed quarterly.

1 with the annual rate being the cumulative sum of the quarterly  
2 rates. The formula to determine the turnover rate shall be the  
3 total number of terminations or separations of nonprobationary  
4 employees from employment divided by the total number of staff  
5 employed at the end of the period for which the rate is  
6 computed, expressed as a percent.

7 (c) Staff turnover shall be reported as one total  
8 figure including staff of all classes and shall be reported by  
9 the following categories: certified nursing assistants,  
10 dietitians, licensed practical nurses, registered nurses,  
11 noncertified nursing assistants working for the allowed 4  
12 months before certification, therapists, social services  
13 staff, recreation staff, activity staff, administrative  
14 support personnel, managers, dietary aides, cooks, maintenance  
15 personnel, custodial personnel, and any other category of  
16 staff necessary for the facility.

17 (20) Report monthly the number of vacant beds in the  
18 facility that are available for resident occupancy on the day  
19 the information is reported.

20  
21 Facilities that have been awarded a Gold Seal under the  
22 program established in s. 400.235 may develop a plan to  
23 provide certified nursing assistant training as prescribed by  
24 federal regulations and state rules and may apply to the  
25 agency for approval of its program.

26 Section 21. Section 400.1413, Florida Statutes, is  
27 created to read:

28 400.1413 Internal risk management and quality  
29 assurance program.--

30 (1) Every licensed facility shall, as part of its  
31 administrative functions, establish an internal risk

1 management and quality assurance program, the purpose of which  
2 is to assess patient care practices, review and act on  
3 facility quality indicators, maintain and review facility  
4 incident reports, correct deficiencies cited by the agency,  
5 resolve resident grievances, and develop plans of action to  
6 correct and respond quickly to identified quality  
7 deficiencies.

8 (2) The internal risk management and quality assurance  
9 program is the responsibility of the facility administrator.

10 (3) The owner of the nursing home shall establish  
11 policies and procedures to implement the internal risk  
12 management and quality assurance program, which includes:

13 (a) The investigation and analysis of the frequency  
14 and causes of general categories and specific types of adverse  
15 incidents involving or affecting residents.

16 (b) The development of appropriate measures to  
17 minimize the risk of adverse incidents to residents,  
18 including, but not limited to:

19 1. Risk management and risk prevention education and  
20 training of all nonphysician personnel as follows:

21 a. Such education and training of all nonphysician  
22 personnel as part of their initial orientation; and

23 b. At least 3 hours of such education and training  
24 annually for all nonphysician personnel in both clinical areas  
25 and provision of resident care.

26 2. The analysis of resident grievances that relate to  
27 resident care and the quality of clinical services.

28 3. The development and implementation of an incident  
29 reporting system based upon the affirmative duty of all health  
30 care providers and all agents and employees of the facility to  
31 report adverse incidents to the risk manager.

1           (4) In addition to the program mandated by this  
2 section, other innovative approaches intended to reduce the  
3 frequency and severity of adverse incidents to residents and  
4 violations of residents' rights shall be encouraged and their  
5 implementation and operation facilitated.

6           (5) Each internal risk management and quality  
7 assurance program shall include the use of incident reports to  
8 be filed with the risk manager and the facility administrator.  
9 The risk manager shall have free access to all medical records  
10 of the licensed facility. As a part of each internal risk  
11 management and quality assurance program, the incident reports  
12 shall be used to develop categories of incidents which  
13 identify problem areas. Once identified, procedures shall be  
14 adjusted to correct the problem areas.

15           (6) The nursing home shall report adverse incidents to  
16 the agency in a timely manner.

17           (7) For purposes of report to the agency pursuant to  
18 this section, the term "adverse incident" means:

19           (a) An event over which facility personnel could  
20 exercise control and which is associated in whole or in part  
21 with clinical intervention, rather than the condition for  
22 which such intervention occurred, and which results in one of  
23 the following injuries:

- 24           1. Death.
- 25           2. Brain or spinal damage.
- 26           3. Permanent disfigurement.
- 27           4. Fracture or dislocation of bones or joints.
- 28           5. A resulting limitation of neurological, physical,  
29 or sensory function.

1           6. Any condition that required medical attention to  
2 which the patient has not given his or her informed consent,  
3 including failure to honor advanced directives.

4           7. Any condition that required the transfer of the  
5 patient, within or outside the facility, to a unit providing a  
6 more acute level of care due to the adverse incident, rather  
7 than the resident's condition prior to the adverse incident.

8           (b) Abuse, neglect, or exploitation as defined in s.  
9 415.102.

10           (c) Resident elopement.

11           (d) Events reported to law enforcement.

12           (8)(a) Each licensed facility subject to this section  
13 shall submit an annual report to the agency on a form  
14 developed by the agency summarizing the incident reports that  
15 have been filed in the facility for that year. The report  
16 shall include:

17           1. The total number of adverse incidents.

18           2. A listing, by category, of the types of adverse  
19 incidents and the number of incidents occurring within each  
20 category.

21           3. Types of liability claims filed based on an adverse  
22 incident or reportable injury.

23           4. Disciplinary action taken against staff,  
24 categorized by type of staff involved.

25           (b) The information reported to the agency pursuant to  
26 paragraph (a) which relates to persons licensed under chapter  
27 458, chapter 459, chapter 461, chapter 464, or chapter 466  
28 shall be reviewed by the agency. The agency shall determine  
29 whether any of the incidents potentially involved conduct by a  
30 health care professional who is subject to disciplinary  
31

1 action, in which case the provisions of s. 456.073 shall  
2 apply.

3 (c) The report submitted to the agency shall also  
4 contain the name of the person responsible for risk management  
5 in the facility.

6 (9)(a) The licensed facility shall notify the agency  
7 within 1 business day after the occurrence of any of the  
8 following:

9 1. The death of a patient.

10 2. Alleged mistreatment of a patient by a certified  
11 nursing assistant or licensed nurse.

12 3. Resident elopement.

13 4. Events reported to law enforcement.

14 (b) The notification must be made in writing and be  
15 provided by facsimile device or overnight mail delivery. The  
16 notification must include information regarding the identity  
17 of the affected resident, the type of adverse incident, the  
18 initiation of an investigation by the facility, and whether  
19 the events causing or resulting in the adverse incident  
20 represent a potential risk to other residents.

21 (c) The agency may investigate, as it deems  
22 appropriate, any such incident and prescribe measures that  
23 must or may be taken in response to the incident. The agency  
24 shall review each incident and determine whether it  
25 potentially involved conduct by the health care professional  
26 who is subject to disciplinary action, in which case the  
27 provisions of s. 456.073 shall apply.

28 (10) The agency shall have access to all licensed  
29 facility records necessary to carry out the provisions of this  
30 section.

31

1       (11) The agency shall review, as part of its licensure  
2 inspection process, the internal risk management and quality  
3 assurance program at each licensed facility regulated by this  
4 section to determine whether the program meets standards  
5 established in statutes and rules, whether the program is  
6 being conducted in a manner designed to reduce the incidence  
7 and severity of adverse incidents, and whether the facility is  
8 reporting adverse incidents as required.

9       (12) There shall be no monetary liability on the part  
10 of, and no cause of action for damages shall arise against,  
11 any risk manager licensed under s. 395.10974, for the  
12 implementation and oversight of the internal risk management  
13 and quality assurance program in a facility licensed under  
14 this chapter as required by this section, or for any act or  
15 proceeding undertaken or performed within the scope of the  
16 functions of such internal risk management and quality  
17 assurance program, if the risk manager acts without  
18 intentional fraud.

19       (13) If the agency, through its receipt of the annual  
20 reports prescribed in this chapter or through any  
21 investigation, has a reasonable belief that conduct by a staff  
22 member or employee of a licensed facility is grounds for  
23 disciplinary action by the appropriate regulatory board, the  
24 agency shall report this fact to such regulatory board.

25       Section 22. Section 400.1415, Florida Statutes, is  
26 amended to read:

27       400.1415 Patient records; penalties for alteration.--

28       (1) Any person who fraudulently alters, defaces, or  
29 falsifies any medical or other nursing home record, or causes  
30 or procures any of these offenses to be committed, commits a  
31 misdemeanor of the second degree, punishable as provided in s.



1 775.082 or s. 775.083. If the agency finds by a preponderance  
2 of evidence that any such offense has occurred at a facility,  
3 the facility shall be subject to a class I citation and fine.  
4 Any person authorized under s. 400.19 to enter a nursing home  
5 facility who detects or reasonably suspects such offense has  
6 occurred must immediately report such information to the local  
7 law enforcement agency and state attorney.

8 (2) A conviction under subsection (1) is also grounds  
9 for restriction, suspension, or termination of license  
10 privileges.

11 (3) The director of nursing and the licensed nursing  
12 home administrator at the facility shall be referred to their  
13 respective licensure boards for disciplinary review when a  
14 staff person is convicted under subsection (1).

15 (4) A conviction or finding by the agency under  
16 subsection (1) is also grounds for an immediate moratorium on  
17 admissions.

