Elder and Long Term Care Committee

Wednesday, January 25, 2006
10:00 AM – 11:00 AM
Reed Hall (102 HOB)

Revised

Meeting Packet

Allan Bense
Speaker

Hugh Gibson, III
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Elder & Long-Term Care Committee

Start Date and Time:	Wednesday, January 25, 2006 10:00 am
End Date and Time:	Wednesday, January 25, 2006 11:00 am
Location:	Reed Hall (102 HOB)
Duration:	1.00 hrs

Consideration of the following bill(s):

HB 49 Caregivers for Adults by Meadows
HB 351 CS Community Residential Homes by Lopez-Cantera
HB 377 Continuing Care Provider Minimum Liquid Reserve Requirements by Gibson, H.
HB 501 Assisted Care Communities by Clarke

Presentation by Johnnie B. Byrd, Sr. Alzheimer's Center & Research Institute

NOTICE FINALIZED on 01/13/2006 15:30 by MANNING.KAREN

House of Representatives

Elder and Long Term Care Committee

AGENDA

January 25, 2006
10:00 AM – 11:00 AM
Reed Hall (102 HOB)

I. Opening Remarks by the Chair

II. Consideration of the following bill(s):

HB 49 Caregivers for Adults by Meadows
HB 351 CS Community Residential Homes by Lopez-Cantera
HB 377 Continuing Care Provider Minimum Liquid Reserve Requirements by Gibson, H.
HB 501 Assisted Care Communities by Clarke

III. Presentation by Johnnie B. Byrd, Sr. Alzheimer's Center & Research Institute

IV. Closing Remarks by the Chair

V. Adjournment

HB 49

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 49 Caregivers for Adults
SPONSOR(S): Meadows
TIED BILLS: **IDEN./SIM. BILLS:** SB 88

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Community Colleges & Workforce Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 49 creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida. Its mission is to foster the development of caregiving for adults as a non-licensed paraprofessional activity and promote the use of nationally recognized best practices information by non-licensed caregivers.

The bill creates a 13-member board of directors of the corporation, and provides for membership and responsibilities.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to conduct an evaluation and review of the corporation and to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2009.

The effective date is July 1, 2006.

The fiscal impact of this bill is undetermined. Please see "Fiscal Comments" for further information.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging at the University of South Florida. Membership on the board of the corporation consists of representatives from the private sector and from various state agencies. One of the functions of the corporation is to provide training to employees of private businesses.

B. EFFECT OF PROPOSED CHANGES:

In summary, HB 49 creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida. Its mission is to foster the development of caregiving for adults as a non-licensed paraprofessional activity and promote the use of nationally recognized best practices information by non-licensed caregivers. Following is background information and a detailed description of the legislation.

BACKGROUND

Caregiving

About 10.1 million people over the age of 18 in the U.S. – nearly 4 percent of the population – need another person's assistance to carry out activities such as bathing, feeding, cleaning, or grocery shopping.[1] Within this group, nearly 80 percent of care recipients are 50 and older, and the average age of care recipients 50 and older in the U.S. is 75.[2] Most care recipients (79 percent) who need long-term care live at home or in the community,[3] and those individuals living in nursing homes and other institutional settings could potentially live in the community if appropriate, affordable support was available.[4]

Depending on which definition of "caregiver" and "care recipient" is utilized, there is wide latitude in estimates of the precise number of caregivers in the U.S.[5] A 2004 study coordinated by the National Alliance for Caregiving and the AARP concluded that 44.4 million Americans (21% of the population) provided unpaid care to friends and family age 18 and older.[6] Moreover, 59% of these U.S. caregivers reported being presently employed, and while the services they provide to care recipients are unpaid, the value of such services has been estimated at $257 billion annually.[7] Nearly 20% of caregivers in the U.S. provide more than 40 hours of care per week,[8] and the overall amount of time spent caring for

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[1] McNeil, Jack. 2001. *Americans with disabilities: Household economic studies*. Washington, DC: US Department of Commerce, Economics and Statistics Administration, US Census Bureau.
[2] *Caregiving in the U.S.*, 2004, National Alliance for Caregiving and AARP, available at http://www.aarp.org/research/reference/publicopinions/aresearch-import-853.html.
[3] *Long-term Care Users Range in Age and Most Do Not Live in Nursing Homes: Research Alert*, 2000, Agency for Healthcare Research and Quality, available, in part, at http://www.ahcpr.gov/research/nov00/1100RA19.htm.
[4] Understanding Medicaid Home and Community Services: A Primer, 2000, U.S. Department of Health and Human Services. Available at http://aspe.hhs.gov/daltcp/reports/primer.pdf.
[5] *Fact Sheet: Side-by-side Comparison of Family Caregiver Prevalence Studies*, Family Caregiver Alliance, 2001, available at http://www.caregiver.org/caregiver/jsp/content/pdfs/fs_caregiver_stats_side_by_side.pdf.
[6] *Caregiving in the U.S.*, National Alliance for Caregiving and AARP.
[7] Ibid.
[8] Ibid.

another increases substantially as the care recipient's cognitive impairment worsens.[9] In terms of lost productivity to American businesses, informal caregiving results in an $11-29 billion loss annually.[10]

Although family members and friends provide most of the needed assistance for people in home and community-based settings, home care workers, personal assistants, direct support professionals and other direct-care workers are a critical resource for many. Individuals and families rely on these workers to provide them with comfort, companionship, and care in an atmosphere that preserves their dignity and well-being. Such workers are already in short supply in many regions and demand is expected to grow rapidly, due to a combination of consumer demand and changes in public policy.

Nursing homes, assisted living facilities, and adult family care homes employ both licensed and unlicensed staff responsible for providing medical, nursing or personal care assistance to their residents, enabling them to live as independently as possible. The requirements for staff training and education vary depending on the setting and the specific job responsibilities of the caregiver.

Although the Omnibus Budget Reconciliation Act of 1987 enhanced the training required of certified nursing assistants in nursing homes and home health aides in certified home health agencies, federal funds allocated for health care training are typically reserved for the development of various medical professionals (doctors, nurses, etc.). Consequently, there are limited resources available to address the training needs of paraprofessional caregivers who work in nursing homes, assisted living facilities, adult day care centers, and private residences.

Assisted Living Facilities

Assisted Living Facilities (ALF) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALF provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that an excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALF, as more than 83% of Florida's ALF function as for-profit enterprises.[11]

In addition to a standard ALF operating license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have greater impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF. Regardless of the facility's license status, residents living in ALF cannot have conditions that require 24-hour nursing supervision.[12]

Administrators, managers, and staff of ALF are required to obtain specific training and education pursuant to s. 400.452, F.S., and Rule 58A-5.0191, F.A.C. Training requirements are specific to an individual's responsibilities within the facility; the Department of Elder Affairs (DOEA)

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[9] *National Estimates of the Quantity and Cost of Informal Caregiving for the Elderly with Dementia*, 2001, Journal of General Internal Medicine, Volume 16: 770-778.

[10] The MetLife Study of Employer Costs for Working Caregivers (based on data from "Family Caregiving in the U.S.: Findings from a National Survey"), 1997, Metropolitan Life Insurance Company, available at http://www.metlife.com/WPSAssets/1400239617104828517 6V1FEmployer%20Costs%20study%20.pdf.

[11] *Florida's Aging Population: Critical Issues for Florida's Future*, 2nd Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.

[12] An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

establishes minimum training and education requirements by rule. Facility staff is required to participate in training relevant to their job duties as specified by rule. Depending on the staff and particular facility, required training may include ongoing staff in-service training, HIV/AIDS training, first aid, CPR, assistance with self-administered medication, nutrition and food service, extended congregate care training, or limited mental health training. Facilities that advertise that they provide special care for persons with Alzheimer's Disease and related disorders must ensure that facility staff receives training in this area.[13]

Adult Family Care Homes

An adult family care home (AFCH) is a familial-oriented living arrangement in a private home. AFCH are licensed in accordance with Chapter 400, part VII, F.S. to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing supervision. The provider must own or rent and live in the home operating as an AFCH, and staff in AFCH are either employed by, or under contract with, the provider.

Prior to accepting any residents or becoming licensed, **all AFCH providers must attend a 12-hour Adult Family Care Home Basic Training program** that conforms to the minimum requirements of s. 400.6211, F.S. Additionally, the AFCH provider is required to annually obtain 3 hours of continuing education in topics related to the care and treatment of frail elders or disabled adults, or the management and administration of an AFCH, and providers must attend update training when the basic course is updated by legislation or through rule amendment.[14]

Prior to assuming responsibility for the care of residents (or within 30 days of employment), an AFCH provider shall ensure that each relief person and all staff receive training relevant to assigned job duties, including emergency/evacuation procedures, universal precautions, food safety, procedures for reporting abuse and neglect, and a review of resident rights. Moreover, providers, relief individuals, and any person left in sole charge of residents must hold a currently valid card documenting completion of First Aid and CPR courses.[15]

Adult Day Care Centers

Adult Day Care Centers (ADCC) are licensed under Part V of Chapter 400, F.S., to provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Training requirements of staff employed by an ADCC vary based upon the work performed by the individual. All staff employed by an ADCC must receive basic written information about interacting with participants who have Alzheimer's disease or dementia-related disorders. Section 400.5571, F.S., requires new employees having direct contact with participants who suffer from Alzheimer's disease or other dementia-related disorders to complete certain training within specified time periods.

Caregiver Training Providers

On July 1, 2003 the training component for ALF and AFCH was privatized by DOEA[16]. Consequently, ALF and AFCH currently contract with private consultants and associations to ensure that facility staff is

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[13] Rule 58A-5.0191, F.A.C.
[14] Rule 58A-14.008, F.A.C.
[15] Ibid.
[16] During Special Session 2003-A, the Legislature privatized the Department of Elderly Affairs' ALF core training program and the eleven FTE training positions associated with the program were eliminated. Section 3, Chapter 2003-405, L.O.F.

provided with required training. There are 19 training providers statewide, and these providers and the fees charged in connection with training are not regulated by any state agency.

Training providers and facility administrators have expressed concerns about increased staff training costs to facilities, especially those serving Optional State Supplementation (OSS)[17] residents. The Department of Elder Affairs currently contracts with the Institute for Instructional Research and Practice at the University of South Florida to develop testing materials for the ALF Core Training requirements, and administer a caregiver examination.

University Research on Aging

There are a number of research institutes and centers on aging affiliated with Florida's state universities. Each institute has a specific focus for research and policy related to aging and long-term care. Research areas include work and retirement, pensions, long-term care, assisted living, technology and aging, dementia and caregiving, well-being, life satisfaction, the impact of Alzheimer's disease on families and communities, intergenerational relations, Social Security, and health and aging.

Created in 1992, the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida collects and analyzes information related to older adults, especially older Floridians. The Center informs policymakers, media representatives, scholars and advocates on policies, programs and services for older adults. The Center carries a Type I designation from the State Board of Education, meaning the Center has a responsibility to work closely with faculty and students from all Florida universities who are involved in aging-related research activities.

PROPOSED CHANGES

HB 49 provides the legislative intent to foster the development of caregiving as a non-licensed paraprofessional activity to provide care for frail and vulnerable adults who live in the community, reside in a licensed assisted living facility or adult family care home, or attend an adult day care center; and to promote the use of nationally recognized best-practices information by caregivers in an effort to improve the quality of care and facilitate uniformity of techniques, practices, and standards that are used in caring for the state's most vulnerable residents.

The bill creates the Florida Caregiver Institute, Inc. ("the corporation"). The corporation is created for the purpose of developing best-practices information and disseminating such information to caregivers and vulnerable adults alike. The corporation is to be organized as a not-for-profit corporation in compliance with Chapter 617, F.S., and is not a unit or entity of state government. The corporation is administratively housed within the Florida Policy Exchange Center on Aging at the University of South Florida.

The bill directs the corporation to assist FPECA with the development of policy recommendations to enhance the FPECA's efforts to improve the availability and skills of individuals seeking to work as caregivers in the home or community, or in an AFCH, ADCC, or ALF. The corporation is directed to exercise certain responsibilities including:

- Seeking state, federal, and private funding to provide training in the use of best practices;
- Working with universities, research and policy development centers and other institutions to develop training materials, identify best-practices techniques, and develop a curriculum;

[17] OSS is a non-Medicaid cash assistance program offered by the Department of Children and Family Services, intended to supplement an individual's income to help pay for costs in an assisted living facility, mental health residential treatment facility, and adult family care home. Calculation formulas and eligibility requirements are available at http://www.dcf.state.fl.us/ess/ssifactsheet.pdf, updated July, 2005.

- Conducting a needs assessment of non-licensed caregivers working in the community or facilities licensed under parts III, V, or VII of Chapter 400, F.S.;
- Making recommendations to DOEA, the Department of Children and Family Services (DCF), the Agency for Health Care Administration (AHCA) and the Florida Department of Health (DOH) regarding policy and related changes to help improve the quality, availability, and retention of non-licensed caregivers;
- Making recommendations to the Legislature and Governor on proposed legislative changes and budget-related items; and
- Developing agreements with AHCA, DOEA, DOH, DCF, and other relevant state agencies to allow access to state-owned buildings and state employees to provide training and professional development.

The corporation is further authorized to offer training to staff of ALF, AFCH, and ADCC and to charge a reasonable fee based on a sliding scale to provide the training. DOEA, in consultation with the corporation and the contractor responsible for the development of the training testing materials, must annually evaluate the testing materials.

The bill directs the corporation to collect information regarding non-licensed caregivers who work in the community and in facilities licensed under part III or part VII of Chapter 400, F.S. It specifies that the information collected must include but is not limited to:

- the salary rates for various positions
- professional development needs of non-licensed caregivers
- turnover rates and retention
- the number of caregivers using best-practices information in day-to-day care-related activities.

The corporation must also develop a memorandum of understanding with FPECA describing how the corporation will interact with FPECA in carrying out its responsibilities. The corporation must develop an agreement with FPECA for the center's provision of start-up costs and administrative support, with the expectation that the corporation will not rely on FPECA staff or financial assistance after June 1, 2008. The corporation is authorized to contract with FPECA for the provision of staff support, research, technical assistance, and data storage under a memorandum of agreement.

The bill provides that the board of directors of the corporation is to consist of 13 members who represent the views, interests, and perspectives of the parties, individuals, and stakeholders affected by the activities of the corporation. Each member is to be appointed to a two-year term and may not be reappointed to more than three additional terms with the exception of initial legislative appointments that shall be for three years. The board of directors for the corporation shall include:

- One member appointed by the Florida Association of Homes for the Aging;
- One member appointed by the Florida Assisted Living Affiliation;
- One member appointed by the Alzheimer's Association;
- One member appointed by the Florida Council on Aging;
- One member appointed by the Florida Adult Day Care Association;
- One member appointed by the Florida Respite Coalition;
- One member appointed by the State Long-Term Care Ombudsman;
- Two members appointed by the Governor;
- Two members appointed by the President of the Senate; and
- Two members appointed by the Speaker of the House of Representatives.

HB 49 requires the Governor, President of the Senate, and the Speaker of the House of Representatives to make their initial appointments no later than September 1, 2006. Appointed members serve at the pleasure of the entity that appointed them and may be removed by the appointing entity without cause.

The bill provides that the chair is to be elected by the members and may not serve more than two one-year terms and may not be a state employee. The corporation is directed to adopt by-laws, follow Robert's Rules of Order, and to meet quarterly unless the chair considers it appropriate to meet more often. A majority of the board membership constitutes a quorum. The corporation is directed to make its meetings open to the public and accept input from stakeholders. The chair is responsible for ensuring that accurate meeting minutes are kept and may appoint advisory committees to advise the corporation on particular issues. The chair of the committee may also appoint advisory committees to advise the corporation on specific issues as well as remove a member of the board for three unexcused absences from regularly scheduled meetings. Members of the board and its advisory committees must serve at their own expense.

HB 49 requires the chairman of the board of the corporation to establish an audit committee to annually review and report on the financial condition of the corporation. The committee is to provide to the board members, the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 10 of each year, a report that includes a complete accounting for all revenues and expenses incurred by the corporation during that year. The bill authorizes the corporation to employ staff, contract with consultants, and otherwise retain the necessary staff, within available fund limits, to accomplish its goals and purposes.

The bill requires the corporation to annually evaluate and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the status of its work relative to promoting the use of best practices by caregivers and developing non-licensed caregivers. This annual report is due by January 10 each year.

HB 49 requires public-sector agencies that provide training or support to non-licensed caregivers who work in the community, ALF, ADCC, and AFCH, to cooperate with the corporation. FPECA is required to certify to the Governor, the President of the Senate, and the Speaker of the House of Representatives – using criteria that includes communication, timeliness of response, and coordination efforts – whether the corporation is receiving the necessary support from the various public-sector entities that provide training to non-licensed caregivers.

The bill directs OPPAGA to conduct a review of the Florida Caregiver Institute, Inc., by October 1, 2009. OPPAGA is required to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives concerning whether the corporation has been effective in helping to improve the retention of non-licensed caregivers in the community and in facilities licensed under parts III, V, or VII of Chapter 400, F.S., and whether it has been successful in promoting the use of best-practice techniques by caregivers who care for Florida's frail and disabled adult population.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within FPECA; provides purpose, duties and powers of the corporation; provides for a board of directors; provides for membership, terms of office, meetings, and powers and duties of the board; provides for an audit committee; requires annual reports; provides duties for FPECA and state agencies.

Section 2: Requires OPPAGA to conduct a review of the corporation by a specified date; requires report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Impact", below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Corporation will need funding for start-up.

There is an undetermined cost for the corporation to perform the responsibilities assigned by the legislation. These responsibilities include developing training curricula and materials, conducting a caregiver needs assessment, reviewing the need for caregivers in certain areas, developing core training materials, and collecting and reporting information regarding the caregiver population.