18 Section 23. Paragraph (a) of subsection (5) of section  
19 400.191, Florida Statutes, is amended to read:

20 400.191 Availability, distribution, and posting of  
21 reports and records.--

22 (5) Every nursing home facility licensee shall:

23 (a) Post, in a sufficient number of prominent  
24 positions in the nursing home so as to be accessible to all  
25 residents and to the general public:7

26 1. A concise summary of the last inspection report  
27 pertaining to the nursing home and issued by the agency, with  
28 references to the page numbers of the full reports, noting any  
29 deficiencies found by the agency and the actions taken by the  
30 licensee to rectify such deficiencies and indicating in such

31

1 summaries where the full reports may be inspected in the  
2 nursing home.

3 2. A copy of the most recent version of the Florida  
4 Nursing Home Guide Watch List.

5 Section 24. Subsection (2) of section 400.211, Florida  
6 Statutes, is amended, and subsection (4) is added to section,  
7 to read:

8 400.211 Persons employed as nursing assistants;  
9 certification requirement.--

10 (2) The following categories of persons who are not  
11 certified as nursing assistants under part II of chapter 464  
12 may be employed as a nursing assistant by a nursing facility  
13 for a period of 4 months:

14 (a) Persons who are enrolled in, or have completed, a  
15 state-approved nursing assistant program; ~~or~~

16 (b) Persons who have been positively verified as  
17 actively certified and on the registry in another state and  
18 who have not been found to have been convicted of or entered a  
19 plea of nolo contendere or guilty to abuse, neglect, or  
20 exploitation in another state, regardless of adjudication with  
21 no findings of abuse; or

22 (c) Persons who have preliminarily passed the state's  
23 certification exam.

24  
25 The certification requirement must be met within 4 months  
26 after initial employment as a nursing assistant in a licensed  
27 nursing facility.

28 (4) When employed in a nursing home facility for a  
29 12-month period or longer, a certified nursing assistant, to  
30 maintain certification, shall submit to a performance review  
31 every 12 months and shall be given regular inservice education

1 based on the outcome of such review. The inservice training  
2 shall be provided by the facility and must:

3 (a) Be sufficient to ensure the continuing competence  
4 of the certified nursing assistant.

5 (b) Include, at a minimum:

6 1. Assisting residents with eating and proper feeding  
7 techniques.

8 2. Principles of adequate hydration.

9 3. Assisting and responding to the cognitively  
10 impaired residents or residents with difficult behaviors.

11 4. Caring for resident at the end of life.

12 5. Recognizing changes that place a resident at risk  
13 for pressure ulcers and falls.

14 (c) Address areas of weakness as determined in the  
15 certified nursing assistant's performance reviews and may  
16 address the special needs of residents as determined by the  
17 nursing home facility staff.

18 Section 25. Subsections (2), (3), (7), and (8) of  
19 section 400.23, Florida Statutes, are amended, and subsection  
20 (10) is added to said section, to read:

21 400.23 Rules; evaluation and deficiencies; licensure  
22 status.--

23 (2) Pursuant to the intention of the Legislature, the  
24 agency, in consultation with the Department of Health and the  
25 Department of Elderly Affairs, shall adopt and enforce rules  
26 to implement this part, which shall include reasonable and  
27 fair standards and procedures relating ~~criteria in relation~~  
28 to:

29 (a) The location and construction of the facility;  
30 including fire and life safety, plumbing, heating, cooling,  
31 lighting, ventilation, and other housing conditions which will

1 ensure the health, safety, and comfort of residents, including  
2 an adequate call system. The agency shall establish standards  
3 for facilities and equipment to increase the extent to which  
4 new facilities and a new wing or floor added to an existing  
5 facility after July 1, 1999, are structurally capable of  
6 serving as shelters only for residents, staff, and families of  
7 residents and staff, and equipped to be self-supporting during  
8 and immediately following disasters. ~~The agency shall work~~  
9 ~~with facilities licensed under this part and report to the~~  
10 ~~Governor and Legislature by April 1, 1999, its recommendations~~  
11 ~~for cost-effective renovation standards to be applied to~~  
12 ~~existing facilities.~~In making such rules, the agency shall be  
13 guided by criteria recommended by nationally recognized  
14 reputable professional groups and associations with knowledge  
15 of such subject matters. ~~The agency shall update or revise~~  
16 ~~such criteria as the need arises.~~All nursing homes must  
17 comply with those lifesafety code requirements and building  
18 code standards applicable at the time of approval of their  
19 construction plans. The agency may require alterations to a  
20 building if it determines that an existing condition  
21 constitutes a distinct hazard to life, health, or safety. The  
22 agency shall adopt fair and reasonable rules setting forth  
23 conditions under which existing facilities undergoing  
24 additions, alterations, conversions, renovations, or repairs  
25 shall be required to comply with the most recent updated or  
26 revised standards.

27 (b) The number and qualifications of all personnel,  
28 including management, medical, nursing, and other professional  
29 personnel, and nursing assistants, orderlies, and support  
30 personnel, having responsibility for any part of the care  
31 given residents.

1 (c) All sanitary conditions within the facility and  
2 its surroundings, including water supply, sewage disposal,  
3 food handling, and general hygiene which will ensure the  
4 health and comfort of residents.

5 (d) The equipment essential to the health and welfare  
6 of the residents.

7 (e) A uniform accounting system.

8 (f) The care, treatment, and maintenance of residents  
9 and measurement of the quality and adequacy thereof,  
10 consistent with ~~based on rules developed under this chapter~~  
11 ~~and the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.~~  
12 ~~100-203) (December 22, 1987), Title IV (Medicare, Medicaid,~~  
13 ~~and Other Health-Related Programs), Subtitle C (Nursing Home~~  
14 ~~Reform), as amended.~~

15 (g) The preparation and annual update of a  
16 comprehensive emergency management plan. The agency shall  
17 adopt rules establishing minimum criteria for the plan after  
18 consultation with the Department of Community Affairs. At a  
19 minimum, the rules must provide for plan components that  
20 address emergency evacuation transportation; adequate  
21 sheltering arrangements; postdisaster activities, including  
22 emergency power, food, and water; postdisaster transportation;  
23 supplies; staffing; emergency equipment; individual  
24 identification of residents and transfer of records; and  
25 responding to family inquiries. The comprehensive emergency  
26 management plan is subject to review and approval by the local  
27 emergency management agency. ~~During its review, the local~~  
28 ~~emergency management agency shall ensure that the following~~  
29 ~~agencies, at a minimum, are given the opportunity to review~~  
30 ~~the plan: the Department of Elderly Affairs, the Department~~  
31 ~~of Health, the Agency for Health Care Administration, and the~~

1 ~~Department of Community Affairs. Also, appropriate volunteer~~  
2 ~~organizations must be given the opportunity to review the~~  
3 ~~plan. The local emergency management agency shall complete~~  
4 ~~its review within 60 days and either approve the plan or~~  
5 ~~advise the facility of necessary revisions.~~

6 (h) The implementation of the consumer satisfaction  
7 surveys required under s. 400.0225; the availability,  
8 distribution, and posting of reports and records required  
9 under s. 400.191; and the Gold Seal program established under  
10 s. 400.235.

11 (i) An adequate quality assurance process and risk  
12 management procedure.

13 (3)(a)1. The agency shall adopt rules providing for  
14 the minimum staffing requirements for direct care staff  
15 nursing homes. These requirements shall include, for each  
16 nursing home facility, a minimum certified nursing assistant  
17 staffing of 2.9 hours per resident per day, with no single  
18 shift having less than one certified nursing assistant per 15  
19 residents; and a minimum licensed nursing staffing of 1.0 hour  
20 per resident per day, with no single shift having less than  
21 one licensed nurse per 40 residents and 0.5 hours of  
22 registered nurse staffing per resident per day. Each nursing  
23 home shall document, including evening and night shifts and  
24 weekends. Agency rules shall specify requirements for  
25 documentation of compliance with staffing standards and post  
26 daily, sanctions for violation of such standards, and  
27 requirements for daily posting of the names of staff on duty  
28 for the benefit of facility residents and the public. Failure  
29 to provide such posting daily constitutes a class III  
30 deficiency.

1           2. The agency shall recognize the use of licensed  
2 nurses for compliance with minimum staffing requirements for  
3 certified nursing assistants, provided that the facility  
4 otherwise meets the minimum staffing requirements for licensed  
5 nurses and that the licensed nurses so recognized are  
6 performing the duties of a certified nursing assistant. Unless  
7 otherwise approved by the agency, licensed nurses counted  
8 towards the minimum staffing requirements for certified  
9 nursing assistants must exclusively perform the duties of a  
10 certified nursing assistant for the entire shift and shall not  
11 also be counted towards the minimum staffing requirements for  
12 licensed nurses.

13           3. If the agency approved a facility's request to use  
14 a licensed nurse to perform both licensed nursing and  
15 certified nursing assistant duties, the facility must allocate  
16 the amount of staff time specifically spent on certified  
17 nursing assistant duties for the purpose of documenting  
18 compliance with minimum staffing requirements for certified  
19 and licensed nursing staff. In no event may the hours of a  
20 licensed nurse with dual job responsibilities be counted  
21 twice.