D. FISCAL COMMENTS:

The University of South Florida
According to the Florida Policy Exchange Center on Aging at the University of South Florida, there will be an estimated cost of $100,000 for the Exchange Center to support the activities of this corporation.

State Agencies
The bill requires that the corporation develop agreements with DOEA, DCF, AHCA, DOH and any other state agency it considers necessary for the purpose of accessing state buildings and employees to provide training. The agencies will incur undetermined costs associated with this requirement.

Department of Elder Affairs

The Department of Elder Affairs reports that they no longer have the staffing or infrastructure capacity to meet the provisions of the legislation because their training program was privatized during the 2003 Legislative Session.

Agency for Health Care Administration

AHCA notes that the bill mandates agreements to be developed with itself, DOEA, DOH and DCF for the exclusive purpose of accessing state-owned buildings and state employees for the purpose of providing low-cost effective training. According to AHCA, without knowledge of the number of individuals who would actually need to be trained, at a minimum, the bill creates a need for one additional full-time equivalent position for the Agency to provide the proposed training. The position, located in Tallahassee, will travel to different locations around the state as needed to provide the

training. The comparable position identified for this training is a Health Services and Facilities Consultant (pay grade 24). It is estimated that there will be $18,200 in travel expenses annually. The trainer would travel to seven districts quarterly with the following travel expenses: $300 airfare, $300 hotel expenses (3 days) and $50 for incidentals. This would be a $650 travel expense for each trip totaling $18,200 annually. Deducting the allowance for travel of $3,550 that is already included in the annual standard expenditure allowance for a position, an additional travel amount of $14,650 per year would be needed. This would be a total cost to AHCA (salary and travel) in year 1 of $81,319 and in year 2 of $77,309.

AHCA notes it is not possible to determine how much training would be required, however there are over 2,300 licensed ALF and the staff turnover is high in some areas. In addition, there are 463 AFCH and relief personnel, and 163 ADCC staff, who would also need to be trained.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not affect counties or municipalities.

2. Other:

   Article IV, Section 6 of the state constitution, limits the power of the Legislature to create new departments, and specifically vests all functions of the executive branch of state government "among not more than twenty-five departments, exclusive of those specifically provided for or authorized" in the constitution. The creation of a corporation "administratively housed" within the Florida Policy and Exchange Center on Aging at the University of South Florida may raise this constitutional concern.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill appears directed at unlicensed caregivers employed by either licensed facilities or private entities, no definition of "caregiver" is provided. The Family Caregiver Alliance (FCA) defines a caregiver as one "who provides assistance to someone else who is, in some degree, incapacitated and needs help."[18] The FCA further distinguishes between "informal caregivers" (unpaid individuals such as family, friends, and neighbors) and "formal caregivers" (volunteers or paid care providers associated with a service system).[19] On December 6, 2005, the Senate Committee on Children & Families adopted without engrossing a definition of a "caregiver" as "a person who receives financial compensation for providing assistance, care, or personal services to another person." Moreover, there is no specific requirement that any member of the Board of Directors of the Florida Caregiver Institute, Inc., be a caregiver.

The legislation directs the board chairman to create an audit committee, constituted by at least three board members, to annually review the financial status of the corporation and ultimately report these findings to the Governor, President of the Senate, and Speaker of the House of Representatives. Nowhere, however, does the bill stipulate that certain members of the board will have accounting or audit experience, and the legislation makes no provision for the board's collaboration with certified

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[18] *Selected Caregiver Statistics*, accessed January 6, 2006, Family Caregiver Alliance, available at: http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=439.
[19] Ibid.

public accountants throughout such an audit process. CPAs are typically involved in audits to ensure accuracy and unbiased reporting.

The bill specifies that the Florida Caregiver Institute, Inc. is not a unit of state government. The bill also does not require that the corporation (and any committees it forms) be subject to the public records requirements of Chapter 119, F.S., or the public meetings requirements of Chapter 286, F.S.

In subsection 3(g) of section 1, the bill enables the corporation to charge a reasonable fee, on a sliding scale, for the training of unlicensed caregivers who work in the community or Parts III, V, or VII of Chapter 400, F.S., but provides no parameters for evaluation of what is considered a "reasonable fee".

AHCA has reported that the agency is uncertain how the corporation's mission will impact either the Consumer Directed Care or Assisted Living for the Elderly waiver programs.[20]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[20] The Florida Consumer Directed Care project, one of three such waiver programs nationally, is a cash benefit allowing recipients to make more of their own decisions about personal attendant and related personal assistance services. Similarly, the Assisted Living for the Elderly waiver provides additional personal care and supervision services to aged individuals who would otherwise require nursing home placement. Source: *Model Florida Long-Term Care System / Analyzing Long-Term Care Initiatives in Florida*, November 2003, Senate Committee on Health, Aging, and Long-Term Care, available at: http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-144hclong.pdf.

1 A bill to be entitled
2 An act relating to caregivers for adults; providing
3 legislative intent to foster caregiving as a nonlicensed
4 paraprofessional activity and to promote the caregivers'
5 use of best practices; creating the Florida Caregiver
6 Institute, Inc., an independent not-for-profit corporation
7 housed in the Florida Policy Exchange Center on Aging at
8 the University of South Florida; providing purposes,
9 duties, and powers of the corporation; providing for a
10 board of directors; providing for membership, terms of
11 office, meetings, and powers and duties of and
12 restrictions on the board; providing for an audit
13 committee; requiring reports to the Governor and the
14 Legislature; providing duties of the Florida Policy
15 Exchange Center on Aging and other public agencies;
16 providing for the Office of Program Policy Analysis and
17 Government Accountability to conduct a review of the
18 corporation by a specified date and to report to the
19 Governor and the Legislature; providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Legislative intent; Florida Caregiver
24 Institute, Inc.; creation, duties, board of directors,
25 reports.--
26 (1) It is the intent of the Legislature to foster the
27 development of caregiving for frail elders and disabled adults
28 as a nonlicensed paraprofessional activity that is critical to

29 the provision of community-based and institutional care for
30 frail elders and disabled adults who live in the community or in
31 an assisted living facility licensed under part III of chapter
32 400, Florida Statutes, or an adult family-care home licensed
33 under part VII of chapter 400, Florida Statutes, or who attend
34 an adult day care center licensed under part V of chapter 400,
35 Florida Statutes. It is the further intent of the Legislature to
36 promote the use of nationally recognized best practices
37 information by caregivers so as to improve the quality of care
38 in the community and in long-term care facilities licensed by
39 the state and to ensure some degree of uniformity of techniques,
40 practices, and standards used in caring for frail elders and
41 disabled adults residing in the state.
42 (2) In order to accomplish the goal of developing best
43 practices information and providing that information to
44 caregivers of frail elders or disabled adults who live in the
45 community, reside in facilities licensed by the state under part
46 III or part VII of chapter 400, Florida Statutes, or attend an
47 adult day care center licensed under part V of chapter 400,
48 Florida Statutes, there is created the Florida Caregiver
49 Institute, Inc., a not-for-profit corporation that shall be
50 registered, incorporated, organized, and operated in compliance
51 with chapter 617, Florida Statutes, and that may not be a unit
52 of state government. The Florida Caregiver Institute, Inc.,
53 hereinafter referred to as "the corporation," shall be
54 administratively housed in the Florida Policy Exchange Center on
55 Aging at the University of South Florida.
56 (3) The corporation shall assist the Florida Policy

57 Exchange Center on Aging in the development of policy
58 recommendations to enhance the center's efforts to improve the
59 skills and availability of individuals who seek to work as
60 caregivers in the home, in the community, or in a facility
61 licensed by the state under part III, part V, or part VII of
62 chapter 400, Florida Statutes. The corporation also:
63 (a) Shall seek to identify funding by state, federal, and
64 private sources for the purpose of providing training in and
65 promotion of the use of best practices to caregivers.
66 (b) Shall work with universities and other related parties
67 to develop training materials and a curriculum and identify best
68 practices.
69 (c) Shall conduct a needs assessment of the nonlicensed
70 caregivers who work in the community or in facilities that are
71 licensed under part III, part V, or part VII of chapter 400,
72 Florida Statutes.
73 (d) Shall make recommendations to the Department of
74 Elderly Affairs, the Department of Children and Family Services,
75 the Agency for Health Care Administration, and the Department of
76 Health regarding policy and related changes that will improve
77 the quality, availability, and retention of nonlicensed
78 caregivers who work in the community or in facilities licensed
79 under part III, part V, or part VII of chapter 400, Florida
80 Statutes.
81 (e) Shall make recommendations on proposed legislative
82 changes and budget-related items that would affect the quality,
83 availability, and retention of nonlicensed caregivers and review
84 the need for nonlicensed caregivers to work in the community or

85 in facilities licensed under part III, part V, or part VII of
86 chapter 400, Florida Statutes. This information shall be
87 provided to the Governor, the President of the Senate, and the
88 Speaker of the House of Representatives by January 1 of each
89 year.
90 (f) Shall develop agreements with the Department of
91 Elderly Affairs, the Department of Children and Family Services,
92 the Agency for Health Care Administration, the Department of
93 Health, and any other state agency it considers necessary for
94 the exclusive purpose of providing access to state buildings and
95 state employees in order to offer low-cost, effective training
96 and paraprofessional development assistance to nonlicensed
97 caregivers who work in the community or in facilities licensed
98 under part III, part V, or part VII of chapter 400, Florida
99 Statutes.
100 (g) May charge a reasonable fee, on a sliding scale, as
101 provided in the bylaws of the corporation for the training of
102 nonlicensed caregivers who work in the community or in
103 facilities licensed under part III, part V, or part VII of
104 chapter 400, Florida Statutes. The corporation shall take all
105 steps possible to offer high-quality training at the most cost-
106 effective rates.
107 (h) May offer training to the personnel of assisted living
108 facilities, adult family-care homes, and adult day care centers.
109 The Department of Elderly Affairs, in consultation with the
110 corporation and the contractor responsible for the development
111 of training materials, shall annually evaluate and make any
112 necessary changes to these materials.

113 (i) Shall collect information regarding nonlicensed
114 caregivers who work in the community and in facilities licensed
115 under part III, part V, or part VII of chapter 400, Florida
116 Statutes. The information collected must include, but need not
117 be limited to, the salary rates for various positions,
118 professional development needs of nonlicensed caregivers,
119 information regarding turnover rates and retention, and data
120 that identify the number of caregivers using best practices in
121 daily care-related activities.
122 (j) Shall develop a memorandum of understanding with the
123 Florida Policy Exchange Center on Aging that describes how the
124 corporation will interact with the center in carrying out its
125 responsibilities.
126 (k) Shall develop an agreement with the Florida Policy
127 Exchange Center on Aging for the provision of administrative
128 support and startup costs, with the expectation that the
129 corporation will not rely upon the center for staff or financial
130 assistance after June 1, 2008.
131 (l) May contract with the Florida Policy Exchange Center
132 on Aging for the provision of staff support, research, technical
133 assistance, and data storage under a memorandum of agreement.
134 (4)(a) The board of directors of the corporation shall
135 consist of 13 members who represent the views, interests, and
136 perspectives of the parties, individuals, and stakeholders
137 affected by the activities of the corporation. Each member of
138 the board shall be appointed to a 2-year term and may not be
139 reappointed to more than three additional terms, except that the
140 initial legislative appointments shall be for a period of 3

141 years each.
142 (b) The board of directors of the corporation shall
143 include:
144 1. One member appointed by the Florida Association of
145 Homes for the Aging.
146 2. One member appointed by the Florida Assisted Living
147 Affiliation.
148 3. One member appointed by the Alzheimer's Association.
149 4. One member appointed by the Florida Council on Aging.
150 5. One member appointed by the Florida Adult Day Care
151 Association.
152 6. One member appointed by the Florida Respite Coalition.
153 7. One member appointed by the State Long-Term Care
154 Ombudsman.
155 8. Two members appointed by the Governor.
156 9. Two members appointed by the President of the Senate.
157 10. Two members appointed by the Speaker of the House of
158 Representatives.
159
160 The Governor, the President of the Senate, and the Speaker of
161 the House of Representatives must make their respective initial
162 appointments not later than September 1, 2006.
163 (c) The chair shall be elected by the members, may not
164 serve more than two 1-year terms, and may not be a state
165 employee.
166 (d) The board shall adopt bylaws for the regulation of its
167 affairs and the conduct of business and shall follow Robert's
168 Rules of Order, newly revised edition, for all procedural

169 matters that arise.
170 (e) A majority of the members of the board constitutes a
171 quorum.
172 (f) The corporation shall be accountable to the board. The
173 meetings of the board shall be open to any member of the public
174 and shall accept input from family members, consumers,
175 stakeholders, providers, or other parties affected by the
176 activities of the corporation. The board shall post the schedule
177 and location of its meetings on a website and in public
178 buildings.
179 (g) The chair shall ensure that accurate minutes are kept
180 which reflect the attendance, motions, and actions of the board
181 and the discussion of matters brought before the board. These
182 minutes shall be made available to the public for inspection and
183 review and, if possible, posted on a website to provide greater
184 public access.
185 (h) The chair shall call a meeting quarterly and may
186 schedule other meetings using electronic means as he or she
187 considers appropriate. The chair shall call at least one meeting
188 per year to establish goals and evaluate the progress of the
189 corporation in the previous year.
190 (i) The chair may appoint advisory committees to advise
191 the corporation on specific issues that fall within the
192 corporation's scope of work and stated objectives.
193 (j) Each member of the board and its advisory committees
194 shall serve at his or her own expense, including travel or other
195 costs associated with his or her duties as a member of the board
196 of directors.

197 (k) The chair may remove a member of the board for three
198 unexcused absences from regularly scheduled meetings.
199 (l) An appointed member serves at the pleasure of the
200 entity that made the appointment and may be removed by that
201 entity without cause.
202 (5)(a) The chair shall establish an audit committee
203 consisting of at least three board members to annually review
204 and report on the financial condition of the corporation. A copy
205 of the audit committee's report shall be provided to board
206 members, the Governor, the President of the Senate, and the
207 Speaker of the House of Representatives by January 10 of each
208 year. The audit committee's report must include a complete
209 accounting of all revenues received and expenses incurred by the
210 corporation during that year.
211 (b) The corporation may employ staff, contract with
212 consultants, and otherwise retain the necessary staff within the
213 limits of available funds to accomplish its goals and purposes.
214 (c) By January 10 of each year, the corporation shall
215 issue a report to the Governor, the President of the Senate, and
216 the Speaker of the House of Representatives that evaluates the
217 status of the work of the corporation relating to the use of
218 best practices by caregivers and the development of nonlicensed
219 caregivers who work in the community or in facilities licensed
220 under part III, part V, or part VII of chapter 400, Florida
221 Statutes.
222 (d) Each public sector agency that provides training or
223 support for nonlicensed caregivers who work in the community or
224 in facilities licensed under part III, part V, or part VII of

225 chapter 400, Florida Statutes, shall cooperate with the
226 corporation. The Florida Policy Exchange Center on Aging shall
227 certify to the Governor, the President of the Senate, and the
228 Speaker of the House of Representatives, using criteria that
229 include communication, timeliness of response, and coordination
230 of efforts, whether the corporation is receiving the necessary
231 and requested support from public sector organizations that
232 provide training to nonlicensed caregivers.
233 Section 2. By October 1, 2009, the Office of Program
234 Policy Analysis and Government Accountability shall conduct a
235 review of the Florida Caregiver Institute, Inc., and shall issue
236 a report to the Governor, the President of the Senate, and the
237 Speaker of the House of Representatives evaluating the
238 effectiveness of the corporation in helping the state meet its
239 goals of improving the retention of nonlicensed caregivers in
240 the community or in facilities licensed under part III, part V,
241 or part VII of chapter 400, Florida Statutes, and whether it has
242 been successful in promoting the use of best practices by
243 caregivers of the state's frail elder and disabled adult
244 population.
245 Section 3. This act shall take effect July 1, 2006.

HB 351

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 CS Community Residential Homes
SPONSOR(S): Lopez-Cantera
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	6 Y, 2 N, w/CS	Davis	Collins
2) Elder & Long-Term Care Committee		DePalma	Walsh
3) Growth Management Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

House Bill 351 amends the statutory provision relative to Community Residential Homes with six or fewer residents. This change requires that, prior to occupancy, the sponsoring agency must provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. Currently, Community Residential Homes with seven to fourteen residents must provide this information but not Community Residential Homes with six or fewer residents. The bill also requires that at the time of home occupancy, the sponsoring agency or the licensing entity must notify the local government that the home is licensed by the department.

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other protected classes of persons. See CONSTITUTIONAL ISSUES section of the analysis for complete analysis of case law, the American with Disabilities Act (ADA), and the Fair Housing Act.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS: This bill requires the sponsoring agency to provide the most recently compiled data to the local government for a community residential home with six or fewer residents. To the extent that the required provision of data by a sponsor of a community residential home to a local government potentially makes the siting of a home more difficult or limits availability of such homes, there could be an effect on choices and alternatives for residents of community residential homes.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This bill amends existing law to add to the required local government notification provisions applicable to an agency sponsoring a community residential home of six or fewer residents.

The bill requires that, prior to occupancy, such sponsoring agency provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located to show that no other community residential home with six or fewer residents is within a radius of 1,000 feet of the proposed home. The purpose of this change is to eliminate the clustering of community residential homes with six or fewer residents within a community.

Previously, the sponsoring agency or the Department of Children and Family Services was required only at the time of occupancy to notify local government that the home was licensed by the department. Now, in addition to the "prior to occupancy" licensing requirement addressed above, the "data requirement" responsibility lies with the sponsoring agency.

Background

Historically, living placement options for the physically disabled, handicapped, developmentally disabled, mentally ill, and children were primarily state institutions or nursing homes. However, that began to change in Florida in the 1980s as the Florida Legislature began to develop a policy of community integration as an effective treatment method for those in need. The history of community integration has not always been an easy transition, but great strides have been made in combating discriminatory policies against the mentally ill, elderly, handicapped and children in need. These changes can largely be attributed to the development of federal law that focused on protecting these protected classes of individuals.