22           (b) The agency shall adopt rules to allow properly  
23 trained staff of a nursing facility, in addition to certified  
24 nursing assistants and licensed nurses, to assist residents  
25 with eating. The rules shall specify the minimum training  
26 requirements and shall specify the physiological conditions or  
27 disorders of residents which would necessitate that the eating  
28 assistance be provided by nursing personnel of the facility.  
29 Nonnursing staff providing eating assistance to residents  
30 under the provisions of this subsection shall not count  
31 towards compliance with minimum staffing standards.

1 (c) Licensed practical nurses licensed under chapter  
2 464 who are providing nursing services in nursing home  
3 facilities under this part may supervise the activities of  
4 other licensed practical nurses, certified nursing assistants,  
5 and other unlicensed personnel providing services in such  
6 facilities in accordance with rules adopted by the Board of  
7 Nursing.

8 (7) The agency shall, at least every 15 months,  
9 evaluate all nursing home facilities and make a determination  
10 as to the degree of compliance by each licensee with the  
11 established rules adopted under this part as a basis for  
12 assigning a licensure status to that facility. The agency  
13 shall base its evaluation on the most recent inspection  
14 report, taking into consideration findings from other official  
15 reports, surveys, interviews, investigations, and inspections.  
16 The agency shall assign a licensure status of standard or  
17 conditional to each nursing home.

18 (a) A standard licensure status means that a facility  
19 has no class I or class II deficiencies, has corrected all  
20 class III deficiencies within the time established by the  
21 agency, ~~and is in substantial compliance at the time of the~~  
22 ~~survey with criteria established under this part, with rules~~  
23 ~~adopted by the agency, and, if applicable, with rules adopted~~  
24 ~~under the Omnibus Budget Reconciliation Act of 1987 (Pub. L.~~  
25 ~~No. 100-203) (December 22, 1987), Title IV (Medicare,~~  
26 ~~Medicaid, and Other Health-Related Programs), Subtitle C~~  
27 ~~(Nursing Home Reform), as amended.~~

28 (b) A conditional licensure status means that a  
29 facility, due to the presence of one or more class I or class  
30 II deficiencies, or class III deficiencies not corrected  
31 within the time established by the agency, is not in



1 substantial compliance at the time of the survey with criteria  
2 established under this part, with rules adopted by the agency,  
3 ~~or, if applicable, with rules adopted under the Omnibus Budget~~  
4 ~~Reconciliation Act of 1987 (Pub. L. No. 100-203) (December 22,~~  
5 ~~1987), Title IV (Medicare, Medicaid, and Other Health-Related~~  
6 ~~Programs), Subtitle C (Nursing Home Reform), as amended. If~~  
7 the facility has no class I, class II, or class III  
8 deficiencies ~~comes into substantial compliance~~ at the time of  
9 the followup survey, a standard licensure status may be  
10 assigned.

11 (c) In evaluating the overall quality of care and  
12 services and determining whether the facility will receive a  
13 conditional or standard license, the agency shall consider the  
14 needs and limitations of residents in the facility and the  
15 results of interviews and surveys of a representative sampling  
16 of residents, families of residents, ombudsman council members  
17 in the planning and service area in which the facility is  
18 located, guardians of residents, and staff of the nursing home  
19 facility.

20 (d) The current licensure status of each facility must  
21 be indicated in bold print on the face of the license. A list  
22 of the deficiencies of the facility shall be posted in a  
23 prominent place that is in clear and unobstructed public view  
24 at or near the place where residents are being admitted to  
25 that facility. Licensees receiving a conditional licensure  
26 status for a facility shall prepare, within 10 working days  
27 after receiving notice of deficiencies, a plan for correction  
28 of all deficiencies and shall submit the plan to the agency  
29 for approval. ~~Correction of all deficiencies, within the~~  
30 ~~period approved by the agency, shall result in termination of~~  
31 ~~the conditional licensure status. Failure to correct the~~

1 ~~deficiencies within a reasonable period approved by the agency~~  
2 ~~shall be grounds for the imposition of sanctions pursuant to~~  
3 ~~this part.~~

4 (e) Each licensee shall post its license in a  
5 prominent place that is in clear and unobstructed public view  
6 at or near the place where residents are being admitted to the  
7 facility.

8 (f) ~~Not later than January 1, 1994,~~The agency shall  
9 adopt rules that:

10 1. Establish uniform procedures for the evaluation of  
11 facilities.

12 2. Provide criteria in the areas referenced in  
13 paragraph (c).

14 3. Address other areas necessary for carrying out the  
15 intent of this section.

16 (8) The agency shall adopt rules to provide that, when  
17 the criteria established under subsection (2) are not met,  
18 such deficiencies, including past deficient practices  
19 identified after the facility has taken corrective action,  
20 shall be classified according to the nature of the deficiency.  
21 The agency shall indicate the classification on the face of  
22 the notice of deficiencies as follows:

23 (a) Class I deficiencies are those which the agency  
24 determines present immediate jeopardy to resident health or  
25 safety ~~an imminent danger to the residents or guests of the~~  
26 ~~nursing home facility or a substantial probability that death~~  
27 ~~or serious physical harm would result therefrom.~~ The  
28 condition or practice constituting a class I deficiency  
29 ~~violation~~ shall be abated or eliminated immediately, unless a  
30 fixed period of time, as determined by the agency, is required  
31 for correction. ~~Notwithstanding s. 400.121(2),~~A class I

1 deficiency is subject to a civil penalty of \$25,000 ~~in an~~  
2 ~~amount not less than \$5,000 and not exceeding \$25,000~~ for each  
3 and every deficiency. A fine shall ~~may~~ be levied  
4 notwithstanding the correction of the deficiency.

5 (b) Class II deficiencies are those which the agency  
6 determines involve harm, with potential for more than minimal  
7 harm that is not immediate jeopardy ~~have a direct or immediate~~  
8 ~~relationship to the health, safety, or security of the nursing~~  
9 ~~home facility residents, other than class I deficiencies.~~

10 Notwithstanding s. 400.121(2), a class II deficiency is  
11 subject to a civil penalty of \$10,000 ~~in an amount not less~~  
12 ~~than \$1,000 and not exceeding \$10,000~~ for each and every  
13 deficiency. A citation for a class II deficiency shall  
14 specify the time within which the deficiency is required to be  
15 corrected. ~~If a class II deficiency is corrected within the~~  
16 ~~time specified, no civil penalty shall be imposed, unless it~~  
17 ~~is a repeated offense.~~

18 (c) Class III deficiencies are those which the agency  
19 determines involve no actual harm, with potential for more  
20 than minimal harm that is not immediate jeopardy ~~to have an~~  
21 ~~indirect or potential relationship to the health, safety, or~~  
22 ~~security of the nursing home facility residents, other than~~  
23 ~~class I or class II deficiencies.~~ A class III deficiency  
24 shall be subject to a civil penalty of \$2,500 ~~not less than~~  
25 ~~\$500 and not exceeding \$2,500~~ for each and every deficiency.  
26 A citation for a class III deficiency shall specify the time  
27 within which the deficiency is required to be corrected. If a  
28 class III deficiency is corrected within the time specified,  
29 no civil penalty shall be imposed, ~~unless it is a repeated~~  
30 ~~offense.~~

31

1           (d) Class IV deficiencies are those which the agency  
2 determines involve no actual harm but do not constitute a  
3 class III deficiency. If the class IV deficiency is isolated,  
4 no plan of correction is required.

5           (10) The agency must submit a report annually to the  
6 Legislature that summarizes the information regarding  
7 staff-to-resident ratios, staff turnover, and staff stability  
8 reported by nursing home facilities pursuant to s.  
9 400.141(19).

10           Section 26. Subsection (3) of section 400.241, Florida  
11 Statutes, is amended to read:

12           400.241 Prohibited acts; penalties for violations.--

13           (3) It is unlawful for any person, long-term care  
14 facility, or other entity to willfully interfere with the  
15 unannounced inspections mandated by s. 400.0073 or s.  
16 400.19(3). Alerting or advising a facility of the actual or  
17 approximate date of such inspection shall be a per se  
18 violation of this subsection.

19           (4) A violation of any provision of this part or of  
20 any minimum standard, rule, or regulation adopted pursuant  
21 thereto constitutes a misdemeanor of the second degree,  
22 punishable as provided in s. 775.082 or s. 775.083. Each day  
23 of a continuing violation shall be considered a separate  
24 offense.

25           Section 27. Section 400.27, Florida Statutes, is  
26 created to read:

27           400.27 Nursing home survey teams; agency duties.--

28           (1) The agency shall ensure that each newly hired  
29 member of a nursing home survey team, as a part of his or her  
30 basic training, is assigned full time to a licensed nursing  
31 home for at least 2 days within a 7-day period to observe

1 facility operations outside of the survey process before  
2 beginning survey responsibilities. The agency may not assign  
3 an individual to be a member of a nursing home survey team for  
4 purposes of a survey, evaluation, or consultation visit at a  
5 nursing home facility in which the individual was an employee  
6 within the preceding 5 years.

7 (2) The agency shall semiannually provide for joint  
8 training of nursing home survey team members and facility  
9 staff concerning at least one of the 10 most frequently issued  
10 federal citations against nursing home facilities in this  
11 state during the previous calendar year.