In 1989, House Bill 1269 (chapter 89-372, L.O.F) established the framework for what is currently section 419.001, Florida Statutes. One of the purposes was to prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care. The goal was simply to follow a deinstitutionalization model for placement of persons with special needs in the least restrictive setting and for the encouragement of placement of such individuals in community residential facilities. The state has a significant interest in the development of community residential homes because of the service they provide. These homes provide a living environment for many different types of people. They include children who may be dependent and are placed in licensed child care settings. Some group homes may serve the developmentally disabled in a licensed residential facility; while other group homes provide a living environment for the elderly in an adult congregate living facility. All of these services and many more that may be offered provide a service that is needed in some capacity in Florida.

Currently, section 419.001, Florida Statutes, requires the local government to approve the location of certain residential homes which provide for a living environment for seven to fourteen unrelated residents. When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily use, the agency shall notify the Chief Executive Officer of the local government in writing. The local government then has up to 60 days to respond and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question. Currently, homes with six or fewer residents shall be deemed a single family unit without approval by the local government, provided that the home does not exist in a 1,000 feet radius of another six or fewer resident home.

In January of 2004, the Department of Children and Families (DCF) reported that over 5,000 individuals with Developmental Disabilities lived in foster care facilities and group home facilities licensed by DCF and operated by private providers. There are approximately 1,000 licensed facilities which serve as alternatives to institutional care, enabling individuals to live in a family-like setting in the community where necessary supports are available.

Section 419.001(1)(d), Florida Statutes, defines a "resident" as a:

- "Frail elder" pursuant to section 400.618, Florida Statutes, which includes a functionally impaired person who is over the age of 60 who has physical and mental limitations that restricts the ability of that person to live independently and perform normal activities of daily living.

- "Physically disabled or handicapped person" pursuant to section 760.22(7)(a), Florida Statutes, which includes a person that has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment.

- "Developmentally disabled person" pursuant to section 393.063, Florida Statutes, which includes a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

- Nondangerous "mentally ill person" pursuant to section 394.455(18), Florida Statutes, which includes an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

- "Child" who is found to be dependent by the court pursuant to section 39.01(14), Florida Statutes, and a "child" in need of services pursuant to subsection 984.03(9) and 985.03(8), Florida Statutes.

Section 393.062, Florida Statutes, provides in part:

> "....The Legislature declares that the goal of this act, to improve the quality of life of all developmentally disabled persons by the development and implementation of community-based residential placements, services, and treatment, cannot be met without ensuring the availability of community residential opportunities for developmentally disabled persons in the residential areas of this state. The Legislature, therefore, declares that all persons with developmental disabilities who live in licensed community homes shall have a family living environment comparable to other Floridians. The Legislature intends that such residences shall be

considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home."

C. SECTION DIRECTORY:

Section 1: Amends s. 419.001(1) and (2), F. S., regarding site selection of community residential homes.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could potentially restrict the ability of private organizations to provide cost-effective residential homes to certain residents because of the added requirement to furnish data to the local government prior to occupancy.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

One potential constitutional concern is whether or not discrimination may be claimed by persons with developmental disabilities and other defined protected classes.

In *Dornbach v. Holley*, 854 So.2d 211, (Fla 2d DCA 2002), owners of residential real property in a subdivision brought action in the lower court seeking injunctive relief, alleging that proposed use of subdivision property as a group home for four to six developmentally disabled adults violated subdivision's restrictive covenants. The lower court entered an order granting a permanent injunction. The owners of the property to be used as a group home appealed. The court held that enforcing deed restriction against a group home was impermissibly discriminatory. In finding this ruling the court discussed the argument that the enforcement of a restrictive covenant is contrary to the United States Fair Housing Act of 1988 (FHAA). This act added handicapped persons to those protected from discrimination in buying and renting facilities.

The Florida Legislature essentially codified the Federal Act when it enacted the Florida Fair Housing Act in sections 760.20 - 760.37, F.S. Section 760.23(7)(b), F.S., provides that, "It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available." The statute states further that discrimination is also defined as to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

In considering the application of the Florida Fair Housing Act, the federal courts have determined that one may be guilty of discrimination in any one of three ways. First, the Act prohibits intentional discriminatory conduct towards a handicapped person. *See Martin v. Constance,* 843 F.Supp. 1321 (E.D.Mo.1994). Second, the Act prohibits incidental discrimination, that is, an act that results in making property unavailable to a handicapped person. *Id.* Third, the Act prohibits an act that fails to make a reasonable accommodation that would allow a handicapped person the enjoyment of the chosen residence. *See Advocacy Ctr. for Persons with Disabilities, Inc. v. Woodlands Estates Ass'n,* 192 F.Supp.2d 1344 (M.D.Fla.2002). The Court was persuaded that, given the similarity of language and purpose in the federal and the Florida legislation, this three-pronged approach applies equally to the Florida Fair Housing Act. The record in *Dornbach* does show that by enforcing the restriction in question, incidental discrimination results since the residence is made unavailable for the handicapped. *See Rhodes v. Palmetto Pathway Homes, Inc.,* 303 S.C. 308, 400 S.E.2d 484 (1991). Finally, public policy as stated in section 419.001(2) and in section 393.062, Florida Statutes (2000), supports the premise that the group home in *Dornbach* is the functional equivalent of a single-family residential unit and as such does not pose any threat to the purpose justifying the deed restrictions at issue. Thus, to refuse to waive these restrictions is to refuse to offer a reasonable accommodation, which also amounts to discrimination as defined by statute. *See Advocacy Ctr.,* 192 F.Supp.2d 1344.

In July 1999, the U.S. Supreme Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. *Olmstead v. L. C.*, 527 U.S. 581 (1999). The *Olmstead* decision interpreted Title II of the Americans with Disabilities Act (ADA) and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age.

B. RULE-MAKING AUTHORITY:

The bill does not provide any additional rulemaking authority to the identified departments and agencies; however, the entities have sufficient rulemaking authority in existing law to carry out its current licensing functions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 419, Florida Statutes, requires the Department of Children and Families to license community residential homes. Staff research has revealed that several other state agencies are involved in the licensing of community residential-type facilities, including the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Agency for Health Care Administration. Since there is not one central licensing agency, there is the potential that residential group homes could be located next to each other in the same community without the knowledge of the other licensing agency. This bill will potentially help avoid this problem by placing with the sponsoring agency the responsibility to provide the most recently published data compiled showing that no other community residential home of six or fewer residents is located within 1,000 feet of the proposed home.

The Agency for Persons with Disabilities (APD) expressed the following concerns:

> Area APD staff currently provide local governments with updated information regarding the number and location of APD-licensed homes. Local government uses this information in determining whether or not prospective providers applying for initial licensure as a community residential home comply with the distance requirements delineated with Chapter 419. Local government is the logical repository for such licensure information since multiple state agencies have the authority to license community residential homes and do not currently have access to each of those licensure databases.
>
> Using the existing definition of "sponsoring agency", agencies which are seeking licensure (through APD) to render residential services to persons with developmental disabilities would not possess the "most recently published data which identifies existing community residential homes". Therefore, in order to comply with the mandatory reporting requirements contained within the proposed bill, prospective residential providers would have to contact each of the various state agencies authorized to license community residential homes in order to obtain the most recent data regarding the locations of those homes. This requirement could create a hardship for these individual providers and delay the licensure process. Since licensure databases change on a routine basis (as new community residential homes are licensed) such delays could potentially result in local governments making decisions based upon outdated licensure information.

The Department of Children and Family Services expressed the following concerns:

> This change will allow local governments to prohibit the development of community residential homes of six or fewer beds within 1,000 feet of other community residential homes. This restriction is likely to make it more difficult for contracted providers to develop community residential homes. This is due to site restrictions which impact lease/purchase costs. Although the 1,000 foot space between homes is not a new requirement, the compilation of data verifying the absence or presence of other community residential homes prior to occupancy is a new requirement.
>
> The proposed language may contain a technical deficiency in the use of the term "district", as this term may not be used by other agencies. If passed, this bill will require sponsors of community residential homes to provide local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Future of Florida's Families Committee adopted a Committee Substitute. The Committee Substitute changed the notification requirement for sponsoring agencies at the time of home occupancy to state that the sponsoring agency or the licensing entity rather than the Department of Children and Family Services must notify the local government that the home is licensed by the department. The need for this change stems from the fact that more than one state agency licenses community residential homes, so to single out the Department of Children and Family Services inaccurately reflects the current licensing situation.

CHAMBER ACTION

The Future of Florida's Families Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to community residential homes; amending s. 419.001, F.S.; revising definitions; requiring the sponsoring agency of a community residential home to provide certain information to a local government under certain circumstances; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 419.001, Florida Statutes, are amended to read:

419.001 Site selection of community residential homes.--

(1) For the purposes of this section, the following definitions shall apply:

(a) "Community residential home" means a dwelling unit licensed to serve residents, as defined in paragraph (c), who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice,

24 or the Department of Children and Family Services or a dwelling
25 unit licensed by the Agency for Health Care Administration~~,~~
26 which provides a living environment for 7 to 14 unrelated
27 residents who operate as the functional equivalent of a family,
28 including such supervision and care by supportive staff as may
29 be necessary to meet the physical, emotional, and social needs
30 of the residents.
31 ~~(b) "Department" means the Department of Children and~~
32 ~~Family Services.~~
33 (b) ~~(c)~~ "Local government" means a county as set forth in
34 chapter 7 or a municipality incorporated under the provisions of
35 chapter 165.
36 (c) ~~(d)~~ "Resident" means any of the following: a frail
37 elder as defined in s. 400.618; a physically disabled or
38 handicapped person as defined in s. 760.22(7)(a); a
39 developmentally disabled person as defined in s. 393.063; a
40 nondangerous mentally ill person as defined in s. 394.455(18);
41 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
42 s. 985.03(8).
43 (d) ~~(e)~~ "Sponsoring agency" means an agency or unit of
44 government, a profit or nonprofit agency, or any other person or
45 organization which intends to establish or operate a community
46 residential home.
47 (2) Homes of six or fewer residents which otherwise meet
48 the definition of a community residential home shall be deemed a
49 single-family unit and a noncommercial, residential use for the
50 purpose of local laws and ordinances. Homes of six or fewer
51 residents which otherwise meet the definition of a community

52 residential home shall be allowed in single-family or
53 multifamily zoning without approval by the local government,
54 provided that such homes shall not be located within a radius of
55 1,000 feet of another existing such home with six or fewer
56 residents. Such homes with six or fewer residents shall not be
57 required to comply with the notification provisions of this
58 section; provided~~, however,~~ that, prior to occupancy, the
59 sponsoring agency provides the local government with the most
60 recently published data compiled that identifies all community
61 residential homes in the district in which the proposed site is
62 to be located in order to show that no other community
63 residential home is within a radius of 1,000 feet of the
64 proposed home with six or fewer residents. At the time of home
65 occupancy, the sponsoring agency or the licensing entity must
66 notify ~~or the department notifies~~ the local government ~~at the~~
67 ~~time of home occupancy~~ that the home is licensed by the
68 department.
69 Section 2. This act shall take effect July 1, 2006.

HB 377

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Continuing Care Provider Minimum Liquid Reserve Requirements
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Insurance Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

House Bill 377 amends s. 651.035(2)(a), F.S. by deleting a provision requiring continuing care providers to increase certain minimum debt service requirements.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The bill deletes certain minimum debt service reserve requirements for continuing care providers, potentially enabling these providers more financial and programmatic flexibility in conducting their affairs and directing available resources.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Continuing Care Retirement Communities

A Continuing Care Retirement Community (CCRC), also frequently referred to as a "Life Care Community," is a senior housing arrangement specifically designed to provide its residents with both short-term independence of living and some measure of long-term security, as providers contract with residents for provision of a continuum of care as the senior's needs and abilities change.

All CCRCs offer three basic care environments which residents may elect to move among to accommodate evolving physical and social needs: (1) independent living, (2) assisted living, and (3) skilled nursing care.[1] While seniors residing in independent living facilities at a CCRC typically are more active residents requiring less direct attention and assistance, residents desiring either short- or long-term skilled nursing care may utilize a CCRC's Health Care Center, an on-site facility offering 24-hour nursing care.

Prior to enrollment at a CCRC, prospective residents are required to sign a lifetime contract with the Community specifying the senior's service and residency elections. Although the entrance and monthly maintenance fees required for CCRC residency are substantial and a prohibitive barrier to such a living arrangement for many seniors[2], CCRCs generally offer three separate fee schedules to choose among when contracting with a resident. These schedules range from more extensive contracts (including unlimited long-term nursing care at little or no increase in monthly fees) to fee-for-service contracts (where residents pay separately for all health and medical services, and for long-term care).[3]

CCRCs are growing in popularity. Nationally, more than 2,100 CCRCs house approximately 625,000 people, and there are currently 70 CCRCs in the state.[4] Nonprofit agencies sponsor most CCRCs, and often are established in a manner that caters to affinity groups such as religious organizations, fraternal orders, and ethnic groups.[5]

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[1] For information on program features and alternatives offered within a CCRC, and a review of the various contract options available to Community residents, refer to program evaluations provided by the American Association of Retired Persons (AARP), available at: http://www.aarp.org/families/housing_choices/other_options/a2004-02-26-retirementcommunity.html, and the Florida Department of Elder Affairs (DOEA), available at: http://elderaffairs.state.fl.us/2004CRG/sec04.html#ccr.

[2] AARP reports that one-time entrance fees can range from a low of $20,000 to a high of $400,000, and monthly maintenance fees can range from $200 to $2,500, ibid.

[3] S. 651.055(1)(b), F.S.,

[4] Statistical data from *Long Term Care: Florida's Challenge*, prepared by University of Florida professor Doctor Josephine Turner and available at: http://fycs.ifas.ufl.edu/financial/unit5/u5ppts/u5ltc.ppt.

[5] A collection of "non-commercial information" on Continuing Care Retirement Communities can be found at: http://www.helpguide.org/elder/continuing_care_retirement_communities.htm.

Minimum Liquid Reserve Requirement

Presently, CCRCs must maintain a statutorily-prescribed minimum liquid reserve for the benefit of facility residents, the requirements of which are found in s. 651.035, F.S. In the event of insolvency, the debt service reserve would be used by the receiver to pay mortgage principal and interest, taxes and insurance for a period of one year for any insolvent continuing care provider that was placed in Rehabilitation and Liquidation.

This reserve is maintained in escrow, and consists of two principal components[6] based on two distinct calculations. The first is the "debt service reserve",[7] a figure representative of a provider's property insurance[8] premiums. Providers must maintain in escrow, as a reserve, an amount equal to the next 12 months of interest payments on any mortgage loan or other long-term financing of the facility, including taxes and insurance.

The other is the "operating reserve" based on the three-year average of total operating expenses, *less* depreciation and amortization, property insurance, interest and taxes, extraordinary expenses if adequately explained and documented, liability insurance[9] premiums in excess of those paid in 1999, and changes in the obligation to provide future services to current residents. Each provider must maintain in reserve an amount equal to 30 percent of the total projected operating expenses[10] for the fiscal 12 months of operation, and 15 percent thereafter.

In recognition of an escalation in liability and property insurance rates, the 2002 Legislature passed SB 1246 amending s. 651.035, F.S.[11] Under this legislation, the amount of property insurance premiums used in calculating a CCRC's debt service reserve – and the amount of liability insurance premiums used in calculating the operating reserve – could not exceed premiums paid in calendar year 1999.[12] For CCRCs licensed during or after 1999, the amount of property insurance premiums used in calculating a provider's debt service reserve are capped at the amount paid during the first 12 months of a facility's operation.

Under s. 651.035, F.S., beginning on January 1, 2006 – and each year thereafter, until the amount held in escrow attributable to property insurance equals 100 percent of the premium – a provider is required to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year. The section does not include a similar provision for making the operating reserve whole at some future time.

EFFECT OF PROPOSED CHANGES

HB 377 amends s. 651.035(2)(a), F.S. by deleting the provision added during the 2002 Legislative Session requiring providers, beginning on January 1, 2006 and continuing each year thereafter until the amount maintained in its debt service reserve attributable to property insurance equals 100 percent of

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[6] S. 651.035, F.S. also supplies the statutory requirements of providers' "debt service reserve offset" and, as an element of the "operating reserve", a "renewal and replacement reserve".

[7] S. 651.035(2)(a), F.S.; although the reserve under paragraph (b) of subsection (2) of s. 651.035, F.S. is identified as a separate "debt service reserve", in practice it is referred to as the "debt service reserve *offset*". Consequently, in practice the reserve in paragraph (a) is referred to as the "debt service reserve".

[8] Per s. 624.604, F.S., property insurance is "insurance on real or personal property of every kind and of every interest therein, whether on land, water, or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon loss or damage, other than noncontractual legal liability for any such loss or damage."

[9] Per s. 624.605(1)(b), F.S., liability insurance is "insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as part of a liability insurance contract."

[10] This forecasting of operating expenses occurs in a feasibility study, required by s. 651.023, F.S.

[11] Section 3, Chapter 2002-222, L.O.F.

[12] Based on the most recently-filed annual reports, the Office of Insurance Regulation reports that CCRC reserve funds have been reduced by $12,408,697 ($3,946,585 in liability insurance and $8,462,112 in property insurance) as a result of capping the insurance premium rates at their 1999 levels for calculation of provider reserves.

the premium, to increase the amount maintained in escrow for property insurance by 10 percent of the premium paid that year.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 651.035, F.S.; deletes additional minimum debt service reserve requirements for certain continuing care providers for certain years.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Insurance Regulation (OIR)[13] reports an indeterminate economic impact on the private sector, and points out that in the event of a provider insolvency, inadequate reserves could result in the need for assessment to all CCRCs pursuant to s. 651.119, F.S.[14] According to OIR, since 1999 only one provider has become insolvent[15] and filed for protection from creditors pursuant to federal bankruptcy laws.[16]

D. FISCAL COMMENTS:

Although the precise number of Medicaid recipients residing in CCRCs is unavailable, 33 of 70 CCRCs are dually-certified as Medicare and Medicaid facilities. Potentially, increases to resident monthly

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[13] Pursuant to s. 20.121(3)(a)1, F.S., the OIR is responsible for all activities concerning insurers and other risk bearing entities, including "licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision."

[14] Under this section, upon provider insolvency, the Office is allowed to seek voluntary contributions from the reserves maintained by other providers to fund resident moving expenses. Absent voluntary contributions, the Office may levy pro rata assessments on the reserves maintained by other providers up to a certain amount, but may waive or temporarily defer all or part of an assessment if such assessment would impair the financial standing of a facility or its residents.

[15] S. 651.011(10), F.S.

[16] In this instance, the provider was purchased out of bankruptcy, and the provisions of s. 651.119, F.S. were thus never invoked.

maintenance fees as a result of the increases to provider reserve levels[17] currently required by s. 651.035(2)(a) F.S., (providers must annually increase the amount maintained in escrow attributable to property insurance by 10 percent of the premium paid that year, until this amount equals 100 percent of the premium) might result in an expenditure of Medicaid funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Counties and municipalities are not affected by this bill.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[17] The OIR reports an average increase per resident, per month, of $3.45, though a 50% increase in property insurance levels would result in residents experiencing an average monthly increase of $6.44, and a 100% increase in property insurance levels would result in an average increase of $8.59 monthly.

Bill No. **HB 377**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Elder & Long Term Care
2 Representative(s) Gibson offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraphs (a), (b), and (c) of subsection (2)
7 of section 651.035, Florida Statutes, are amended to read:
8 651.035 Minimum liquid reserve requirements.--
9 (2)(a) A provider shall maintain in escrow as a debt
10 service reserve an amount equal to the aggregate amount of all
11 principal and interest payments due during the fiscal year on
12 any mortgage loan or other long-term financing of the facility,
13 including taxes ~~and insurance~~ as recorded in the audited
14 financial statements required under s. 651.026. The amount shall
15 include any leasehold payments and all costs related to such
16 payments ~~same~~. If principal payments are not due during the
17 fiscal year, the provider shall maintain in escrow as a minimum
18 liquid reserve an amount equal to interest payments due during
19 the next 12 months on any mortgage loan or other long-term
20 financing of the facility, including taxes ~~and insurance~~. ~~For~~
21 ~~the purpose of this paragraph, the amount of property insurance~~
22 ~~premiums used in calculating the debt service reserve shall not~~

23 ~~exceed the amount paid in calendar year 1999. For providers~~
24 ~~initially licensed during or after calendar year 1999, the~~
25 ~~amount of property insurance premiums used in calculating the~~
26 ~~debt service reserve shall not exceed the amount paid during the~~
27 ~~first 12 months of facility operation. However, beginning~~
28 ~~January 1, 2006, and each year thereafter, until the amount~~
29 ~~maintained in escrow attributable to property insurance equals~~
30 ~~100 percent of the premium, the provider shall increase the~~
31 ~~amount maintained in escrow for property insurance by 10 percent~~
32 ~~of the premium paid that year~~.
33 (b) A provider which has outstanding indebtedness which
34 requires what is normally referred to as a "debt service
35 reserve" to be held in escrow pursuant to a trust indenture or
36 mortgage lien on the facility and for which the debt service
37 reserve may only be used to pay principal and interest payments
38 on the debt which the debtor is obligated to pay, and which may
39 include taxes and insurance, may include such debt service
40 reserve in its computation of its minimum liquid reserve to
41 satisfy this subsection, provided that the provider furnishes to
42 the office a copy of the agreement under which such debt service
43 is held, together with a statement of the amount being held in
44 escrow for the debt service reserve, certified by the lender or
45 trustee and the provider to be correct. The trustee shall
46 provide the office with any information concerning the debt
47 service reserve account upon request of the provider or the
48 office.
49 (c) Each provider shall maintain in escrow an operating
50 reserve in an amount equal to 30 percent of the total operating
51 expenses projected in the feasibility study required by s.
52 651.023 for the first 12 months of operation. Thereafter, each
53 provider shall maintain in escrow an operating reserve in an

54 amount equal to 15 percent of the total operating expenses in
55 the annual report filed pursuant to s. 651.026. Where a provider
56 has been in operation for more than 12 months, the total annual
57 operating expenses shall be determined by averaging the total
58 annual operating expenses reported to the office by the number
59 of annual reports filed with the office within the immediate
60 preceding 3-year period subject to adjustment in the event there
61 is a change in the number of facilities owned. For purposes of
62 this subsection, total annual operating expenses shall include
63 all expenses of the facility except: depreciation and
64 amortization; interest~~, insurance~~ and taxes included in
65 subsection (1); extraordinary expenses which are adequately
66 explained and documented in accordance with generally accepted
67 accounting principles; liability insurance premiums in excess of
68 those paid in calendar year 1999; and changes in the obligation
69 to provide future services to current residents. For providers
70 initially licensed during or after calendar year 1999, liability
71 insurance shall be included in the total operating expenses in
72 an amount not to exceed the premium paid during the first 12
73 months of facility operation. Beginning January 1, 1993, the
74 operating reserves required under this subsection shall be in an
75 unencumbered account held in escrow for the benefit of the
76 residents. Such funds may not be encumbered or subject to any
77 liens or charges by the escrow agent or judgments, garnishments,
78 or creditors' claims against the provider or facility. However,
79 if a facility had a lien, mortgage, trust indenture, or similar
80 debt instrument in place prior to January 1, 1993, which
81 encumbered all or any part of the reserves required by this
82 subsection and such funds were used to meet the requirements of
83 this subsection, then such arrangement may be continued, unless

84 a refinancing or acquisition has occurred, and the provider
85 shall be in compliance with this subsection.
86
87 ========== T I T L E A M E N D M E N T ==========
88 Remove the entire title and insert:
89 An act relating to continuing care provider minimum liquid
90 reserve requirements; amending s. 651.035, F.S.; deleting
91 property insurance premiums from debt service reserve
92 requirements; deleting calculations for the same; adding
93 property insurance premiums into operating reserve
94 calculations; providing an effective date.

1 A bill to be entitled
2 An act relating to continuing care provider minimum liquid
3 reserve requirements; amending s. 651.035, F.S.; deleting
4 certain additional minimum debt service reserve
5 requirements for certain years; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (a) of subsection (2) of section
11 651.035, Florida Statutes, is amended to read:
12 651.035 Minimum liquid reserve requirements.--
13 (2)(a) A provider shall maintain in escrow as a debt
14 service reserve an amount equal to the aggregate amount of all
15 principal and interest payments due during the fiscal year on
16 any mortgage loan or other long-term financing of the facility,
17 including taxes and insurance as recorded in the audited
18 financial statements required under s. 651.026. The amount shall
19 include any leasehold payments and all costs related to <u>such</u>
20 <u>payments</u> ~~same~~. If principal payments are not due during the
21 fiscal year, the provider shall maintain in escrow as a minimum
22 liquid reserve an amount equal to interest payments due during
23 the next 12 months on any mortgage loan or other long-term
24 financing of the facility, including taxes and insurance. For
25 the purpose of this paragraph, the amount of property insurance
26 premiums used in calculating the debt service reserve shall not
27 exceed the amount paid in calendar year 1999. For providers
28 initially licensed during or after calendar year 1999, the

29 amount of property insurance premiums used in calculating the
30 debt service reserve shall not exceed the amount paid during the
31 first 12 months of facility operation. ~~However, beginning~~
32 ~~January 1, 2006, and each year thereafter, until the amount~~
33 ~~maintained in escrow attributable to property insurance equals~~
34 ~~100 percent of the premium, the provider shall increase the~~
35 ~~amount maintained in escrow for property insurance by 10 percent~~
36 ~~of the premium paid that year.~~
37 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 Assisted Care Communities
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee		DePalma	Walsh
2) Future of Florida's Families Committee			
3) Governmental Operations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

House Bill 501 transfers provisions relating to assisted living facilities, adult family-care homes and adult day care centers from Parts III, V and VII of Chapter 400, F.S., to newly-created Parts I, II and III of Chapter 429, F.S., to be entitled "Assisted Care Communities."

The bill makes multiple statutory revisions which specify each conforming change required to accurately move these sections to their new chapter.

The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Regulation of Health Care Facilities and Services

Chapter 408, F.S., "Health Care Administration" contains the general statutory provisions assigned to the Agency for Health Care Administration (AHCA). The Agency, as created in s. 20.42, F.S., is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate of need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA, are found in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The facilities and services include drug free workplace laboratories, birth centers, abortion clinics, crisis stabilization units, short term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for the developmentally disabled, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

These regulated health care facilities and services provide care in settings ranging from individuals homes to institutions such as hospitals and nursing homes. The complexity of care provided ranges from companion and homemaker services in the home to trauma care and intensive care in hospitals. The duration of service ranges from short-term to long-term.

The Department of Elderly Affairs currently has rulemaking authority for the assisted living facility, adult family care home, adult day care center, and hospice programs. The Agency for Health Care Administration has rulemaking authority for the majority of other programs it licenses including hospitals, nursing homes, home health agencies, and others.

Nursing Homes and Related Health Care Facilities

Chapter 400, F.S., is entitled "Nursing Homes and Related Health Care Facilities" and consists of 13 parts.

Part	Title
I	Long-Term Care Facilities: Ombudsman Program
II	Nursing Homes
III	Assisted Living Facilities
IV	Home Health Agencies
V	Adult Day Care Centers
VI	Hospices
VII	Adult Family-Care Home Act
VIII	Intermediate, Special Services, and Transitional Living Facilities
IX	Prescribed Pediatric Extended Care Centers
X	Home Medical Equipment Providers
XI	Intermediate Care Facilities for Developmentally Disabled Persons
XII	Health Care Services Pools
XIII	Health Care Clinic Act

Assisted Living Facilities

Assisted Living Facilities (ALF) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALF provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that an excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALF, as more than 83% of Florida's ALF function as for-profit enterprises.[1]

In addition to a standard ALF operating license, there are three "specialty" ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have greater impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF.

Regardless of the facility's license status, residents living in ALF cannot have conditions that require 24-hour nursing supervision.[2]

Part III of Chapter 400, F.S., was created in 1975, and details the licensing and regulatory requirements for ALF.

Adult Family Care Homes

Adult Family Care Homes (AFCH) are a familial-oriented living arrangement in a private home. AFCH are licensed in accordance with Chapter 400, part VII, F.S. to provide room, board, and personal care on a 24-hour basis for up to five residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing supervision. The

[1] *Florida's Aging Population: Critical Issues for Florida's Future*, 2nd Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.
[2] An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

provider must own or rent and live in the home operating as an AFCH, and staff in AFCH are either employed by, or under contract with, the provider.

Part VII of Chapter 400, F.S., was created in 1985, and details the licensing and regulatory requirements for AFCH.

Adult Day Care Centers

Adult Day Care Centers (ADCC) provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Part V of Chapter 400, F.S., was created in 1978, and details the licensing and regulatory requirements for ADCC.

Division of Statutory Revision

The Division of Statutory Revision (the "Division") is a unit within the Office of Legislative Services (OLS), which is responsible for editing, compiling, indexing, and publishing the Florida Statutes under the continuous permanent statutory revision plan established under ss. 11.241-11.243, F.S. The powers, duties, and functions of OLS as they pertain to the statutory revision program are specified by these sections of statute.

The provisions of s.11.242(1), F.S., charge the Division with conducting a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser's bills and bills for the amendment, consolidation, revision, repeal, or other alterations or changes in any general statute or laws or parts thereof of a general nature required as a result of legislation approved during the preceding session or sessions.

EFFECT OF PROPOSED CHANGES

The bill transfers all sections of parts III, V and VII of chapter 400, F.S., to chapter 429, F.S., entitling the chapter "Assisted Care Communities" and making multiple statutory revisions necessary to accurately reflect the move of part III of chapter 400, F.S., to chapter 429, F.S. Chapter 429, F.S. is organized into parts I, II and II as follows:

Chapter 400, F.S., part	Title	Transfer to Chapter 429, F.S., part
III	Assisted Living Facilities	I
VII	Adult Family-Care Home Act	II
V	Adult Day Care Centers	III

C. SECTION DIRECTORY:

Section 1: Creates Chapter 429, Assisted Care Communities.

Section 2: Renumbers ss. 400.401 through 400.454 as ss. 429.01 through 429.54 and designates those sections as Part I, Assisted Living Facilities.

Section 3: Renumbers ss. 400.616 through 400.629 as ss. 429.60 through 429.87 and designates those sections as Part II, Adult Family-Care Homes.

Section 4: Renumbers ss. 400.55 through 400.564 as ss. 429.90 through 429.933 and designates those sections as Part III, Adult Day Care Centers.

Sections 5 through 121: Specifies each conforming change required to reflect the relocation of Parts III, VII and V of Chapter 400, F.S., to newly-created Parts I, II, and III of Chapter 429, F.S.

Section 122: Directs the Division of Statutory Revision to prepare a reviser's bill for introduction at a subsequent legislative session making conforming changes to Florida Statutes.

Section 123: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of this bill.

2. Expenditures:

   The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The municipal/county mandates provision in Section 18 of Article VII of the Florida Constitution does not appear to be applicable since the bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Agency for Health Care Administration has recommended several technical, non-substantive amendments to conform citations in the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Bill No. **HB 501**

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)
ADOPTED AS AMENDED __ (Y/N)
ADOPTED W/O OBJECTION __ (Y/N)
FAILED TO ADOPT __ (Y/N)
WITHDRAWN __ (Y/N)
OTHER ____

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1 Council/Committee hearing bill: Elder & Long-Term Care
2 Committee
3 Representative(s) Clarke offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Chapter 429, Florida Statutes, is created, to
8 be entitled "Assisted Care Communities."
9 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
10 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
11 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
12 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
13 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
14 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
15 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
16 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and
17 400.454, Florida Statutes, are renumbered as sections 429.01,
18 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
19 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,
20 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
21 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
22 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,

23 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
24 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
25 Florida Statutes, respectively, designated as part I of chapter
26 429, Florida Statutes, and entitled "ASSISTED LIVING
27 FACILITIES."
28 Section 3. Sections 400.616, 400.617, 400.618, 400.619,
29 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
30 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
31 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
32 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
33 Florida Statutes, respectively, designated as part II of chapter
34 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."
35 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
36 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
37 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
38 and 400.564, Florida Statutes, are renumbered as sections
39 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
40 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
41 429.927, 429.929, 429.931, and 429.933, Florida Statutes,
42 designated as part III of chapter 429, Florida Statutes, and
43 entitled "ADULT DAY CARE CENTERS."
44 Section 5. Subsection (1) of section 101.655, Florida
45 Statutes, is amended to read:
46 101.655 Supervised voting by absent electors in certain
47 facilities.--
48 (1) The supervisor of elections of a county shall provide
49 supervised voting for absent electors residing in any assisted
50 living facility, as defined in s. 429.02 ~~s. 400.402~~, or nursing
51 home facility, as defined in s. 400.021, within that county at
52 the request of any administrator of such a facility. Such
53 request for supervised voting in the facility shall be made by

54 submitting a written request to the supervisor of elections no
55 later than 21 days prior to the election for which that request
56 is submitted. The request shall specify the name and address of
57 the facility and the name of the electors who wish to vote
58 absentee in that election. If the request contains the names of
59 fewer than five voters, the supervisor of elections is not
60 required to provide supervised voting.
61 Section 6. Subsection (9) of section 189.428, Florida
62 Statutes, is amended to read:
63 189.428 Special districts; oversight review process.--
64 (9) This section does not apply to a deepwater port listed
65 in s. 311.09(1) which is in compliance with a port master plan
66 adopted pursuant to s. 163.3178(2)(k), or to an airport
67 authority operating in compliance with an airport master plan
68 approved by the Federal Aviation Administration, or to any
69 special district organized to operate health systems and
70 facilities licensed under chapter 395, ~~or~~ chapter 400, or
71 chapter 429.
72 Section 7. Paragraph (b) of subsection (2) of section
73 196.1975, Florida Statutes, is amended to read:
74 196.1975 Exemption for property used by nonprofit homes
75 for the aged.--Nonprofit homes for the aged are exempt to the
76 extent that they meet the following criteria:
77 (2) A facility will not qualify as a "home for the aged"
78 unless at least 75 percent of the occupants are over the age of
79 62 years or totally and permanently disabled. For homes for the
80 aged which are exempt from paying income taxes to the United
81 States as specified in subsection (1), licensing by the Agency
82 for Health Care Administration is required for ad valorem tax
83 exemption hereunder only if the home:

84 (b) Qualifies as an assisted living facility under ~~part~~
85 ~~III of~~ chapter 429 ~~400~~.
86 Section 8. Paragraph (c) of subsection (4) of section
87 202.125, Florida Statutes, is amended to read:
88 202.125 Sales of communications services; specified
89 exemptions.--
90 (4) The sale of communications services to a home for the
91 aged, religious institution or educational institution that is
92 exempt from federal income tax under s. 501(c)(3) of the
93 Internal Revenue Code, or by a religious institution that is
94 exempt from federal income tax under s. 501(c)(3) of the
95 Internal Revenue Code having an established physical place for
96 worship at which nonprofit religious services and activities are
97 regularly conducted and carried on, is exempt from the taxes
98 imposed or administered pursuant to ss. 202.12 and 202.19. As
99 used in this subsection, the term:
100 (c) "Home for the aged" includes any nonprofit
101 corporation:
102 1. In which at least 75 percent of the occupants are 62
103 years of age or older or totally and permanently disabled; which
104 qualifies for an ad valorem property tax exemption under s.
105 196.196, s. 196.197, or s. 196.1975; and which is exempt from
106 the sales tax imposed under chapter 212.
107 2. Licensed as a nursing home under chapter 400 or an
108 assisted living facility under chapter 429 ~~400~~ and which is
109 exempt from the sales tax imposed under chapter 212.
110 Section 9. Section 205.1965, Florida Statutes, is amended
111 to read:
112 205.1965 Assisted living facilities.--A county or
113 municipality may not issue an occupational license for the
114 operation of an assisted living facility pursuant to ~~part III of~~