12 (3) Each member of a nursing home survey team who is a  
13 health professional licensed under part I of chapter 464, part  
14 II of chapter 468, or chapter 491 shall earn not less 50  
15 percent of required biennial continuing education credits in  
16 geriatric care. Each member of a nursing home survey team who  
17 is a health professional licensed under chapter 465 shall earn  
18 not less than 30 percent of required biennial continuing  
19 education credits in geriatric care.

20 Section 28. Paragraph (k) of subsection (1) of section  
21 400.428, Florida Statutes, is amended to read:

22 400.428 Resident bill of rights.--

23 (1) No resident of a facility shall be deprived of any  
24 civil or legal rights, benefits, or privileges guaranteed by  
25 law, the Constitution of the State of Florida, or the  
26 Constitution of the United States as a resident of a facility.  
27 Every resident of a facility shall have the right to:

28 (k) At least 45 ~~30~~ days' notice of relocation or  
29 termination of residency from the facility unless, for medical  
30 reasons, the resident is certified by a physician to require  
31 an emergency relocation to a facility providing a more skilled

1 level of care or the resident engages in a pattern of conduct  
2 that is harmful or offensive to other residents. In the case  
3 of a resident who has been adjudicated mentally incapacitated,  
4 the guardian shall be given at least 30 days' notice of a  
5 nonemergency relocation or residency termination. Reasons for  
6 relocation shall be set forth in writing. In order for a  
7 facility to terminate the residency of an individual without  
8 notice as provided herein, the facility shall show good cause  
9 in a court of competent jurisdiction.

10 Section 29. Effective October 1, 2001, section  
11 400.429, Florida Statutes, is amended to read:

12 (Substantial rewording of section. See  
13 s. 400.429, F.S., for present text.)

14 400.429 Civil actions to enforce assisted living  
15 facility residents' rights.--

16 (1)(a) Sections 400.429-400.430 provide the exclusive  
17 remedy for any civil action against an assisted living  
18 facility licensee, facility owner, facility administrator, or  
19 facility staff for recovery of damages for an assisted living  
20 facility resident's personal injury, death, or deprivation of  
21 the rights specified in s. 400.428, whether based on the  
22 common law or on statutory law, including, but not limited to,  
23 an action founded on negligence, abuse, neglect, exploitation,  
24 or a deprivation of rights specified in s. 400.428. This  
25 exclusivity applies to and includes any claim against an  
26 employee, agent, or other person for whose actions the  
27 licensee is alleged to be vicariously liable and to any  
28 management company, parent corporation, subsidiary, lessor, or  
29 other person alleged to be directly liable to the resident or  
30 vicariously liable for the actions of the licensee or its  
31 agent.

1           (b) However, ss. 400.429-400.430 do not prohibit a  
2 resident or a resident's legal guardian from pursuing any  
3 administrative remedy or injunctive relief available to a  
4 resident as a result of a deprivation of the rights specified  
5 in s. 400.028, whether or not the deprivation of rights  
6 resulted in personal injury to, or the death of, the resident.

7           (c) In addition to the remedies provided in ss.  
8 400.429-400.430, a resident, a resident's legal guardian, or  
9 the personal representative of the estate of a deceased  
10 resident may pursue an action under s. 415.1111 against a  
11 perpetrator who has been found guilty, or entered a plea of  
12 guilty or nolo contendere to, any criminal offense set forth  
13 in s. 825.102, s. 825.1025, or s. 825.103.

14           (2) A claim pursuant to ss. 400.429-400.430 may be  
15 brought by the resident or his or her legal guardian, by a  
16 person or organization acting on behalf of a resident with the  
17 consent of the resident or his or her guardian or, if the  
18 resident has died, the personal representative of the estate  
19 of the deceased resident.

20           (3) In any claim brought pursuant to this ss.  
21 400.429-400.430, the claimant has the burden of proving by a  
22 preponderance of the evidence that:

23           (a) Each defendant had an established duty to the  
24 resident;

25           (b) Each defendant breached that duty;

26           (c) The breach of that duty is the proximate cause of  
27 the personal injury to, or the death of, the resident, or the  
28 proximate cause of the deprivation of the resident's rights  
29 specified in s. 400.428; and

30           (d) The proximate cause of the personal injury, death,  
31 or deprivation of the resident's rights resulted in damages.

1           (4) For purposes of ss. 400.429-400.430, a licensee  
2 breaches its established duty to the resident when it fails to  
3 provide a standard of care that a reasonably prudent licensee  
4 licensed under this part would have provided to the resident  
5 under similar circumstances. A violation of the rights  
6 specified in s. 400.428 or failure to comply with the quality  
7 assurances standards specified in s. 400.118 or s. 400.1413 or  
8 with any other standard or guideline or any state or federal  
9 regulatory agency are evidence of a breach of duty by the  
10 licensee.

11           (5) A licensee shall not be liable for the medical  
12 negligence of any physician rendering care or treatment to the  
13 resident except for the services of a medical director as  
14 required in this part. Nothing in this subsection shall be  
15 construed to protect a licensee from liability for failure to  
16 provide a resident with appropriate observation, assessment,  
17 nursing diagnosis, planning, intervention, and evaluation of  
18 care by nursing staff.

19           (6) An action for damages brought under ss.  
20 400.429-400.430 must be commenced within 2 years after the  
21 date on which the incident giving rise to the action occurred  
22 or within 2 years after the date on which the incident is  
23 discovered, or should have been discovered with the exercise  
24 of due diligence. However, the action may not be commenced  
25 later than 4 years after the date of the incident or  
26 occurrence out of which the cause of action accrued. In any  
27 action covered by this subsection in which it is shown that  
28 fraud, concealment, or intentional misrepresentation of fact  
29 prevented the discovery of the injury, the period of  
30 limitation is extended forward 2 years from the time that the  
31 injury is discovered, or should have been discovered with the



1 exercise of due diligence, but such period may not in any  
2 event exceed 7 years after the date that the incident giving  
3 rise to the injury occurred.

4 (7) As used in ss. 400.429-400.430, the term:

5 (a) "Claimant" means any person who is entitled to  
6 recover damages under this part.

7 (b) "Licensee" means the legal entity identified in  
8 the application for licensure under this part which entity is  
9 the licensed operator of the facility. The term also includes  
10 the facility owner, facility administrator, and facility  
11 staff.

12 (c) "Medical expert" means a person duly and regularly  
13 engaged in the practice of his or her profession who holds a  
14 health care professional degree from a university or college  
15 and has had special professional training and experience, or a  
16 person who possesses special health care knowledge or skill,  
17 concerning the subject upon which he or she is called to  
18 testify or provide an opinion.

19 (d) "Resident" means a person who occupies a licensed  
20 bed in a facility licensed under this part.

21 (8) Sections 768.16-768.26 apply to a claim in which  
22 the resident has died as a result of the facility's breach of  
23 an established duty to the resident. In addition to any other  
24 damages, the personal representative may recover on behalf of  
25 the estate pursuant to ss. 768.16-768.26. The personal  
26 representative may also recover on behalf of the estate  
27 noneconomic damages for the resident's pain and suffering from  
28 the time of injury until the time of death.

29 (9) For the purpose of this section, punitive damages  
30 may be awarded for conduct which is willful, wanton, gross or  
31

1 flagrant, reckless, or consciously indifferent to the rights  
2 of the resident.

3 (10) Discovery of financial information for the  
4 purpose of determining the value of punitive damages may not  
5 be had unless the plaintiff shows the court by proffer or  
6 evidence in the record that a reasonable basis exists to  
7 support a claim for punitive damages.

8 (11) In addition to any other standards for punitive  
9 damages, any award of punitive damages must be reasonable in  
10 light of the actual harm suffered by the resident and the  
11 egregiousness of the conduct that caused the actual harm to  
12 the resident.

13 (12) Any portion of an order, judgment, arbitration  
14 decision, mediation agreement, or other type of agreement,  
15 contract, or settlement that has the purpose or effect of  
16 concealing information relating to the settlement or  
17 resolution of any claim or action brought pursuant to ss.  
18 400.429-400.430 is void, contrary to public policy, and may  
19 not be enforced. No court shall enter an order or judgment  
20 that has the purpose or effect of concealing any information  
21 pertaining to the resolution or settlement of any claim or  
22 action brought pursuant to ss. 400.429-400.430. Any person or  
23 governmental entity has standing to contest an order,  
24 judgment, arbitration decision, mediation agreement, or other  
25 type of agreement, contract, or settlement that violates this  
26 subsection. A contest pursuant to this subsection may be  
27 brought by a motion or an action for a declaratory judgment  
28 filed in the circuit court of the circuit where the violation  
29 of this subsection occurred.

30 (13) The defendant must provide to the agency a copy  
31 of any resolution of a claim or civil action brought pursuant

1 to ss. 400.429-400.430 within 90 days after such resolution,  
2 including, but not limited to, any final judgment, arbitration  
3 decision, order, mediation agreement, or settlement. Failure  
4 to provide the copy to the agency shall result in a fine of  
5 \$500 for each day it is overdue. The agency shall develop  
6 forms and adopt rules necessary to administer this subsection.

7 Section 30. Subsections (1) through (11) of section  
8 400.429, Florida Statutes, as amended by this act, shall apply  
9 to causes of action accruing on or after October 1, 2001.

10 Subsections (12) and (13) of section 400.429, Florida  
11 Statutes, as amended by this act, shall apply to causes of  
12 action in existence on October 1, 2001.

13 Section 31. Section 400.430, Florida Statutes, is  
14 created to read:

15 400.430 Voluntary binding arbitration.--

16 (1) Causes of action pursuant to this section shall be  
17 governed by the requirements for presuit process, screening,  
18 and investigation provided in ss. 400.0235-400.0237.

19 (2)(a) Upon the filing of a complaint pursuant to this  
20 section, the parties may elect to have damages determined by  
21 an arbitration panel. Such election may be initiated by  
22 either party by serving a request for voluntary binding  
23 arbitration of damages within 90 days after service of the  
24 complaint upon the defendant. The evidentiary standards for  
25 voluntary binding arbitration as authorized herein shall be as  
26 provided in ss. 120.569(2)(g) and 120.57(1)(c).

27 (b) Upon receipt of a party's request for such  
28 arbitration, the opposing party may accept the offer of  
29 voluntary binding arbitration within 30 days. However, in no  
30 event shall the defendant be required to respond to the  
31 request for arbitration sooner than 90 days after service of

1 the complaint. Such acceptance within the time period  
2 provided by this paragraph shall be a binding commitment to  
3 comply with the decision of the arbitration panel. The  
4 liability of any insurer shall be subject to any applicable  
5 insurance policy limits.

6 (c) The arbitration panel shall be composed of three  
7 arbitrators, one selected by the claimant, one selected by the  
8 defendant, and one an administrative law judge furnished by  
9 the Division of Administrative Hearings who shall serve as the  
10 chief arbitrator. In the event of multiple plaintiffs or  
11 multiple defendants, the arbitrator selected by the side with  
12 multiple parties shall be the choice of those parties. If the  
13 multiple parties cannot reach agreement as to their  
14 arbitrator, each of the multiple parties shall submit a  
15 nominee, and the director of the Division of Administrative  
16 Hearings shall appoint the arbitrator from among such  
17 nominees.

18 (d) The arbitrators shall be independent of all  
19 parties, witnesses, and legal counsel, and no officer,  
20 director, affiliate, subsidiary, or employee of a party,  
21 witness, or legal counsel may serve as an arbitrator in the  
22 proceeding.

23 (e) The rate of compensation for arbitrators other  
24 than the administrative law judge shall be set by the chief  
25 judge of the appropriate circuit court by schedule or as  
26 agreed by the parties. In setting the schedule, the chief  
27 judge shall consider the prevailing rates charged for the  
28 delivery of professional services in the community.

29 (f) Arbitration pursuant to this section shall  
30 preclude recourse to any other remedy by the claimant against  
31

1 any participating defendant, and shall be undertaken with the  
2 understanding that:

3 1. Net economic damages shall be awardable, including,  
4 but not limited to, past and future medical expenses and 80  
5 percent of wage loss and loss of earning capacity, offset by  
6 any collateral source payments.

7 2. Noneconomic damages shall be limited to a maximum  
8 of \$1.5 million per incident.

9 3. Damages for future economic losses shall be awarded  
10 to be paid by periodic payments pursuant to s. 766.202(8) and  
11 shall be offset by future collateral source payments.

12 4. Punitive damages may be awarded by the arbitration  
13 panel for conduct which is willful, wanton, gross or flagrant,  
14 reckless, or consciously indifferent to the rights of the  
15 resident. Upon such finding, the judgment for the total amount  
16 of punitive damages awarded to a claimant may not exceed three  
17 times the amount of compensatory damages awarded to each  
18 person entitled thereto by the arbitrators. Any award of  
19 punitive damages shall be equally divided between the claimant  
20 and the Quality of Long-Term Care Facility Improvement Trust  
21 Fund and awarded pursuant to paragraphs (4)(b)-(e).

22 5. The defendant shall be responsible for the payment  
23 of interest on all accrued damages with respect to which  
24 interest would be awarded at trial.

25 6. The defendant shall pay the claimant's reasonable  
26 attorney's fees and costs, as determined by the arbitration  
27 panel, but in no event more than 15 percent of the award,  
28 reduced to present value.

29 7. The defendant shall pay all the costs of the  
30 arbitration proceeding and the fees of all the arbitrators  
31 other than the administrative law judge.

1           8. Each defendant who submits to arbitration under  
2 this section shall be jointly and severally liable for all  
3 damages assessed pursuant to this section.

4           9. The defendant's obligation to pay the claimant's  
5 damages shall be for the purpose of arbitration under this  
6 section only. A defendant's or claimant's offer to arbitrate  
7 shall not be used in evidence or in argument during any  
8 subsequent litigation of the claim following the rejection  
9 thereof.

10           10. The fact of making or accepting an offer to  
11 arbitrate shall not be admissible as evidence of liability in  
12 any collateral or subsequent proceeding on the claim.

13           11. Any offer by a claimant to arbitrate must be made  
14 to each defendant against whom the claimant has made a claim.  
15 Any offer by a defendant to arbitrate must be made to each  
16 claimant who has joined in the litigation. A defendant who  
17 rejects a claimant's offer to arbitrate shall be subject to  
18 the provisions of paragraph (3)(c). A claimant who rejects a  
19 defendant's offer to arbitrate shall be subject to the  
20 provisions of paragraph (3)(d).

21           12. The hearing shall be conducted by all of the  
22 arbitrators, but a majority may determine any question of fact  
23 and render a final decision. The chief arbitrator shall  
24 decide all evidentiary matters.

25  
26 The provisions of this paragraph shall not preclude settlement  
27 at any time by mutual agreement of the parties.

28           (g) Any issue between the defendant and the  
29 defendant's insurer or self-insurer as to who shall control  
30 the defense of the claim and any responsibility for payment of  
31 an arbitration award, shall be determined under existing

1 principles of law; provided that the insurer or self-insurer  
2 shall not offer to arbitrate or accept a claimant's offer to  
3 arbitrate without the written consent of the defendant.

4 (h) The Division of Administrative Hearings is  
5 authorized to promulgate rules to effect the orderly and  
6 efficient processing of the arbitration procedures of this  
7 section.

8 (i) Rules promulgated by the Division of  
9 Administrative Hearings pursuant to this section, s. 120.54,  
10 or s. 120.65 may authorize any reasonable sanctions except  
11 contempt for violation of the rules of the division or failure  
12 to comply with a reasonable order issued by an administrative  
13 law judge, which is not under judicial review.

14 (3) The following provisions shall govern when  
15 voluntary binding arbitration is not offered or accepted:

16 (a) A proceeding for voluntary binding arbitration is  
17 an alternative to jury trial and shall not supersede the right  
18 of any party to a jury trial.

19 (b) If neither party requests or agrees to voluntary  
20 binding arbitration, the claim shall proceed to trial or to  
21 any available legal alternative such as offer of and demand  
22 for judgment under s. 768.79 or offer of settlement under s.  
23 45.061.

24 (c) If the defendant refuses a claimant's offer of  
25 voluntary binding arbitration:

26 1. The claim shall proceed to trial without limitation  
27 on damages, and the claimant, upon proving a violation of s.  
28 400.428, shall be entitled to recover prejudgment interest,  
29 and reasonable attorney's fees up to 25 percent of the award  
30 reduced to present value.

31

1           2. The claimant's award at trial shall be reduced by  
2 any damages recovered by the claimant from arbitrating  
3 codefendants following arbitration.

4           (d) If the claimant rejects a defendant's offer to  
5 enter voluntary binding arbitration:

6           1. The damages awardable at trial shall be limited to  
7 net economic damages, plus noneconomic damages not to exceed  
8 \$2 million per incident and to punitive damages pursuant to s.  
9 768.735(1) and (2)(a), (c), and (d). The Legislature expressly  
10 finds that such conditional limit on noneconomic damages is  
11 warranted by the claimant's refusal to accept arbitration, and  
12 represents an appropriate balance between the interests of all  
13 residents who ultimately pay for assisted living facility  
14 liability losses and the interests of those residents who are  
15 injured as a result of assisted living facility liability.

16           2. Net economic damages reduced to present value shall  
17 be awardable, including, but not limited to, past and future  
18 medical expenses and 80 percent of wage loss and loss of  
19 earning capacity, offset by any collateral source payments.

20           3. Damages for future economic losses shall be awarded  
21 to be paid by periodic payments pursuant to s. 766.202(8), and  
22 shall be offset by future collateral source payments.

23           (e) Jury trial shall proceed in accordance with  
24 existing principles of law.

25           (4) Notwithstanding any other law to the contrary,  
26 punitive damages may not exceed three times the amount of  
27 compensatory damages awarded to each person entitled thereto  
28 by the trier of fact and the amount shall be equally divided  
29 between the claimant and the Quality of Long-Term Care  
30 Facility Improvement Trust Fund, in accordance with the  
31 following provisions:



1           (a) The clerk of the court shall transmit a copy of  
2 the jury verdict to the State Treasurer by certified mail. In  
3 the final judgment the court shall order the percentages of  
4 the award, payable as provided herein.