115 chapter 429 ~~400~~ without first ascertaining that the applicant
116 has been licensed by the Agency for Health Care Administration
117 to operate such facility at the specified location or locations.
118 The Agency for Health Care Administration shall furnish to local
119 agencies responsible for issuing occupational licenses
120 sufficient instructions for making the above required
121 determinations.
122 Section 10. Paragraph (b) of subsection (1) of section
123 212.031, Florida Statutes, is amended to read:
124 212.031 Tax on rental or license fee for use of real
125 property.--
126 (1)
127 (b) When a lease involves multiple use of real property
128 wherein a part of the real property is subject to the tax
129 herein, and a part of the property would be excluded from the
130 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
131 (a)3., or subparagraph (a)5., the department shall determine,
132 from the lease or license and such other information as may be
133 available, that portion of the total rental charge which is
134 exempt from the tax imposed by this section. The portion of the
135 premises leased or rented by a for-profit entity providing a
136 residential facility for the aged will be exempt on the basis of
137 a pro rata portion calculated by combining the square footage of
138 the areas used for residential units by the aged and for the
139 care of such residents and dividing the resultant sum by the
140 total square footage of the rented premises. For purposes of
141 this section, the term "residential facility for the aged" means
142 a facility that is licensed or certified in whole or in part
143 under chapter 400, chapter 429, or chapter 651; or that provides
144 residences to the elderly and is financed by a mortgage or loan
145 made or insured by the United States Department of Housing and

146 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
147 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
148 or other such similar facility that provides residences
149 primarily for the elderly.
150 Section 11. Paragraph (i) of subsection (7) of section
151 212.08, Florida Statutes, is amended to read:
152 212.08 Sales, rental, use, consumption, distribution, and
153 storage tax; specified exemptions.--The sale at retail, the
154 rental, the use, the consumption, the distribution, and the
155 storage to be used or consumed in this state of the following
156 are hereby specifically exempt from the tax imposed by this
157 chapter.
158 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
159 entity by this chapter do not inure to any transaction that is
160 otherwise taxable under this chapter when payment is made by a
161 representative or employee of the entity by any means,
162 including, but not limited to, cash, check, or credit card, even
163 when that representative or employee is subsequently reimbursed
164 by the entity. In addition, exemptions provided to any entity by
165 this subsection do not inure to any transaction that is
166 otherwise taxable under this chapter unless the entity has
167 obtained a sales tax exemption certificate from the department
168 or the entity obtains or provides other documentation as
169 required by the department. Eligible purchases or leases made
170 with such a certificate must be in strict compliance with this
171 subsection and departmental rules, and any person who makes an
172 exempt purchase with a certificate that is not in strict
173 compliance with this subsection and the rules is liable for and
174 shall pay the tax. The department may adopt rules to administer
175 this subsection.

176 (i) Hospital meals and rooms.--Also exempt from payment of
177 the tax imposed by this chapter on rentals and meals are
178 patients and inmates of any hospital or other physical plant or
179 facility designed and operated primarily for the care of persons
180 who are ill, aged, infirm, mentally or physically incapacitated,
181 or otherwise dependent on special care or attention. Residents
182 of a home for the aged are exempt from payment of taxes on meals
183 provided through the facility. A home for the aged is defined
184 as a facility that is licensed or certified in part or in whole
185 under chapter 400, chapter 429, or chapter 651, or that is
186 financed by a mortgage loan made or insured by the United States
187 Department of Housing and Urban Development under s. 202, s. 202
188 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
189 the National Housing Act, or other such similar facility
190 designed and operated primarily for the care of the aged.
191 Section 12. Subsection (5) of section 296.02, Florida
192 Statutes, is amended to read:
193 296.02 Definitions.--For the purposes of this part, except
194 where the context clearly indicates otherwise:
195 (5) "Extended congregate care" has the meaning given to
196 that term under s. 429.02 ~~s. 400.402~~.
197 Section 13. Subsections (1) and (3) of section 381.0035,
198 Florida Statutes, are amended to read:
199 381.0035 Educational course on HIV and AIDS; employees and
200 clients of certain health care facilities.--
201 (1) The Department of Health shall require all employees
202 and clients of facilities licensed under chapters 393, 394, and
203 397 and employees of facilities licensed under chapter 395, ~~and~~
204 parts II and~~,~~ III~~,~~ ~~IV, and VI~~ of chapter 400, and parts I and IV
205 of chapter 429 to complete, biennially, a continuing educational
206 course on the modes of transmission, infection control

207 procedures, clinical management, and prevention of human
208 immunodeficiency virus and acquired immune deficiency syndrome
209 with an emphasis on appropriate behavior and attitude change.
210 Such instruction shall include information on current Florida
211 law and its impact on testing, confidentiality of test results,
212 and treatment of patients and any protocols and procedures
213 applicable to human immunodeficiency counseling and testing,
214 reporting, the offering of HIV testing to pregnant women, and
215 partner notification issues pursuant to ss. 381.004 and 384.25.
216 (3) Facilities licensed under chapters 393, 394, 395, and
217 397, ~~and~~ parts II, III, and IV~~, and VI~~ of chapter 400, and part
218 I of chapter 429 shall maintain a record of employees and dates
219 of attendance at human immunodeficiency virus and acquired
220 immune deficiency syndrome educational courses.
221 Section 14. Subsection (9) of section 381.745, Florida
222 Statutes, is amended to read:
223 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
224 381.739-381.79, the term:
225 (9) "Transitional living facility" means a state-approved
226 facility, as defined and licensed under chapter 400 or chapter
227 429, or a facility approved by the brain and spinal cord injury
228 program in accordance with this chapter.
229 Section 15. Subsection (24) of section 393.063, Florida
230 Statutes, is amended to read:
231 393.063 Definitions.--For the purposes of this chapter:
232 (24) "Intermediate care facility for the developmentally
233 disabled" or "ICF/DD" means a residential facility licensed and
234 certified pursuant to part VIII ~~XI~~ of chapter 400.
235 Section 16. Paragraph (b) of subsection (1) of section
236 393.506, Florida Statutes, is amended to read:
237 393.506 Administration of medication.--

238 (1) Notwithstanding the provisions of part I of chapter
239 464, the Nurse Practice Act, unlicensed direct care services
240 staff providing services to persons with developmental
241 disabilities may administer oral, transdermal, inhaled, or
242 topical prescription medications as provided in this section.
243 (b) For intermediate care facilities for the
244 developmentally disabled licensed pursuant to part VIII ~~XI~~ of
245 chapter 400, unlicensed staff designated by the director may
246 provide medication assistance under the general supervision of a
247 registered nurse licensed pursuant to chapter 464.
248 Section 17. Subsection (10) of section 394.455, Florida
249 Statutes, is amended to read:
250 394.455 Definitions.--As used in this part, unless the
251 context clearly requires otherwise, the term:
252 (10) "Facility" means any hospital, community facility,
253 public or private facility, or receiving or treatment facility
254 providing for the evaluation, diagnosis, care, treatment,
255 training, or hospitalization of persons who appear to have a
256 mental illness or have been diagnosed as having a mental
257 illness. "Facility" does not include any program or entity
258 licensed pursuant to chapter 400 or chapter 429.
259 Section 18. Paragraphs (b), (c), and (e) of subsection (2)
260 of section 394.4574, Florida Statutes, are amended to read:
261 394.4574 Department responsibilities for a mental health
262 resident who resides in an assisted living facility that holds a
263 limited mental health license.--
264 (2) The department must ensure that:
265 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~
266 ~~400.4075~~, is developed between the mental health care services
267 provider that serves a mental health resident and the
268 administrator of the assisted living facility with a limited

269 mental health license in which the mental health resident is
270 living. Any entity that provides Medicaid prepaid health plan
271 services shall ensure the appropriate coordination of health
272 care services with an assisted living facility in cases where a
273 Medicaid recipient is both a member of the entity's prepaid
274 health plan and a resident of the assisted living facility. If
275 the entity is at risk for Medicaid targeted case management and
276 behavioral health services, the entity shall inform the assisted
277 living facility of the procedures to follow should an emergent
278 condition arise.
279 (c) The community living support plan, as defined in s.
280 429.02 ~~s. 400.402~~, has been prepared by a mental health resident
281 and a mental health case manager of that resident in
282 consultation with the administrator of the facility or the
283 administrator's designee. The plan must be provided to the
284 administrator of the assisted living facility with a limited
285 mental health license in which the mental health resident lives.
286 The support plan and the agreement may be in one document.
287 (e) The mental health services provider assigns a case
288 manager to each mental health resident who lives in an assisted
289 living facility with a limited mental health license. The case
290 manager is responsible for coordinating the development of and
291 implementation of the community living support plan defined in
292 s. 429.02 ~~s. 400.402~~. The plan must be updated at least
293 annually.
294 Section 19. Paragraph (b) of subsection (2) of section
295 394.463, Florida Statutes, is amended to read:
296 394.463 Involuntary examination.--
297 (2) INVOLUNTARY EXAMINATION.--
298 (b) A person shall not be removed from any program or
299 residential placement licensed under chapter 400 or chapter 429

300 and transported to a receiving facility for involuntary
301 examination unless an ex parte order, a professional
302 certificate, or a law enforcement officer's report is first
303 prepared. If the condition of the person is such that
304 preparation of a law enforcement officer's report is not
305 practicable before removal, the report shall be completed as
306 soon as possible after removal, but in any case before the
307 person is transported to a receiving facility. A receiving
308 facility admitting a person for involuntary examination who is
309 not accompanied by the required ex parte order, professional
310 certificate, or law enforcement officer's report shall notify
311 the Agency for Health Care Administration of such admission by
312 certified mail no later than the next working day. The
313 provisions of this paragraph do not apply when transportation is
314 provided by the patient's family or guardian.
315 Section 20. Paragraph (b) of subsection (3) of section
316 400.0063, Florida Statutes, is amended to read:
317 400.0063 Establishment of Office of State Long-Term Care
318 Ombudsman; designation of ombudsman and legal advocate.--
319 (3)
320 (b) The duties of the legal advocate shall include, but
321 not be limited to:
322 1. Assisting the ombudsman in carrying out the duties of
323 the office with respect to the abuse, neglect, or violation of
324 rights of residents of long-term care facilities.
325 2. Assisting the state and local ombudsman councils in
326 carrying out their responsibilities under this part.
327 3. Initiating and prosecuting legal and equitable actions
328 to enforce the rights of long-term care facility residents as
329 defined in this chapter <u>or chapter 429</u>.

330 4. Serving as legal counsel to the state and local
331 ombudsman councils, or individual members thereof, against whom
332 any suit or other legal action is initiated in connection with
333 the performance of the official duties of the councils or an
334 individual member.
335 Section 21. Subsection (3) of section 400.0069, Florida
336 Statutes, is amended to read:
337 400.0069 Local long-term care ombudsman councils; duties;
338 membership.--
339 (3) In order to carry out the duties specified in
340 subsection (2), the local ombudsman council is authorized,
341 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any long-
342 term care facility without notice or first obtaining a warrant,
343 subject to the provisions of s. 400.0073(5).
344 Section 22. Paragraphs (c) and (f) of subsection (5) and
345 subsection (6) of section 400.0073, Florida Statutes, are
346 amended to read:
347 400.0073 State and local ombudsman council
348 investigations.--
349 (5) Any onsite administrative inspection conducted by an
350 ombudsman council shall be subject to the following:
351 (c) Inspections shall be conducted in a manner which will
352 impose no unreasonable burden on nursing homes or long-term care
353 facilities, consistent with the underlying purposes of this part
354 and chapter 429. Unnecessary duplication of efforts among
355 council members or the councils shall be reduced to the extent
356 possible.
357 (f) All inspections shall be limited to compliance with
358 part ~~parts~~ II~~, III, and VII~~ of this chapter, chapter 429, and 42
359 U.S.C. ss. 1396(a) et seq., and any rules or regulations
360 promulgated pursuant to such laws.

361 (6) An inspection may not be accomplished by forcible
362 entry. Refusal of a long-term care facility to allow entry of
363 any ombudsman council member constitutes a violation of part II~~,~~
364 ~~part III, or part VII~~ of this chapter or chapter 429.
365 Section 23. Subsection (4) of section 400.0077, Florida
366 Statutes, is amended to read:
367 400.0077 Confidentiality.--
368 (4) Members of any state or local ombudsman council shall
369 not be required to testify in any court with respect to matters
370 held to be confidential under s. 429.14 ~~s. 400.414~~ except as may
371 be necessary to enforce the provisions of this act.
372 Section 24. Subsection (1) of section 400.0239, Florida
373 Statutes, is amended to read:
374 400.0239 Quality of Long-Term Care Facility Improvement
375 Trust Fund.--
376 (1) There is created within the Agency for Health Care
377 Administration a Quality of Long-Term Care Facility Improvement
378 Trust Fund to support activities and programs directly related
379 to improvement of the care of nursing home and assisted living
380 facility residents. The trust fund shall be funded through
381 proceeds generated pursuant to ss. 400.0238 and 429.298
382 ~~400.4298~~, through funds specifically appropriated by the
383 Legislature, through gifts, endowments, and other charitable
384 contributions allowed under federal and state law, and through
385 federal nursing home civil monetary penalties collected by the
386 Centers for Medicare and Medicaid Services and returned to the
387 state. These funds must be utilized in accordance with federal
388 requirements.
389 Section 25. Subsections (1) and (4) of section 400.119,
390 Florida Statutes, are amended to read:

391 400.119 Confidentiality of records and meetings of risk
392 management and quality assurance committees.--
393 (1) Records of meetings of the risk management and quality
394 assurance committee of a long-term care facility licensed under
395 this part or part I ~~III~~ of ~~this~~ chapter 429, as well as incident
396 reports filed with the facility's risk manager and
397 administrator, notifications of the occurrence of an adverse
398 incident, and adverse incident reports from the facility are
399 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
400 of the State Constitution. However, if the Agency for Health
401 Care Administration has a reasonable belief that conduct by a
402 staff member or employee of a facility is criminal activity or
403 grounds for disciplinary action by a regulatory board, the
404 agency may disclose such records to the appropriate law
405 enforcement agency or regulatory board.
406 (4) The meetings of an internal risk management and
407 quality assurance committee of a long-term care facility
408 licensed under this part or part I ~~III~~ of ~~this~~ chapter 429 are
409 exempt from s. 286.011 and s. 24(b), Art. I of the State
410 Constitution and are not open to the public.
411 Section 26. Subsections (4) and (7) of section 400.141,
412 Florida Statutes, are amended to read:
413 400.141 Administration and management of nursing home
414 facilities.--Every licensed facility shall comply with all
415 applicable standards and rules of the agency and shall:
416 (4) Provide for resident use of a community pharmacy as
417 specified in s. 400.022(1)(q). Any other law to the contrary
418 notwithstanding, a registered pharmacist licensed in Florida,
419 that is under contract with a facility licensed under this
420 chapter or chapter 429, shall repackage a nursing facility
421 resident's bulk prescription medication which has been packaged

422 by another pharmacist licensed in any state in the United States
423 into a unit dose system compatible with the system used by the
424 nursing facility, if the pharmacist is requested to offer such
425 service. In order to be eligible for the repackaging, a resident
426 or the resident's spouse must receive prescription medication
427 benefits provided through a former employer as part of his or
428 her retirement benefits, a qualified pension plan as specified
429 in s. 4972 of the Internal Revenue Code, a federal retirement
430 program as specified under 5 C.F.R. s. 831, or a long-term care
431 policy as defined in s. 627.9404(1). A pharmacist who correctly
432 repackages and relabels the medication and the nursing facility
433 which correctly administers such repackaged medication under the
434 provisions of this subsection shall not be held liable in any
435 civil or administrative action arising from the repackaging. In
436 order to be eligible for the repackaging, a nursing facility
437 resident for whom the medication is to be repackaged shall sign
438 an informed consent form provided by the facility which includes
439 an explanation of the repackaging process and which notifies the
440 resident of the immunities from liability provided herein. A
441 pharmacist who repackages and relabels prescription medications,
442 as authorized under this subsection, may charge a reasonable fee
443 for costs resulting from the implementation of this provision.
444 (7) If the facility has a standard license or is a Gold
445 Seal facility, exceeds the minimum required hours of licensed
446 nursing and certified nursing assistant direct care per resident
447 per day, and is part of a continuing care facility licensed
448 under chapter 651 or a retirement community that offers other
449 services pursuant to part III of this chapter or part I or part
450 III of chapter 429~~, part IV, or part V~~ on a single campus, be
451 allowed to share programming and staff. At the time of
452 inspection and in the semiannual report required pursuant to

453 subsection (15), a continuing care facility or retirement
454 community that uses this option must demonstrate through
455 staffing records that minimum staffing requirements for the
456 facility were met. Licensed nurses and certified nursing
457 assistants who work in the nursing home facility may be used to
458 provide services elsewhere on campus if the facility exceeds the
459 minimum number of direct care hours required per resident per
460 day and the total number of residents receiving direct care
461 services from a licensed nurse or a certified nursing assistant
462 does not cause the facility to violate the staffing ratios
463 required under s. 400.23(3)(a). Compliance with the minimum
464 staffing ratios shall be based on total number of residents
465 receiving direct care services, regardless of where they reside
466 on campus. If the facility receives a conditional license, it
467 may not share staff until the conditional license status ends.
468 This subsection does not restrict the agency's authority under
469 federal or state law to require additional staff if a facility
470 is cited for deficiencies in care which are caused by an
471 insufficient number of certified nursing assistants or licensed
472 nurses. The agency may adopt rules for the documentation
473 necessary to determine compliance with this provision.
474
475 Facilities that have been awarded a Gold Seal under the program
476 established in s. 400.235 may develop a plan to provide
477 certified nursing assistant training as prescribed by federal
478 regulations and state rules and may apply to the agency for
479 approval of their program.
480 Section 27. Subsection (1) of section 400.142, Florida
481 Statutes, is amended to read:
482 400.142 Emergency medication kits; orders not to
483 resuscitate.--

484 (1) Other provisions of this chapter or of chapter 429,
485 chapter 465, chapter 499, or chapter 893 to the contrary
486 notwithstanding, each nursing home operating pursuant to a
487 license issued by the agency may maintain an emergency
488 medication kit for the purpose of storing medicinal drugs to be
489 administered under emergency conditions to residents residing in
490 such facility.
491 Section 28. Paragraph (a) of subsection (2) of section
492 400.191, Florida Statutes, is amended to read:
493 400.191 Availability, distribution, and posting of reports
494 and records.--
495 (2) The agency shall provide additional information in
496 consumer-friendly printed and electronic formats to assist
497 consumers and their families in comparing and evaluating nursing
498 home facilities.
499 (a) The agency shall provide an Internet site which shall
500 include at least the following information either directly or
501 indirectly through a link to another established site or sites
502 of the agency's choosing:
503 1. A list by name and address of all nursing home
504 facilities in this state.
505 2. Whether such nursing home facilities are proprietary or
506 nonproprietary.
507 3. The current owner of the facility's license and the
508 year that that entity became the owner of the license.
509 4. The name of the owner or owners of each facility and
510 whether the facility is affiliated with a company or other
511 organization owning or managing more than one nursing facility
512 in this state.
513 5. The total number of beds in each facility.

514 6. The number of private and semiprivate rooms in each
515 facility.
516 7. The religious affiliation, if any, of each facility.
517 8. The languages spoken by the administrator and staff of
518 each facility.
519 9. Whether or not each facility accepts Medicare or
520 Medicaid recipients or insurance, health maintenance
521 organization, Veterans Administration, CHAMPUS program, or
522 workers' compensation coverage.
523 10. Recreational and other programs available at each
524 facility.
525 11. Special care units or programs offered at each
526 facility.
527 12. Whether the facility is a part of a retirement
528 community that offers other services pursuant to part III of
529 this chapter or part I or part III of chapter 429~~, part IV, or~~
530 ~~part V~~.
531 13. Survey and deficiency information contained on the
532 Online Survey Certification and Reporting (OSCAR) system of the
533 federal Health Care Financing Administration, including annual
534 survey, revisit, and complaint survey information, for each
535 facility for the past 45 months. For noncertified nursing
536 homes, state survey and deficiency information, including annual
537 survey, revisit, and complaint survey information for the past
538 45 months shall be provided.
539 14. A summary of the Online Survey Certification and
540 Reporting (OSCAR) data for each facility over the past 45
541 months. Such summary may include a score, rating, or comparison
542 ranking with respect to other facilities based on the number of
543 citations received by the facility of annual, revisit, and
544 complaint surveys; the severity and scope of the citations; and

545 the number of annual recertification surveys the facility has
546 had during the past 45 months. The score, rating, or comparison
547 ranking may be presented in either numeric or symbolic form for
548 the intended consumer audience.
549 Section 29. Paragraph (b) of subsection (2) of section
550 400.215, Florida Statutes, is amended to read:
551 400.215 Personnel screening requirement.--
552 (2) Employers and employees shall comply with the
553 requirements of s. 435.05.
554 (b) Employees qualified under the provisions of paragraph
555 (a) who have not maintained continuous residency within the
556 state for the 5 years immediately preceding the date of request
557 for background screening must complete level 2 screening, as
558 provided in chapter 435. Such employees may work in a
559 conditional status up to 180 days pending the receipt of written
560 findings evidencing the completion of level 2 screening. Level 2
561 screening shall not be required of employees or prospective
562 employees who attest in writing under penalty of perjury that
563 they meet the residency requirement. Completion of level 2
564 screening shall require the employee or prospective employee to
565 furnish to the nursing facility a full set of fingerprints to
566 enable a criminal background investigation to be conducted. The
567 nursing facility shall submit the completed fingerprint card to
568 the agency. The agency shall establish a record of the request
569 in the database provided for in paragraph (c) and forward the
570 request to the Department of Law Enforcement, which is
571 authorized to submit the fingerprints to the Federal Bureau of
572 Investigation for a national criminal history records check. The
573 results of the national criminal history records check shall be
574 returned to the agency, which shall maintain the results in the
575 database provided for in paragraph (c). The agency shall notify

576 the administrator of the requesting nursing facility or the
577 administrator of any other facility licensed under chapter 393,
578 chapter 394, chapter 395, chapter 397, chapter 429, or this
579 chapter, as requested by such facility, as to whether or not the
580 employee has qualified under level 1 or level 2 screening. An
581 employee or prospective employee who has qualified under level 2
582 screening and has maintained such continuous residency within
583 the state shall not be required to complete a subsequent level 2
584 screening as a condition of employment at another facility.
585 Section 30. Section 400.402, Florida Statutes, is
586 renumbered as section 429.02, Florida Statutes, and amended to
587 read:
588 429.02 ~~400.402~~ Definitions.--When used in this part, the
589 term:
590 (1) "Activities of daily living" means functions and tasks
591 for self-care, including ambulation, bathing, dressing, eating,
592 grooming, and toileting, and other similar tasks.
593 (2) "Administrator" means an individual at least 21 years
594 of age who is responsible for the operation and maintenance of
595 an assisted living facility.
596 (3) "Agency" means the Agency for Health Care
597 Administration.
598 (4) "Aging in place" or "age in place" means the process
599 of providing increased or adjusted services to a person to
600 compensate for the physical or mental decline that may occur
601 with the aging process, in order to maximize the person's
602 dignity and independence and permit them to remain in a
603 familiar, noninstitutional, residential environment for as long
604 as possible. Such services may be provided by facility staff,
605 volunteers, family, or friends, or through contractual
606 arrangements with a third party.

607 (5) "Applicant" means an individual owner, corporation,
608 partnership, firm, association, or governmental entity that
609 applies for a license.
610 (6) "Assisted living facility" means any building or
611 buildings, section or distinct part of a building, private home,
612 boarding home, home for the aged, or other residential facility,
613 whether operated for profit or not, which undertakes through its
614 ownership or management to provide housing, meals, and one or
615 more personal services for a period exceeding 24 hours to one or
616 more adults who are not relatives of the owner or administrator.
617 (7) "Chemical restraint" means a pharmacologic drug that
618 physically limits, restricts, or deprives an individual of
619 movement or mobility, and is used for discipline or convenience
620 and not required for the treatment of medical symptoms.
621 (8) "Community living support plan" means a written
622 document prepared by a mental health resident and the resident's
623 mental health case manager in consultation with the
624 administrator of an assisted living facility with a limited
625 mental health license or the administrator's designee. A copy
626 must be provided to the administrator. The plan must include
627 information about the supports, services, and special needs of
628 the resident which enable the resident to live in the assisted
629 living facility and a method by which facility staff can
630 recognize and respond to the signs and symptoms particular to
631 that resident which indicate the need for professional services.
632 (9) "Cooperative agreement" means a written statement of
633 understanding between a mental health care provider and the
634 administrator of the assisted living facility with a limited
635 mental health license in which a mental health resident is
636 living. The agreement must specify directions for accessing
637 emergency and after-hours care for the mental health resident. A

638 single cooperative agreement may service all mental health
639 residents who are clients of the same mental health care
640 provider.
641 (10) "Department" means the Department of Elderly Affairs.
642 (11) "Emergency" means a situation, physical condition, or
643 method of operation which presents imminent danger of death or
644 serious physical or mental harm to facility residents.
645 (12) "Extended congregate care" means acts beyond those
646 authorized in subsection (17) that may be performed pursuant to
647 part I of chapter 464 by persons licensed thereunder while
648 carrying out their professional duties, and other supportive
649 services which may be specified by rule. The purpose of such
650 services is to enable residents to age in place in a residential
651 environment despite mental or physical limitations that might
652 otherwise disqualify them from residency in a facility licensed
653 under this part.
654 (13) "Guardian" means a person to whom the law has
655 entrusted the custody and control of the person or property, or
656 both, of a person who has been legally adjudged incapacitated.
657 (14) "Limited nursing services" means acts that may be
658 performed pursuant to part I of chapter 464 by persons licensed
659 thereunder while carrying out their professional duties but
660 limited to those acts which the department specifies by rule.
661 Acts which may be specified by rule as allowable limited nursing
662 services shall be for persons who meet the admission criteria
663 established by the department for assisted living facilities and
664 shall not be complex enough to require 24-hour nursing
665 supervision and may include such services as the application and
666 care of routine dressings, and care of casts, braces, and
667 splints.

668 (15) "Managed risk" means the process by which the
669 facility staff discuss the service plan and the needs of the
670 resident with the resident and, if applicable, the resident's
671 representative or designee or the resident's surrogate,
672 guardian, or attorney in fact, in such a way that the
673 consequences of a decision, including any inherent risk, are
674 explained to all parties and reviewed periodically in
675 conjunction with the service plan, taking into account changes
676 in the resident's status and the ability of the facility to
677 respond accordingly.
678 (16) "Mental health resident" means an individual who
679 receives social security disability income due to a mental
680 disorder as determined by the Social Security Administration or
681 receives supplemental security income due to a mental disorder
682 as determined by the Social Security Administration and receives
683 optional state supplementation.
684 (17) "Personal services" means direct physical assistance
685 with or supervision of the activities of daily living and the
686 self-administration of medication and other similar services
687 which the department may define by rule. "Personal services"
688 shall not be construed to mean the provision of medical,
689 nursing, dental, or mental health services.
690 (18) "Physical restraint" means a device which physically
691 limits, restricts, or deprives an individual of movement or
692 mobility, including, but not limited to, a half-bed rail, a
693 full-bed rail, a geriatric chair, and a posey restraint. The
694 term "physical restraint" shall also include any device which
695 was not specifically manufactured as a restraint but which has
696 been altered, arranged, or otherwise used for this purpose. The
697 term shall not include bandage material used for the purpose of
698 binding a wound or injury.

699 (19) "Relative" means an individual who is the father,
700 mother, stepfather, stepmother, son, daughter, brother, sister,
701 grandmother, grandfather, great-grandmother, great-grandfather,
702 grandson, granddaughter, uncle, aunt, first cousin, nephew,
703 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
704 daughter-in-law, brother-in-law, sister-in-law, stepson,
705 stepdaughter, stepbrother, stepsister, half brother, or half
706 sister of an owner or administrator.
707 (20) "Resident" means a person 18 years of age or older,
708 residing in and receiving care from a facility.
709 (21) "Resident's representative or designee" means a
710 person other than the owner, or an agent or employee of the
711 facility, designated in writing by the resident, if legally
712 competent, to receive notice of changes in the contract executed
713 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
714 participate in meetings between the resident and the facility
715 owner, administrator, or staff concerning the rights of the
716 resident; to assist the resident in contacting the ombudsman
717 council if the resident has a complaint against the facility; or
718 to bring legal action on behalf of the resident pursuant to s.
719 429.29 ~~s. 400.429~~.
720 (22) "Service plan" means a written plan, developed and
721 agreed upon by the resident and, if applicable, the resident's
722 representative or designee or the resident's surrogate,
723 guardian, or attorney in fact, if any, and the administrator or
724 designee representing the facility, which addresses the unique
725 physical and psychosocial needs, abilities, and personal
726 preferences of each resident receiving extended congregate care
727 services. The plan shall include a brief written description, in
728 easily understood language, of what services shall be provided,

729 who shall provide the services, when the services shall be
730 rendered, and the purposes and benefits of the services.
731 (23) "Shared responsibility" means exploring the options
732 available to a resident within a facility and the risks involved
733 with each option when making decisions pertaining to the
734 resident's abilities, preferences, and service needs, thereby
735 enabling the resident and, if applicable, the resident's
736 representative or designee, or the resident's surrogate,
737 guardian, or attorney in fact, and the facility to develop a
738 service plan which best meets the resident's needs and seeks to
739 improve the resident's quality of life.
740 (24) "Supervision" means reminding residents to engage in
741 activities of daily living and the self-administration of
742 medication, and, when necessary, observing or providing verbal
743 cuing to residents while they perform these activities.
744 (25) "Supplemental security income," Title XVI of the
745 Social Security Act, means a program through which the Federal
746 Government guarantees a minimum monthly income to every person
747 who is age 65 or older, or disabled, or blind and meets the
748 income and asset requirements.
749 (26) "Supportive services" means services designed to
750 encourage and assist aged persons or adults with disabilities to
751 remain in the least restrictive living environment and to
752 maintain their independence as long as possible.
753 (27) "Twenty-four-hour nursing supervision" means services
754 that are ordered by a physician for a resident whose condition
755 requires the supervision of a physician and continued monitoring
756 of vital signs and physical status. Such services shall be:
757 medically complex enough to require constant supervision,
758 assessment, planning, or intervention by a nurse; required to be
759 performed by or under the direct supervision of licensed nursing

760 personnel or other professional personnel for safe and effective
761 performance; required on a daily basis; and consistent with the
762 nature and severity of the resident's condition or the disease
763 state or stage.
764 Section 31. Section 400.404, Florida Statutes, is
765 renumbered as section 429.04, Florida Statutes, and amended to
766 read:
767 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--
768 (1) For the administration of this part, facilities to be
769 licensed by the agency shall include all assisted living
770 facilities as defined in this part.
771 (2) The following are exempt from licensure under this
772 part:
773 (a) Any facility, institution, or other place operated by
774 the Federal Government or any agency of the Federal Government.
775 (b) Any facility or part of a facility licensed under
776 chapter 393 or chapter 394.
777 (c) Any facility licensed as an adult family-care home
778 under part II of chapter 429 ~~VII~~.
779 (d) Any person who provides housing, meals, and one or
780 more personal services on a 24-hour basis in the person's own
781 home to not more than two adults who do not receive optional
782 state supplementation. The person who provides the housing,
783 meals, and personal services must own or rent the home and
784 reside therein.
785 (e) Any home or facility approved by the United States
786 Department of Veterans Affairs as a residential care home
787 wherein care is provided exclusively to three or fewer veterans.
788 (f) Any facility that has been incorporated in this state
789 for 50 years or more on or before July 1, 1983, and the board of
790 directors of which is nominated or elected by the residents,

791 until the facility is sold or its ownership is transferred; or
792 any facility, with improvements or additions thereto, which has
793 existed and operated continuously in this state for 60 years or
794 more on or before July 1, 1989, is directly or indirectly owned
795 and operated by a nationally recognized fraternal organization,
796 is not open to the public, and accepts only its own members and
797 their spouses as residents.
798 (g) Any facility certified under chapter 651, or a
799 retirement community, may provide services authorized under this
800 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who
801 live in single-family homes, duplexes, quadruplexes, or
802 apartments located on the campus without obtaining a license to
803 operate an assisted living facility if residential units within
804 such buildings are used by residents who do not require staff
805 supervision for that portion of the day when personal services
806 are not being delivered and the owner obtains a home health
807 license to provide such services. However, any building or
808 distinct part of a building on the campus that is designated for
809 persons who receive personal services and require supervision
810 beyond that which is available while such services are being
811 rendered must be licensed in accordance with this part. If a
812 facility provides personal services to residents who do not
813 otherwise require supervision and the owner is not licensed as a
814 home health agency, the buildings or distinct parts of buildings
815 where such services are rendered must be licensed under this
816 part. A resident of a facility that obtains a home health
817 license may contract with a home health agency of his or her
818 choice, provided that the home health agency provides liability
819 insurance and workers' compensation coverage for its employees.
820 Facilities covered by this exemption may establish policies that
821 give residents the option of contracting for services and care

822 beyond that which is provided by the facility to enable them to
823 age in place. For purposes of this section, a retirement
824 community consists of a facility licensed under this part or
825 under part II of chapter 400, and apartments designed for
826 independent living located on the same campus.
827 (h) Any residential unit for independent living which is
828 located within a facility certified under chapter 651, or any
829 residential unit which is colocated with a nursing home licensed
830 under part II of chapter 400 or colocated with a facility
831 licensed under this part in which services are provided through
832 an outpatient clinic or a nursing home on an outpatient basis.
833 Section 32. Section 400.407, Florida Statutes, is
834 renumbered as section 429.07, Florida Statutes, and amended to
835 read:
836 429.07 ~~400.407~~ License required; fee, display.--
837 (1) A license issued by the agency is required for an
838 assisted living facility operating in this state.
839 (2) Separate licenses shall be required for facilities
840 maintained in separate premises, even though operated under the
841 same management. A separate license shall not be required for
842 separate buildings on the same grounds.
843 (3) Any license granted by the agency must state the
844 maximum resident capacity of the facility, the type of care for
845 which the license is granted, the date the license is issued,
846 the expiration date of the license, and any other information
847 deemed necessary by the agency. Licenses shall be issued for one
848 or more of the following categories of care: standard, extended
849 congregate care, limited nursing services, or limited mental
850 health.
851 (a) A standard license shall be issued to facilities
852 providing one or more of the personal services identified in s.