5           (b) A settlement agreement entered into between the  
6 original parties to the action after a verdict has been  
7 returned must provide a proportionate share payable to the  
8 Quality of Long-Term Care Facility Improvement Trust Fund  
9 specified herein. For purposes of this paragraph, a  
10 proportionate share is a 50-percent share of that percentage  
11 of the settlement amount which the punitive damages portion of  
12 the verdict bore to the total of the compensatory and punitive  
13 damages in the verdict.

14           (c) The Department of Banking and Finance shall  
15 collect or cause to be collected all payments due the state  
16 under this section. Such payments are made to the Comptroller  
17 and deposited in the appropriate fund specified in this  
18 subsection.

19           (d) If the full amount of punitive damages awarded  
20 cannot be collected, the claimant and the other recipient  
21 designated pursuant to this subsection are each entitled to a  
22 proportionate share of the punitive damages collected.

23           (e) Claimant's attorney's fees, if payable from the  
24 judgment, are, to the extent that they are based on the  
25 punitive damages, calculated based only on the portion of the  
26 judgment payable to the claimant as provided in this  
27 subsection. Nothing herein limits the payment of attorney's  
28 fees based upon the award of damages other than punitive  
29 damages.

30           (5) Arbitration to allocate responsibility when more  
31 than one defendant has participated in voluntary binding

1 arbitration, procedures involving misarbitration, payment of  
2 an arbitration award, and appeal of an arbitration award shall  
3 be governed by the requirements provided in ss.  
4 400.0239-400.0242.

5 Section 32. Subsection (5) of section 400.431, Florida  
6 Statutes, is amended to read:

7 400.431 Closing of facility; notice; penalty.--

8 (5) The agency may levy a fine in an amount no greater  
9 than \$5,000 upon each person or business entity that owns any  
10 interest in a facility that terminates operation without  
11 providing notice to the agency and the residents of the  
12 facility at least 45 ~~30~~ days before operation ceases. This  
13 fine shall not be levied against any facility involuntarily  
14 closed at the initiation of the agency. The agency shall use  
15 the proceeds of the fines to operate the facility until all  
16 residents of the facility are relocated and shall deposit any  
17 balance of the proceeds into the Health Care Trust Fund  
18 established pursuant to s. 400.418.

19 Section 33. Section 400.455, Florida Statutes, is  
20 created to read:

21 400.455 Adverse action against employee for disclosing  
22 information of specified nature prohibited; employee remedy  
23 and relief.--

24 (1) SHORT TITLE.--This section may be cited as the  
25 "Assisted Living Facility Whistleblower's Act."

26 (2) LEGISLATIVE INTENT.--It is the intent of the  
27 Legislature to prevent assisted living facilities or  
28 independent contractors from taking retaliatory action against  
29 an employee who reports to an appropriate person or agency  
30 violations of law on the part of a facility or independent  
31 contractor that create a substantial and specific danger to an

1 assisted living facility resident's health, safety, or  
2 welfare. It is further the intent of the Legislature to  
3 prevent assisted living facilities or independent contractors  
4 from taking retaliatory action against any person who  
5 discloses information to an appropriate agency alleging  
6 improper use of or gross waste of governmental funds, or any  
7 other abuse or gross neglect of duty on the part of an  
8 assisted living facility.

9 (3) DEFINITIONS.--As used in this section, unless  
10 otherwise specified, the following words or terms shall have  
11 the meanings indicated:

12 (a) "Adverse personnel action" means the discharge,  
13 suspension, transfer, or demotion of any employee or the  
14 withholding of bonuses, the reduction in salary or benefits,  
15 or any other adverse action taken against an employee within  
16 the terms and conditions of employment by an assisted living  
17 facility or independent contractor.

18 (b) "Agency" means any state, regional, county, local,  
19 or municipal government entity, whether executive, judicial,  
20 or legislative; or any official, officer, department,  
21 division, bureau, commission, authority, or political  
22 subdivision thereof.

23 (c) "Employee" means a person who performs services  
24 for, and under the control and direction of, or contracts  
25 with, an assisted living facility or independent contractor  
26 for wages or other remuneration.

27 (d) "Gross mismanagement" means a continuous pattern  
28 of managerial abuses, wrongful or arbitrary and capricious  
29 actions, or fraudulent or criminal conduct which may have a  
30 substantial adverse economic impact.

31

1        (e) "Independent contractor" means a person who is  
2 engaged in any business and enters into a contract with an  
3 assisted living facility.

4        (4) ACTIONS PROHIBITED.--

5        (a) An assisted living facility or an independent  
6 contractor shall not dismiss, discipline, or take any other  
7 adverse personnel action against an employee for disclosing  
8 information pursuant to the provisions of this section.

9        (b) An assisted living facility or an independent  
10 contractor shall not take any adverse action that affects the  
11 rights or interests of a person in retaliation for the  
12 person's disclosure of information under this section.

13        (c) The provisions of this subsection shall not be  
14 applicable when an employee or person discloses information  
15 known by the employee or person to be false.

16        (5) NATURE OF INFORMATION DISCLOSED.--The information  
17 disclosed under this section must include:

18        (a) Any violation or suspected violation of any  
19 federal, state, or local law, rule, or regulation committed by  
20 an employee or agent of an assisted living facility or  
21 independent contractor which creates and presents a  
22 substantial and specific danger to the assisted living  
23 facility resident's health, safety, or welfare.

24        (b) Any act or suspected act of gross mismanagement,  
25 malfeasance, misfeasance, gross waste of public funds, or  
26 gross neglect of duty committed by an employee or agent of an  
27 assisted living facility or independent contractor.

28        (6) TO WHOM INFORMATION DISCLOSED.--The information  
29 disclosed under this section must be disclosed to any agency  
30 or Federal Government entity or person designated in s.  
31

1 400.022(1)(c) having the authority to investigate, police,  
2 manage, or otherwise remedy the violation or act.

3 (7) EMPLOYEES AND PERSONS PROTECTED.--This section  
4 protects employees and persons who disclose information on  
5 their own initiative in a written and signed complaint; who  
6 are requested to participate in an investigation, hearing, or  
7 other inquiry conducted by any agency or Federal Government  
8 entity; who refuse to participate in any adverse action  
9 prohibited by this section; or who initiate a complaint  
10 through any appropriate complaint hotline. No remedy or other  
11 protection under this section applies to any person who has  
12 committed or intentionally participated in committing the  
13 violation or suspected violation for which protection under  
14 this section is being sought.

15 (8) REMEDIES.--Any person protected by this section  
16 may bring a civil action in any court of competent  
17 jurisdiction against an assisted living facility for any  
18 action prohibited by this section.

19 (9) RELIEF.--In any action brought under this section,  
20 the relief may include the following:

21 (a) Reinstatement of the employee to the same position  
22 held before the adverse action was commenced or to an  
23 equivalent position, or reasonable front pay as alternative  
24 relief.

25 (b) Reinstatement of the employee's full fringe  
26 benefits and seniority rights, as appropriate.

27 (c) Compensation, if appropriate, for lost wages, lost  
28 benefits, or other lost remuneration caused by the adverse  
29 action.

30 (d) Payment of reasonable costs, including attorney's  
31 fees, to a substantially prevailing employee, or to the

1 prevailing employer if the employee filed a frivolous action  
2 in bad faith.

3 (e) Issuance of an injunction, if appropriate, by a  
4 court of competent jurisdiction.

5 (f) Temporary reinstatement to the employee's former  
6 position or to an equivalent position, pending the final  
7 outcome on the complaint, if an employee complains of being  
8 discharged in retaliation for a protected disclosure and if a  
9 court of competent jurisdiction determines that the disclosure  
10 was not made in bad faith or for a wrongful purpose or  
11 occurred after an assisted living facility's or independent  
12 contractor's initiation of a personnel action against the  
13 employee which includes documentation of the employee's  
14 violation of a disciplinary standard or performance  
15 deficiency.

16 (10) DEFENSES.--It shall be an affirmative defense to  
17 any action brought pursuant to this section that the adverse  
18 action was predicated upon grounds other than, and would have  
19 been taken absent, the employee's or person's exercise of  
20 rights protected by this section.

21 (11) EXISTING RIGHTS.--This section does not diminish  
22 the rights, privileges, or remedies of an employee under any  
23 other law or rule or under any collective bargaining agreement  
24 or employment contract.