853 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
854 with a person licensed under part I of chapter 464 to administer
855 medications and perform other tasks as specified in s. 429.255
856 ~~s. 400.4255~~.
857 (b) An extended congregate care license shall be issued to
858 facilities providing, directly or through contract, services
859 beyond those authorized in paragraph (a), including acts
860 performed pursuant to part I of chapter 464 by persons licensed
861 thereunder, and supportive services defined by rule to persons
862 who otherwise would be disqualified from continued residence in
863 a facility licensed under this part.
864 1. In order for extended congregate care services to be
865 provided in a facility licensed under this part, the agency must
866 first determine that all requirements established in law and
867 rule are met and must specifically designate, on the facility's
868 license, that such services may be provided and whether the
869 designation applies to all or part of a facility. Such
870 designation may be made at the time of initial licensure or
871 relicensure, or upon request in writing by a licensee under this
872 part. Notification of approval or denial of such request shall
873 be made within 90 days after receipt of such request and all
874 necessary documentation. Existing facilities qualifying to
875 provide extended congregate care services must have maintained a
876 standard license and may not have been subject to administrative
877 sanctions during the previous 2 years, or since initial
878 licensure if the facility has been licensed for less than 2
879 years, for any of the following reasons:
880 a. A class I or class II violation;
881 b. Three or more repeat or recurring class III violations
882 of identical or similar resident care standards as specified in

883 rule from which a pattern of noncompliance is found by the
884 agency;
885 c. Three or more class III violations that were not
886 corrected in accordance with the corrective action plan approved
887 by the agency;
888 d. Violation of resident care standards resulting in a
889 requirement to employ the services of a consultant pharmacist or
890 consultant dietitian;
891 e. Denial, suspension, or revocation of a license for
892 another facility under this part in which the applicant for an
893 extended congregate care license has at least 25 percent
894 ownership interest; or
895 f. Imposition of a moratorium on admissions or initiation
896 of injunctive proceedings.
897 2. Facilities that are licensed to provide extended
898 congregate care services shall maintain a written progress
899 report on each person who receives such services, which report
900 describes the type, amount, duration, scope, and outcome of
901 services that are rendered and the general status of the
902 resident's health. A registered nurse, or appropriate designee,
903 representing the agency shall visit such facilities at least
904 quarterly to monitor residents who are receiving extended
905 congregate care services and to determine if the facility is in
906 compliance with this part and with rules that relate to extended
907 congregate care. One of these visits may be in conjunction with
908 the regular survey. The monitoring visits may be provided
909 through contractual arrangements with appropriate community
910 agencies. A registered nurse shall serve as part of the team
911 that inspects such facility. The agency may waive one of the
912 required yearly monitoring visits for a facility that has been
913 licensed for at least 24 months to provide extended congregate

914 care services, if, during the inspection, the registered nurse
915 determines that extended congregate care services are being
916 provided appropriately, and if the facility has no class I or
917 class II violations and no uncorrected class III violations.
918 Before such decision is made, the agency shall consult with the
919 long-term care ombudsman council for the area in which the
920 facility is located to determine if any complaints have been
921 made and substantiated about the quality of services or care.
922 The agency may not waive one of the required yearly monitoring
923 visits if complaints have been made and substantiated.
924 3. Facilities that are licensed to provide extended
925 congregate care services shall:
926 a. Demonstrate the capability to meet unanticipated
927 resident service needs.
928 b. Offer a physical environment that promotes a homelike
929 setting, provides for resident privacy, promotes resident
930 independence, and allows sufficient congregate space as defined
931 by rule.
932 c. Have sufficient staff available, taking into account
933 the physical plant and firesafety features of the building, to
934 assist with the evacuation of residents in an emergency, as
935 necessary.
936 d. Adopt and follow policies and procedures that maximize
937 resident independence, dignity, choice, and decisionmaking to
938 permit residents to age in place to the extent possible, so that
939 moves due to changes in functional status are minimized or
940 avoided.
941 e. Allow residents or, if applicable, a resident's
942 representative, designee, surrogate, guardian, or attorney in
943 fact to make a variety of personal choices, participate in

944 developing service plans, and share responsibility in
945 decisionmaking.
946 f. Implement the concept of managed risk.
947 g. Provide, either directly or through contract, the
948 services of a person licensed pursuant to part I of chapter 464.
949 h. In addition to the training mandated in s. 429.52 ~~s.~~
950 ~~400.452~~, provide specialized training as defined by rule for
951 facility staff.
952 4. Facilities licensed to provide extended congregate care
953 services are exempt from the criteria for continued residency as
954 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.
955 Facilities so licensed shall adopt their own requirements within
956 guidelines for continued residency set forth by the department
957 in rule. However, such facilities may not serve residents who
958 require 24-hour nursing supervision. Facilities licensed to
959 provide extended congregate care services shall provide each
960 resident with a written copy of facility policies governing
961 admission and retention.
962 5. The primary purpose of extended congregate care
963 services is to allow residents, as they become more impaired,
964 the option of remaining in a familiar setting from which they
965 would otherwise be disqualified for continued residency. A
966 facility licensed to provide extended congregate care services
967 may also admit an individual who exceeds the admission criteria
968 for a facility with a standard license, if the individual is
969 determined appropriate for admission to the extended congregate
970 care facility.
971 6. Before admission of an individual to a facility
972 licensed to provide extended congregate care services, the
973 individual must undergo a medical examination as provided in s.

974 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a
975 preliminary service plan for the individual.
976 7. When a facility can no longer provide or arrange for
977 services in accordance with the resident's service plan and
978 needs and the facility's policy, the facility shall make
979 arrangements for relocating the person in accordance with s.
980 429.28(1)(k) ~~s. 400.428(1)(k)~~.
981 8. Failure to provide extended congregate care services
982 may result in denial of extended congregate care license
983 renewal.
984 9. No later than January 1 of each year, the department,
985 in consultation with the agency, shall prepare and submit to the
986 Governor, the President of the Senate, the Speaker of the House
987 of Representatives, and the chairs of appropriate legislative
988 committees, a report on the status of, and recommendations
989 related to, extended congregate care services. The status report
990 must include, but need not be limited to, the following
991 information:
992 a. A description of the facilities licensed to provide
993 such services, including total number of beds licensed under
994 this part.
995 b. The number and characteristics of residents receiving
996 such services.
997 c. The types of services rendered that could not be
998 provided through a standard license.
999 d. An analysis of deficiencies cited during licensure
1000 inspections.
1001 e. The number of residents who required extended
1002 congregate care services at admission and the source of
1003 admission.
1004 f. Recommendations for statutory or regulatory changes.

1005 g. The availability of extended congregate care to state
1006 clients residing in facilities licensed under this part and in
1007 need of additional services, and recommendations for
1008 appropriations to subsidize extended congregate care services
1009 for such persons.
1010 h. Such other information as the department considers
1011 appropriate.
1012 (c) A limited nursing services license shall be issued to
1013 a facility that provides services beyond those authorized in
1014 paragraph (a) and as specified in this paragraph.
1015 1. In order for limited nursing services to be provided in
1016 a facility licensed under this part, the agency must first
1017 determine that all requirements established in law and rule are
1018 met and must specifically designate, on the facility's license,
1019 that such services may be provided. Such designation may be made
1020 at the time of initial licensure or relicensure, or upon request
1021 in writing by a licensee under this part. Notification of
1022 approval or denial of such request shall be made within 90 days
1023 after receipt of such request and all necessary documentation.
1024 Existing facilities qualifying to provide limited nursing
1025 services shall have maintained a standard license and may not
1026 have been subject to administrative sanctions that affect the
1027 health, safety, and welfare of residents for the previous 2
1028 years or since initial licensure if the facility has been
1029 licensed for less than 2 years.
1030 2. Facilities that are licensed to provide limited nursing
1031 services shall maintain a written progress report on each person
1032 who receives such nursing services, which report describes the
1033 type, amount, duration, scope, and outcome of services that are
1034 rendered and the general status of the resident's health. A
1035 registered nurse representing the agency shall visit such

1036 facilities at least twice a year to monitor residents who are
1037 receiving limited nursing services and to determine if the
1038 facility is in compliance with applicable provisions of this
1039 part and with related rules. The monitoring visits may be
1040 provided through contractual arrangements with appropriate
1041 community agencies. A registered nurse shall also serve as part
1042 of the team that inspects such facility.
1043 3. A person who receives limited nursing services under
1044 this part must meet the admission criteria established by the
1045 agency for assisted living facilities. When a resident no
1046 longer meets the admission criteria for a facility licensed
1047 under this part, arrangements for relocating the person shall be
1048 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless
1049 the facility is licensed to provide extended congregate care
1050 services.
1051 (4)(a) The biennial license fee required of a facility is
1052 $300 per license, with an additional fee of $50 per resident
1053 based on the total licensed resident capacity of the facility,
1054 except that no additional fee will be assessed for beds
1055 designated for recipients of optional state supplementation
1056 payments provided for in s. 409.212. The total fee may not
1057 exceed $10,000, no part of which shall be returned to the
1058 facility. The agency shall adjust the per bed license fee and
1059 the total licensure fee annually by not more than the change in
1060 the consumer price index based on the 12 months immediately
1061 preceding the increase.
1062 (b) In addition to the total fee assessed under paragraph
1063 (a), the agency shall require facilities that are licensed to
1064 provide extended congregate care services under this part to pay
1065 an additional fee per licensed facility. The amount of the
1066 biennial fee shall be $400 per license, with an additional fee

1067 of $10 per resident based on the total licensed resident
1068 capacity of the facility. No part of this fee shall be returned
1069 to the facility. The agency may adjust the per bed license fee
1070 and the annual license fee once each year by not more than the
1071 average rate of inflation for the 12 months immediately
1072 preceding the increase.
1073 (c) In addition to the total fee assessed under paragraph
1074 (a), the agency shall require facilities that are licensed to
1075 provide limited nursing services under this part to pay an
1076 additional fee per licensed facility. The amount of the
1077 biennial fee shall be $250 per license, with an additional fee
1078 of $10 per resident based on the total licensed resident
1079 capacity of the facility. No part of this fee shall be returned
1080 to the facility. The agency may adjust the per bed license fee
1081 and the biennial license fee once each year by not more than the
1082 average rate of inflation for the 12 months immediately
1083 preceding the increase.
1084 (5) Counties or municipalities applying for licenses under
1085 this part are exempt from the payment of license fees.
1086 (6) The license shall be displayed in a conspicuous place
1087 inside the facility.
1088 (7) A license shall be valid only in the possession of the
1089 individual, firm, partnership, association, or corporation to
1090 which it is issued and shall not be subject to sale, assignment,
1091 or other transfer, voluntary or involuntary; nor shall a license
1092 be valid for any premises other than that for which originally
1093 issued.
1094 (8) A fee may be charged to a facility requesting a
1095 duplicate license. The fee shall not exceed the actual cost of
1096 duplication and postage.

1097 Section 33. Section 400.4071, Florida Statutes, is
1098 renumbered as section 429.071, Florida Statutes, and amended to
1099 read:
1100 429.071 ~~400.4071~~ Intergenerational respite care assisted
1101 living facility pilot program.--
1102 (1) It is the intent of the Legislature to establish a
1103 pilot program to:
1104 (a) Facilitate the receipt of in-home, family-based care
1105 by minors and adults with disabilities and elderly persons with
1106 special needs through respite care for up to 14 days.
1107 (b) Prevent caregiver "burnout," in which the caregiver's
1108 health declines and he or she is unable to continue to provide
1109 care so that the only option for the person with disabilities or
1110 special needs is to receive institutional care.
1111 (c) Foster the development of intergenerational respite
1112 care assisted living facilities to temporarily care for minors
1113 and adults with disabilities and elderly persons with special
1114 needs in the same facility and to give caregivers the time they
1115 need for rejuvenation and healing.
1116 (2) The Agency for Health Care Administration shall
1117 establish a 5-year pilot program, which shall license an
1118 intergenerational respite care assisted living facility that
1119 will provide temporary personal, respite, and custodial care to
1120 minors and adults with disabilities and elderly persons with
1121 special needs who do not require 24-hour nursing services. The
1122 intergenerational respite care assisted living facility must:
1123 (a) Meet all applicable requirements and standards
1124 contained in this part ~~III of this chapter~~, except that, for
1125 purposes of this section, the term "resident" means a person of
1126 any age temporarily residing in and receiving care from the
1127 facility.

1128 (b) Provide respite care services for minors and adults
1129 with disabilities and elderly persons with special needs for a
1130 period of at least 24 hours but not for more than 14 consecutive
1131 days.
1132 (c) Provide a facility or facilities in which minors and
1133 adults reside in distinct and separate living units.
1134 (d) Provide a facility that has a maximum of 48 beds, is
1135 located in Miami-Dade County, and is operated by a not-for-
1136 profit entity.
1137 (3) The agency may establish policies necessary to achieve
1138 the objectives specific to the pilot program and may adopt rules
1139 necessary to implement the program.
1140 (4) After 4 years, the agency shall present its report on
1141 the effectiveness of the pilot program to the President of the
1142 Senate and the Speaker of the House of Representatives and its
1143 recommendation as to whether the Legislature should make the
1144 program permanent.
1145 Section 34. Section 400.408, Florida Statutes, is
1146 renumbered as section 429.08, Florida Statutes, and amended to
1147 read:
1148 429.08 ~~400.408~~ Unlicensed facilities; referral of person
1149 for residency to unlicensed facility; penalties; verification of
1150 licensure status.--
1151 (1)(a) It is unlawful to own, operate, or maintain an
1152 assisted living facility without obtaining a license under this
1153 part.
1154 (b) Except as provided under paragraph (d), any person who
1155 owns, operates, or maintains an unlicensed assisted living
1156 facility commits a felony of the third degree, punishable as
1157 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1158 continued operation is a separate offense.

1159 (c) Any person found guilty of violating paragraph (a) a
1160 second or subsequent time commits a felony of the second degree,
1161 punishable as provided under s. 775.082, s. 775.083, or s.
1162 775.084. Each day of continued operation is a separate offense.
1163 (d) Any person who owns, operates, or maintains an
1164 unlicensed assisted living facility due to a change in this part
1165 or a modification in department rule within 6 months after the
1166 effective date of such change and who, within 10 working days
1167 after receiving notification from the agency, fails to cease
1168 operation or apply for a license under this part commits a
1169 felony of the third degree, punishable as provided in s.
1170 775.082, s. 775.083, or s. 775.084. Each day of continued
1171 operation is a separate offense.
1172 (e) Any facility that fails to cease operation after
1173 agency notification may be fined for each day of noncompliance
1174 pursuant to s. 429.19 ~~s. 400.419~~.
1175 (f) When a licensee has an interest in more than one
1176 assisted living facility, and fails to license any one of these
1177 facilities, the agency may revoke the license, impose a
1178 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
1179 on any or all of the licensed facilities until such time as the
1180 unlicensed facility is licensed or ceases operation.
1181 (g) If the agency determines that an owner is operating or
1182 maintaining an assisted living facility without obtaining a
1183 license and determines that a condition exists in the facility
1184 that poses a threat to the health, safety, or welfare of a
1185 resident of the facility, the owner is subject to the same
1186 actions and fines imposed against a licensed facility as
1187 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.
1188 (h) Any person aware of the operation of an unlicensed
1189 assisted living facility must report that facility to the

1190 agency. The agency shall provide to the department's elder
1191 information and referral providers a list, by county, of
1192 licensed assisted living facilities, to assist persons who are
1193 considering an assisted living facility placement in locating a
1194 licensed facility.
1195 (i) Each field office of the Agency for Health Care
1196 Administration shall establish a local coordinating workgroup
1197 which includes representatives of local law enforcement
1198 agencies, state attorneys, the Medicaid Fraud Control Unit of
1199 the Department of Legal Affairs, local fire authorities, the
1200 Department of Children and Family Services, the district long-
1201 term care ombudsman council, and the district human rights
1202 advocacy committee to assist in identifying the operation of
1203 unlicensed facilities and to develop and implement a plan to
1204 ensure effective enforcement of state laws relating to such
1205 facilities. The workgroup shall report its findings, actions,
1206 and recommendations semiannually to the Director of Health
1207 Facility Regulation of the agency.
1208 (2) It is unlawful to knowingly refer a person for
1209 residency to an unlicensed assisted living facility; to an
1210 assisted living facility the license of which is under denial or
1211 has been suspended or revoked; or to an assisted living facility
1212 that has a moratorium on admissions. Any person who violates
1213 this subsection commits a noncriminal violation, punishable by a
1214 fine not exceeding $500 as provided in s. 775.083.
1215 (a) Any health care practitioner, as defined in s.
1216 456.001, who is aware of the operation of an unlicensed facility
1217 shall report that facility to the agency. Failure to report a
1218 facility that the practitioner knows or has reasonable cause to
1219 suspect is unlicensed shall be reported to the practitioner's
1220 licensing board.

1221 (b) Any hospital or community mental health center
1222 licensed under chapter 395 or chapter 394 which knowingly
1223 discharges a patient or client to an unlicensed facility is
1224 subject to sanction by the agency.
1225 (c) Any employee of the agency or department, or the
1226 Department of Children and Family Services, who knowingly refers
1227 a person for residency to an unlicensed facility; to a facility
1228 the license of which is under denial or has been suspended or
1229 revoked; or to a facility that has a moratorium on admissions is
1230 subject to disciplinary action by the agency or department, or
1231 the Department of Children and Family Services.
1232 (d) The employer of any person who is under contract with
1233 the agency or department, or the Department of Children and
1234 Family Services, and who knowingly refers a person for residency
1235 to an unlicensed facility; to a facility the license of which is
1236 under denial or has been suspended or revoked; or to a facility
1237 that has a moratorium on admissions shall be fined and required
1238 to prepare a corrective action plan designed to prevent such
1239 referrals.
1240 (e) The agency shall provide the department and the
1241 Department of Children and Family Services with a list of
1242 licensed facilities within each county and shall update the list
1243 at least quarterly.
1244 (f) At least annually, the agency shall notify, in
1245 appropriate trade publications, physicians licensed under
1246 chapter 458 or chapter 459, hospitals licensed under chapter
1247 395, nursing home facilities licensed under part II of ~~this~~
1248 chapter 400, and employees of the agency or the department, or
1249 the Department of Children and Family Services, who are
1250 responsible for referring persons for residency, that it is
1251 unlawful to knowingly refer a person for residency to an

1252 unlicensed assisted living facility and shall notify them of the
1253 penalty for violating such prohibition. The department and the
1254 Department of Children and Family Services shall, in turn,
1255 notify service providers under contract to the respective
1256 departments who have responsibility for resident referrals to
1257 facilities. Further, the notice must direct each noticed
1258 facility and individual to contact the appropriate agency office
1259 in order to verify the licensure status of any facility prior to
1260 referring any person for residency. Each notice must include the
1261 name, telephone number, and mailing address of the appropriate
1262 office to contact.