25 Section 34. Paragraph (b) of subsection (2) of section  
26 409.908, Florida Statutes, is amended to read:

27 409.908 Reimbursement of Medicaid providers.--Subject  
28 to specific appropriations, the agency shall reimburse  
29 Medicaid providers, in accordance with state and federal law,  
30 according to methodologies set forth in the rules of the  
31 agency and in policy manuals and handbooks incorporated by

1 reference therein. These methodologies may include fee  
2 schedules, reimbursement methods based on cost reporting,  
3 negotiated fees, competitive bidding pursuant to s. 287.057,  
4 and other mechanisms the agency considers efficient and  
5 effective for purchasing services or goods on behalf of  
6 recipients. Payment for Medicaid compensable services made on  
7 behalf of Medicaid eligible persons is subject to the  
8 availability of moneys and any limitations or directions  
9 provided for in the General Appropriations Act or chapter 216.  
10 Further, nothing in this section shall be construed to prevent  
11 or limit the agency from adjusting fees, reimbursement rates,  
12 lengths of stay, number of visits, or number of services, or  
13 making any other adjustments necessary to comply with the  
14 availability of moneys and any limitations or directions  
15 provided for in the General Appropriations Act, provided the  
16 adjustment is consistent with legislative intent.

17 (2)

18 (b) Subject to any limitations or directions provided  
19 for in the General Appropriations Act, the agency shall  
20 establish and implement a Florida Title XIX Long-Term Care  
21 Reimbursement Plan (Medicaid) for nursing home care in order  
22 to provide care and services in conformance with the  
23 applicable state and federal laws, rules, regulations, and  
24 quality and safety standards and to ensure that individuals  
25 eligible for medical assistance have reasonable geographic  
26 access to such care. The agency shall amend the long-term care  
27 reimbursement plan to create a direct care and indirect care  
28 patient component. These two subcomponents together shall  
29 equal the patient care component of the per diem rate. The  
30 direct care subcomponent shall include only the salaries and  
31 employee benefits of direct care staff who provide nursing

1 services to the residents of the nursing facility. "Direct  
2 care staff" is defined for this purpose as registered nurses,  
3 licensed practical nurses, and certified nurse assistants who  
4 deliver care directly to residents in nursing home facilities.  
5 There shall be no cost directly or indirectly allocated to the  
6 direct care subcomponent from a home office or management  
7 company. Separate cost-based class ceilings shall be  
8 calculated for each patient care subcomponent, and the direct  
9 care subcomponent shall be limited by the cost-based class  
10 ceiling and the indirect care subcomponent shall be limited by  
11 the individual provider target, target rate class ceiling, or  
12 the cost-based ceiling. The agency shall make the required  
13 changes to the nursing home cost reporting forms to implement  
14 this requirement effective January 1, 2002.~~Under the plan,~~  
15 ~~interim rate adjustments shall not be granted to reflect~~  
16 ~~increases in the cost of general or professional liability~~  
17 ~~insurance for nursing homes unless the following criteria are~~  
18 ~~met: have at least a 65 percent Medicaid utilization in the~~  
19 ~~most recent cost report submitted to the agency, and the~~  
20 ~~increase in general or professional liability costs to the~~  
21 ~~facility for the most recent policy period affects the total~~  
22 ~~Medicaid per diem by at least 5 percent. This rate adjustment~~  
23 ~~shall not result in the per diem exceeding the class ceiling.~~  
24 ~~This provision shall apply only to fiscal year 2000-2001 and~~  
25 ~~shall be implemented to the extent existing appropriations are~~  
26 ~~available. The agency shall report to the Governor, the~~  
27 ~~Speaker of the House of Representatives, and the President of~~  
28 ~~the Senate by December 31, 2000, on the cost of liability~~  
29 ~~insurance for Florida nursing homes for fiscal years 1999 and~~  
30 ~~2000 and the extent to which these costs are not being~~  
31 ~~compensated by the Medicaid program. Medicaid-participating~~



1 ~~nursing homes shall be required to report to the agency~~  
2 ~~information necessary to compile this report. Effective no~~  
3 ~~earlier than the rate-setting period beginning April 1, 1999,~~  
4 ~~the agency shall establish a case-mix reimbursement~~  
5 ~~methodology for the rate of payment for long-term care~~  
6 ~~services for nursing home residents. The agency shall compute~~  
7 ~~a per diem rate for Medicaid residents, adjusted for case mix,~~  
8 ~~which is based on a resident classification system that~~  
9 ~~accounts for the relative resource utilization by different~~  
10 ~~types of residents and which is based on level-of-care data~~  
11 ~~and other appropriate data. The case-mix methodology developed~~  
12 ~~by the agency shall take into account the medical, behavioral,~~  
13 ~~and cognitive deficits of residents. In developing the~~  
14 ~~reimbursement methodology, the agency shall evaluate and~~  
15 ~~modify other aspects of the reimbursement plan as necessary to~~  
16 ~~improve the overall effectiveness of the plan with respect to~~  
17 ~~the costs of patient care, operating costs, and property~~  
18 ~~costs. In the event adequate data are not available, the~~  
19 ~~agency is authorized to adjust the patient's care component or~~  
20 ~~the per diem rate to more adequately cover the cost of~~  
21 ~~services provided in the patient's care component. The agency~~  
22 ~~shall work with the Department of Elderly Affairs, the Florida~~  
23 ~~Health Care Association, and the Florida Association of Homes~~  
24 ~~for the Aging in developing the methodology. It is the intent~~  
25 ~~of the Legislature that the reimbursement plan achieve the~~  
26 ~~goal of providing access to health care for nursing home~~  
27 ~~residents who require large amounts of care while encouraging~~  
28 ~~diversion services as an alternative to nursing home care for~~  
29 ~~residents who can be served within the community. The agency~~  
30 ~~shall base the establishment of any maximum rate of payment,~~  
31 ~~whether overall or component, on the available moneys as~~

1 ~~provided for in the General Appropriations Act. The agency may~~  
2 ~~base the maximum rate of payment on the results of~~  
3 ~~scientifically valid analysis and conclusions derived from~~  
4 ~~objective statistical data pertinent to the particular maximum~~  
5 ~~rate of payment.~~

6 Section 35. Subsection (3) of section 430.708, Florida  
7 Statutes, is amended to read:

8 430.708 Certificate of need.--To ensure that Medicaid  
9 community diversion pilot projects result in a reduction in  
10 the projected average monthly nursing home caseload, the  
11 agency shall, in accordance with the provisions of s.  
12 408.034(4):

13 ~~(3) Adopt rules to reduce the number of beds in~~  
14 ~~Medicaid-participating nursing homes eligible for Medicaid,~~  
15 ~~through a Medicaid-selective contracting process or some other~~  
16 ~~appropriate method.~~

17 Section 36. Subsections (2) and (3) of section  
18 430.709, Florida Statutes, are amended to read:

19 430.709 Reports and evaluations.--

20 (2) The agency, in consultation with the department,  
21 shall contract for an independent evaluation of the community  
22 diversion pilot projects. Such evaluation must include a  
23 careful review and assessment of the actual cost for the  
24 provision of services to enrollees participants. No later than  
25 120 days after the effective date of this section, the agency  
26 shall select a contractor with experience and expertise in  
27 evaluating capitation rates for managed care organizations  
28 servng a disabled or frail elderly population to conduct the  
29 evaluation of the community diversion pilot project as defined  
30 in s. 430.703. The contractor shall demonstrate the capacity  
31 to evaluate managed care arrangements that seek to test the

1 blending of Medicaid and Medicare capitation as a strategy to  
2 provide efficient, cost-effective care. The contractor shall  
3 report to the agency and the Legislature the specific array of  
4 services provided to each enrollee, the average number of  
5 times per week each service was provided, the unit cost and  
6 total cost per week to provide the service, the total cost of  
7 all services provided to the enrollee, and the enrollment  
8 period for which total costs were calculated. In addition, the  
9 contractor shall report to the agency and the Legislature the  
10 total number of enrollees to date; the total payment to the  
11 managed care organization for enrollees; the number of  
12 enrollees who have been admitted to a nursing facility; the  
13 total number of days enrollees have spent in nursing home  
14 facilities; the number of enrollees who have disenrolled from  
15 the project; the average length of time participants were  
16 enrolled, expressed as the mean number of days and standard  
17 deviation; the number of persons who disenrolled and  
18 subsequently became a nursing home resident; the number of  
19 enrollees who have died while enrolled in the project and the  
20 mean number of days enrolled prior to death; the list of  
21 available services delivered in-home by percentage of  
22 enrollees receiving the service; the list of available  
23 services delivered out-of-home by percentage of enrollees  
24 receiving the service. The evaluation contractor shall analyze  
25 and report the individual services and the array of services  
26 most associated with effective diversion of frail elderly  
27 enrollees from nursing home placement. Further, the contractor  
28 will evaluate the project responses to at least the following  
29 questions:

30  
31

- 1           (a) Was the cost of the diversion project per person  
2 less than the cost of providing services through  
3 fee-for-service Medicaid?
- 4           (b) Did the diversion project increase access to  
5 physical health care, mental health care, and social services?
- 6           (c) Did the diversion project maintain or improve the  
7 quality of care and quality of life of the participants?
- 8           (d) What was the functional status of participants  
9 before enrolling in the diversion project, and what was the  
10 functional status at various points during and after  
11 enrollment?
- 12           (e) How many participants disenrolled and at what  
13 point after enrolling?
- 14           (f) Why did participants disenroll?
- 15           (g) Did the department develop specialized contract  
16 standards and quality assurance measures?
- 17           (h) Did the department assess quality of care,  
18 appropriateness of care claims data analysis and consumer  
19 self-report data?
- 20           (i) Does the cost analysis show savings to the state?
- 21           (j) What were the results of recipient profile and  
22 enrollment analyses?
- 23           (k) What were the results of the family satisfaction  
24 and consumer outcome analyses?
- 25           (l) How did hospital admissions and preventable  
26 readmissions differ among nursing home enrollees in the  
27 diversion project, nursing home residents not in the project,  
28 and frail elders living in the community? Did payer or  
29 provider type have a significant relationship to the number of  
30 hospital admissions?
- 31

1           (m) What agencies or providers did the diversion  
2 project contractor engage to provide noninstitutional  
3 services?

4           (n) Was there a volume-outcome or dose-response  
5 relationship between the utilization rate of noninstitutional  
6 services, functional assessment, and the ability of the  
7 enrollee to remain in the community?

8           (3) Subsequent to the completion of the evaluation and  
9 submission of the evaluation report to the Legislature, the  
10 agency, in consultation with the department, in consultation  
11 with the agency, shall assess and make specific  
12 recommendations to the Legislature as to the feasibility of  
13 implementing a managed long-term care system throughout the  
14 state to serve appropriate Medicaid-eligible long-term care  
15 recipients age 60 years and older.

16           Section 37. Subsection (3) of section 435.04, Florida  
17 Statutes, is amended to read:

18           435.04 Level 2 screening standards.--

19           (3) Standards must also ensure that the person+

20           ~~(a) For employees or employers licensed or registered~~  
21 ~~pursuant to chapter 400, does not have a confirmed report of~~  
22 ~~abuse, neglect, or exploitation as defined in s. 415.102(6),~~  
23 ~~which has been uncontested or upheld under s. 415.103.~~

24           ~~(b)~~ has not committed an act that constitutes domestic  
25 violence as defined in s. 741.30.

26           Section 38. Paragraph (a) of subsection (1) of section  
27 464.201, Florida Statutes, is amended to read:

28           464.201 Definitions.--As used in this part, the term:

29           (1) "Approved training program" means:

30           (a) A program offered by Enterprise Florida Jobs and  
31 Education Partnership Grant or a course of training conducted

1 by a public sector or private sector educational center  
2 licensed by the Department of Education to implement the basic  
3 curriculum for nursing assistants which is approved by the  
4 Department of Education. Beginning October 1, 2000, the board  
5 shall assume responsibility for approval of training programs  
6 under this paragraph.

7 Section 39. Paragraph (e) is added to subsection (2)  
8 of section 464.2085, Florida Statutes, to read:

9 464.2085 Council on Certified Nursing Assistants.--The  
10 Council on Certified Nursing Assistants is created within the  
11 department, under the Board of Nursing.

12 (2) The council shall:

13 (e) Develop special certifications or other  
14 designations that indicate a certified nursing assistant's  
15 advanced competence in significant areas of nursing home  
16 practice including: care for persons with dementia, care at  
17 the end of life, care for the mentally ill, care for persons  
18 at risk of malnutrition or dehydration, transfer and movement  
19 of persons with special needs, training as a mentor or coach  
20 for newly hired certified nursing assistants, and such other  
21 areas as determined by the council.

22 Section 40. Subsection (1) of section 101.655, Florida  
23 Statutes, is amended to read:

24 101.655 Supervised voting by absent electors in  
25 certain facilities.--

26 (1) The supervisor of elections of a county shall  
27 provide supervised voting for absent electors residing in any  
28 assisted living facility, as defined in s. 400.402, or nursing  
29 home facility, as defined in s. 400.021, within that county at  
30 the request of any administrator of such a facility. Such  
31 request for supervised voting in the facility shall be made by

1 submitting a written request to the supervisor of elections no  
2 later than 21 days prior to the election for which that  
3 request is submitted. The request shall specify the name and  
4 address of the facility and the name of the electors who wish  
5 to vote absentee in that election. If the request contains  
6 the names of fewer than five voters, the supervisor of  
7 elections is not required to provide supervised voting.

8 Section 41. Subsection (2) of section 397.405, Florida  
9 Statutes, is amended to read:

10 397.405 Exemptions from licensure.--The following are  
11 exempt from the licensing provisions of this chapter:

12 (2) A nursing home ~~facility~~ as defined in s.  
13 400.021~~(12)~~.

14

15 The exemptions from licensure in this section do not apply to  
16 any facility or entity which receives an appropriation, grant,  
17 or contract from the state to operate as a service provider as  
18 defined in this chapter or to any substance abuse program  
19 regulated pursuant to s. 397.406. No provision of this  
20 chapter shall be construed to limit the practice of a  
21 physician licensed under chapter 458 or chapter 459, a  
22 psychologist licensed under chapter 490, or a psychotherapist  
23 licensed under chapter 491, providing outpatient or inpatient  
24 substance abuse treatment to a voluntary patient, so long as  
25 the physician, psychologist, or psychotherapist does not  
26 represent to the public that he or she is a licensed service  
27 provider under this act. Failure to comply with any  
28 requirement necessary to maintain an exempt status under this  
29 section is a misdemeanor of the first degree, punishable as  
30 provided in s. 775.082 or s. 775.083.

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1           Section 42. Subsection (3) of section 400.0069,  
2 Florida Statutes, is amended to read:

3           400.0069 Local long-term care ombudsman councils;  
4 duties; membership.--

5           (3) In order to carry out the duties specified in  
6 subsection (2), the local ombudsman council is authorized,  
7 pursuant to ss. 400.19(1) and 400.434, to enter any long-term  
8 care facility without notice or first obtaining a warrant,  
9 subject to the provisions of s. 400.0073~~(7)~~<sup>(5)</sup>.

10           Section 43. The Auditor General shall develop a  
11 standard chart of accounts to govern the content and manner of  
12 presentation of financial information to be submitted by  
13 Medicaid long-term care providers in their cost reports. The  
14 Auditor General shall submit the standard chart of accounts to  
15 the Agency for Health Care Administration not later than  
16 December 31, 2001. The agency shall amend the Florida Title  
17 XIX Long-Term Care Reimbursement Plan to incorporate this  
18 standard chart of accounts and shall implement use of this  
19 standard chart of accounts effective January 1, 2002. The  
20 standard chart of accounts shall include specific accounts for  
21 each component of direct care staff by type of personnel and  
22 may not be revised without the written consent of the Auditor  
23 General.

24           Section 44. The Board of Nursing is directed to  
25 develop standards and procedures for recognizing professional  
26 nurses whose commitment to the practice of nursing in  
27 long-term care settings is worthy of commendation.

28           Section 45. There is appropriated from the General  
29 Revenue Fund to the Department of Elderly Affairs for fiscal  
30 year 2001-2002 the sum of \$300,000 to fund the additional  
31



1 responsibilities of the Office of State Long-Term Care  
2 Ombudsman provided under this act.  
3       Section 46. There is appropriated from the General  
4 Revenue Fund for the Statewide Public Guardianship Office  
5 established in part II, chapter 744, Florida Statutes, the sum  
6 of \$100,000. The office shall use the funds for training and  
7 for costs associated with providing assistance to judicial  
8 circuits in development of local public guardianship programs,  
9 including public guardianship services for residents of  
10 long-term care facilities licensed under chapter 400, Florida  
11 Statutes.  
12       Section 47. Except as otherwise provided herein, this  
13 act shall take effect upon becoming a law.  
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HOUSE SUMMARY

1 Provides requirements and procedures for civil actions to  
2 enforce the rights of nursing home and assisted living  
3 facility residents, including requirements for notice,  
4 investigation, arbitration, and appeal. Establishes  
5 "whistleblower" protections prohibiting retaliatory  
6 action against an employee who discloses certain  
7 information concerning a nursing home or assisted living  
8 facility. Requires nursing homes to allow residents to  
9 install electronic monitoring devices in their rooms, and  
10 provides requirements and penalties. Revises requirements  
11 for nursing home license applications and grounds for  
12 denial. Provides or expands requirements relating to  
13 staff on duty, assessment and care of residents, resident  
14 grievance procedures, recordkeeping, and reporting to the  
15 Agency for Health Care Administration. Revises  
16 qualifications for nursing home personnel, including  
17 medical directors, nursing personnel, and temporary  
18 nursing assistants. Provides for competency review,  
19 inservice training, and competency designations for  
20 certified nursing assistants. Directs the Board of  
21 Nursing to provide for commendations for professional  
22 nurses. Expands grounds for administrative and other  
23 actions against a nursing home, revises classifications  
24 of deficient practices, and revises penalties. Requires  
25 nursing homes to establish internal risk management  
26 programs, and provides requirements for implementation,  
27 including reporting of adverse incidents and access to  
28 and review of records. Provides for training of agency

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

1 nursing home survey teams. Revises Medicaid long-term  
2 care reimbursement requirements to provide for direct  
3 care and indirect care subcomponents and cost reporting.  
4 Provides requirements for contracts for independent  
5 evaluation of long-term care community diversion  
6 projects, and transfers contract responsibility from the  
7 Department of Elderly Affairs to the agency. Requires the  
8 Auditor General to develop a standard chart of accounts  
9 for Medicaid long-term care cost reporting. Provides  
10 appropriations. See bill for details.

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