1263 Section 35. Section 400.411, Florida Statutes, is
1264 renumbered as section 429.11, Florida Statutes, and amended to
1265 read:

1266 429.11 ~~400.411~~ Initial application for license;
1267 provisional license.--

1268 (1) Application for a license shall be made to the agency
1269 on forms furnished by it and shall be accompanied by the
1270 appropriate license fee.

1271 (2) The applicant may be an individual owner, a
1272 corporation, a partnership, a firm, an association, or a
1273 governmental entity.

1274 (3) The application must be signed by the applicant under
1275 oath and must contain the following:

1276 (a) The name, address, date of birth, and social security
1277 number of the applicant and the name by which the facility is to
1278 be known. If the applicant is a firm, partnership, or
1279 association, the application shall contain the name, address,
1280 date of birth, and social security number of every member
1281 thereof. If the applicant is a corporation, the application
1282 shall contain the corporation's name and address; the name,

1283 address, date of birth, and social security number of each of
1284 its directors and officers; and the name and address of each
1285 person having at least a 5-percent ownership interest in the
1286 corporation.
1287 (b) The name and address of any professional service,
1288 firm, association, partnership, or corporation that is to
1289 provide goods, leases, or services to the facility if a 5-
1290 percent or greater ownership interest in the service, firm,
1291 association, partnership, or corporation is owned by a person
1292 whose name must be listed on the application under paragraph
1293 (a).
1294 (c) The name and address of any long-term care facility
1295 with which the applicant, administrator, or financial officer
1296 has been affiliated through ownership or employment within 5
1297 years of the date of this license application; and a signed
1298 affidavit disclosing any financial or ownership interest that
1299 the applicant, or any person listed in paragraph (a), holds or
1300 has held within the last 5 years in any facility licensed under
1301 this part, or in any other entity licensed by this state or
1302 another state to provide health or residential care, which
1303 facility or entity closed or ceased to operate as a result of
1304 financial problems, or has had a receiver appointed or a license
1305 denied, suspended or revoked, or was subject to a moratorium on
1306 admissions, or has had an injunctive proceeding initiated
1307 against it.
1308 (d) A description and explanation of any exclusions,
1309 permanent suspensions, or terminations of the applicant from the
1310 Medicare or Medicaid programs. Proof of compliance with
1311 disclosure of ownership and control interest requirements of the
1312 Medicaid or Medicare programs shall be accepted in lieu of this
1313 submission.

1314 (e) The names and addresses of persons of whom the agency
1315 may inquire as to the character, reputation, and financial
1316 responsibility of the owner and, if different from the
1317 applicant, the administrator and financial officer.
1318 (f) Identification of all other homes or facilities,
1319 including the addresses and the license or licenses under which
1320 they operate, if applicable, which are currently operated by the
1321 applicant or administrator and which provide housing, meals, and
1322 personal services to residents.
1323 (g) The location of the facility for which a license is
1324 sought and documentation, signed by the appropriate local
1325 government official, which states that the applicant has met
1326 local zoning requirements.
1327 (h) The name, address, date of birth, social security
1328 number, education, and experience of the administrator, if
1329 different from the applicant.
1330 (4) The applicant shall furnish satisfactory proof of
1331 financial ability to operate and conduct the facility in
1332 accordance with the requirements of this part. A certificate of
1333 authority, pursuant to chapter 651, may be provided as proof of
1334 financial ability.
1335 (5) If the applicant is a continuing care facility
1336 certified under chapter 651, a copy of the facility's
1337 certificate of authority must be provided.
1338 (6) The applicant shall provide proof of liability
1339 insurance as defined in s. 624.605.
1340 (7) If the applicant is a community residential home, the
1341 applicant must provide proof that it has met the requirements
1342 specified in chapter 419.
1343 (8) The applicant must provide the agency with proof of
1344 legal right to occupy the property.

1345 (9) The applicant must furnish proof that the facility has
1346 received a satisfactory firesafety inspection. The local
1347 authority having jurisdiction or the State Fire Marshal must
1348 conduct the inspection within 30 days after written request by
1349 the applicant.
1350 (10) The applicant must furnish documentation of a
1351 satisfactory sanitation inspection of the facility by the county
1352 health department.
1353 (11) The applicant must furnish proof of compliance with
1354 level 2 background screening as required under s. 429.174 ~~s.~~
1355 ~~400.4174~~.
1356 (12) A provisional license may be issued to an applicant
1357 making initial application for licensure or making application
1358 for a change of ownership. A provisional license shall be
1359 limited in duration to a specific period of time not to exceed 6
1360 months, as determined by the agency.
1361 (13) A county or municipality may not issue an
1362 occupational license that is being obtained for the purpose of
1363 operating a facility regulated under this part without first
1364 ascertaining that the applicant has been licensed to operate
1365 such facility at the specified location or locations by the
1366 agency. The agency shall furnish to local agencies responsible
1367 for issuing occupational licenses sufficient instruction for
1368 making such determinations.
1369 Section 36. Section 400.412, Florida Statutes, is
1370 renumbered as section 429.12, Florida Statutes, and amended to
1371 read:
1372 429.12 ~~400.412~~ Sale or transfer of ownership of a
1373 facility.--It is the intent of the Legislature to protect the
1374 rights of the residents of an assisted living facility when the
1375 facility is sold or the ownership thereof is transferred.

1376 Therefore, whenever a facility is sold or the ownership thereof
1377 is transferred, including leasing:
1378 (1) The transferee shall make application to the agency
1379 for a new license at least 60 days before the date of transfer
1380 of ownership. The application must comply with the provisions
1381 of s. 429.11 ~~s. 400.411~~.
1382 (2)(a) The transferor shall notify the agency in writing
1383 at least 60 days before the date of transfer of ownership.
1384 (b) The new owner shall notify the residents, in writing,
1385 of the transfer of ownership within 7 days of his or her receipt
1386 of the license.
1387 (3) The transferor shall be responsible and liable for:
1388 (a) The lawful operation of the facility and the welfare
1389 of the residents domiciled in the facility until the date the
1390 transferee is licensed by the agency.
1391 (b) Any and all penalties imposed against the facility for
1392 violations occurring before the date of transfer of ownership
1393 unless the penalty imposed is a moratorium on admissions or
1394 denial of licensure. The moratorium on admissions or denial of
1395 licensure remains in effect after the transfer of ownership,
1396 unless the agency has approved the transferee's corrective
1397 action plan or the conditions which created the moratorium or
1398 denial have been corrected, and may be grounds for denial of
1399 license to the transferee in accordance with chapter 120.
1400 (c) Any outstanding liability to the state, unless the
1401 transferee has agreed, as a condition of sale or transfer, to
1402 accept the outstanding liabilities and to guarantee payment
1403 therefor; except that, if the transferee fails to meet these
1404 obligations, the transferor shall remain liable for the
1405 outstanding liability.

1406 (4) The transferor of a facility the license of which is
1407 denied pending an administrative hearing shall, as a part of the
1408 written transfer-of-ownership contract, advise the transferee
1409 that a plan of correction must be submitted by the transferee
1410 and approved by the agency at least 7 days before the transfer
1411 of ownership and that failure to correct the condition which
1412 resulted in the moratorium on admissions or denial of licensure
1413 is grounds for denial of the transferee's license.
1414 (5) The transferee must provide the agency with proof of
1415 legal right to occupy the property before a license may be
1416 issued. Proof may include, but is not limited to, copies of
1417 warranty deeds, or copies of lease or rental agreements,
1418 contracts for deeds, quitclaim deeds, or other such
1419 documentation.
1420 Section 37. Section 400.414, Florida Statutes, is
1421 renumbered as section 429.14, Florida Statutes, and amended to
1422 read:
1423 429.14 ~~400.414~~ Denial, revocation, or suspension of
1424 license; imposition of administrative fine; grounds.--
1425 (1) The agency may deny, revoke, or suspend any license
1426 issued under this part, or impose an administrative fine in the
1427 manner provided in chapter 120, for any of the following actions
1428 by an assisted living facility, for the actions of any person
1429 subject to level 2 background screening under s. 429.174 ~~s.~~
1430 ~~400.4174~~, or for the actions of any facility employee:
1431 (a) An intentional or negligent act seriously affecting
1432 the health, safety, or welfare of a resident of the facility.
1433 (b) The determination by the agency that the owner lacks
1434 the financial ability to provide continuing adequate care to
1435 residents.

1436 (c) Misappropriation or conversion of the property of a
1437 resident of the facility.
1438 (d) Failure to follow the criteria and procedures provided
1439 under part I of chapter 394 relating to the transportation,
1440 voluntary admission, and involuntary examination of a facility
1441 resident.
1442 (e) A citation of any of the following deficiencies as
1443 defined in s. 429.19 ~~s. 400.419~~:
1444 1. One or more cited class I deficiencies.
1445 2. Three or more cited class II deficiencies.
1446 3. Five or more cited class III deficiencies that have
1447 been cited on a single survey and have not been corrected within
1448 the times specified.
1449 (f) A determination that a person subject to level 2
1450 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
1451 meet the screening standards of s. 435.04 or that the facility
1452 is retaining an employee subject to level 1 background screening
1453 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
1454 the screening standards of s. 435.03 and for whom exemptions
1455 from disqualification have not been provided by the agency.
1456 (g) A determination that an employee, volunteer,
1457 administrator, or owner, or person who otherwise has access to
1458 the residents of a facility does not meet the criteria specified
1459 in s. 435.03(2), and the owner or administrator has not taken
1460 action to remove the person. Exemptions from disqualification
1461 may be granted as set forth in s. 435.07. No administrative
1462 action may be taken against the facility if the person is
1463 granted an exemption.
1464 (h) Violation of a moratorium.
1465 (i) Failure of the license applicant, the licensee during
1466 relicensure, or a licensee that holds a provisional license to

1467 meet the minimum license requirements of this part, or related
1468 rules, at the time of license application or renewal.
1469 (j) A fraudulent statement or omission of any material
1470 fact on an application for a license or any other document
1471 required by the agency, including the submission of a license
1472 application that conceals the fact that any board member,
1473 officer, or person owning 5 percent or more of the facility may
1474 not meet the background screening requirements of s. 429.174 ~~s.~~
1475 ~~400.4174~~, or that the applicant has been excluded, permanently
1476 suspended, or terminated from the Medicaid or Medicare programs.
1477 (k) An intentional or negligent life-threatening act in
1478 violation of the uniform firesafety standards for assisted
1479 living facilities or other firesafety standards that threatens
1480 the health, safety, or welfare of a resident of a facility, as
1481 communicated to the agency by the local authority having
1482 jurisdiction or the State Fire Marshal.
1483 (l) Exclusion, permanent suspension, or termination from
1484 the Medicare or Medicaid programs.
1485 (m) Knowingly operating any unlicensed facility or
1486 providing without a license any service that must be licensed
1487 under this chapter or chapter 400.
1488 (n) Any act constituting a ground upon which application
1489 for a license may be denied.
1490
1491 Administrative proceedings challenging agency action under this
1492 subsection shall be reviewed on the basis of the facts and
1493 conditions that resulted in the agency action.
1494 (2) Upon notification by the local authority having
1495 jurisdiction or by the State Fire Marshal, the agency may deny
1496 or revoke the license of an assisted living facility that fails

1497 to correct cited fire code violations that affect or threaten
1498 the health, safety, or welfare of a resident of a facility.
1499 (3) The agency may deny a license to any applicant or to
1500 any officer or board member of an applicant who is a firm,
1501 corporation, partnership, or association or who owns 5 percent
1502 or more of the facility, if the applicant, officer, or board
1503 member has or had a 25-percent or greater financial or ownership
1504 interest in any other facility licensed under this part, or in
1505 any entity licensed by this state or another state to provide
1506 health or residential care, which facility or entity during the
1507 5 years prior to the application for a license closed due to
1508 financial inability to operate; had a receiver appointed or a
1509 license denied, suspended, or revoked; was subject to a
1510 moratorium on admissions; had an injunctive proceeding initiated
1511 against it; or has an outstanding fine assessed under this
1512 chapter or chapter 400.
1513 (4) The agency shall deny or revoke the license of an
1514 assisted living facility that has two or more class I violations
1515 that are similar or identical to violations identified by the
1516 agency during a survey, inspection, monitoring visit, or
1517 complaint investigation occurring within the previous 2 years.
1518 (5) An action taken by the agency to suspend, deny, or
1519 revoke a facility's license under this part, in which the agency
1520 claims that the facility owner or an employee of the facility
1521 has threatened the health, safety, or welfare of a resident of
1522 the facility be heard by the Division of Administrative Hearings
1523 of the Department of Management Services within 120 days after
1524 receipt of the facility's request for a hearing, unless that
1525 time limitation is waived by both parties. The administrative
1526 law judge must render a decision within 30 days after receipt of
1527 a proposed recommended order.

1528 (6) The agency shall provide to the Division of Hotels and
1529 Restaurants of the Department of Business and Professional
1530 Regulation, on a monthly basis, a list of those assisted living
1531 facilities that have had their licenses denied, suspended, or
1532 revoked or that are involved in an appellate proceeding pursuant
1533 to s. 120.60 related to the denial, suspension, or revocation of
1534 a license.
1535 (7) Agency notification of a license suspension or
1536 revocation, or denial of a license renewal, shall be posted and
1537 visible to the public at the facility.
1538 (8) The agency may issue a temporary license pending final
1539 disposition of a proceeding involving the suspension or
1540 revocation of an assisted living facility license.
1541 Section 38. Section 400.415, Florida Statutes, is
1542 renumbered as section 429.15, Florida Statutes, and amended to
1543 read:
1544 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
1545 agency may impose an immediate moratorium on admissions to any
1546 assisted living facility if the agency determines that any
1547 condition in the facility presents a threat to the health,
1548 safety, or welfare of the residents in the facility.
1549 (1) A facility the license of which is denied, revoked, or
1550 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
1551 immediate imposition of a moratorium on admissions to run
1552 concurrently with licensure denial, revocation, or suspension.
1553 (2) When a moratorium is placed on a facility, notice of
1554 the moratorium shall be posted and visible to the public at the
1555 facility until the moratorium is lifted.
1556 (3) The department may by rule establish conditions that
1557 constitute grounds for imposing a moratorium on a facility and

1558 procedures for imposing and lifting a moratorium, as necessary
1559 to administer this section.
1560 Section 39. Section 400.417, Florida Statutes, is
1561 renumbered as section 429.17, Florida Statutes, and amended to
1562 read:
1563 429.17 ~~400.417~~ Expiration of license; renewal; conditional
1564 license.--
1565 (1) Biennial licenses, unless sooner suspended or revoked,
1566 shall expire 2 years from the date of issuance. Limited nursing,
1567 extended congregate care, and limited mental health licenses
1568 shall expire at the same time as the facility's standard
1569 license, regardless of when issued. The agency shall notify the
1570 facility at least 120 days prior to expiration that a renewal
1571 license is necessary to continue operation. The notification
1572 must be provided electronically or by mail delivery. Ninety days
1573 prior to the expiration date, an application for renewal shall
1574 be submitted to the agency. Fees must be prorated. The failure
1575 to file a timely renewal application shall result in a late fee
1576 charged to the facility in an amount equal to 50 percent of the
1577 current fee.
1578 (2) A license shall be renewed within 90 days upon the
1579 timely filing of an application on forms furnished by the agency
1580 and the provision of satisfactory proof of ability to operate
1581 and conduct the facility in accordance with the requirements of
1582 this part and adopted rules, including proof that the facility
1583 has received a satisfactory firesafety inspection, conducted by
1584 the local authority having jurisdiction or the State Fire
1585 Marshal, within the preceding 12 months and an affidavit of
1586 compliance with the background screening requirements of s.
1587 429.174 ~~s. 400.4174~~.

1588 (3) An applicant for renewal of a license who has complied
1589 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
1590 proof of financial ability to operate shall not be required to
1591 provide further proof unless the facility or any other facility
1592 owned or operated in whole or in part by the same person has
1593 demonstrated financial instability as provided under s.
1594 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
1595 facility is not financially stable as a result of the annual
1596 survey or complaints from the public or a report from the State
1597 Long-Term Care Ombudsman Council. Each facility must report to
1598 the agency any adverse court action concerning the facility's
1599 financial viability, within 7 days after its occurrence. The
1600 agency shall have access to books, records, and any other
1601 financial documents maintained by the facility to the extent
1602 necessary to determine the facility's financial stability. A
1603 license for the operation of a facility shall not be renewed if
1604 the licensee has any outstanding fines assessed pursuant to this
1605 part which are in final order status.
1606 (4) A licensee against whom a revocation or suspension
1607 proceeding is pending at the time of license renewal may be
1608 issued a conditional license effective until final disposition
1609 by the agency. If judicial relief is sought from the final
1610 disposition, the court having jurisdiction may issue a
1611 conditional license for the duration of the judicial proceeding.
1612 (5) A conditional license may be issued to an applicant
1613 for license renewal if the applicant fails to meet all standards
1614 and requirements for licensure. A conditional license issued
1615 under this subsection shall be limited in duration to a specific
1616 period of time not to exceed 6 months, as determined by the
1617 agency, and shall be accompanied by an agency-approved plan of
1618 correction.

1619 (6) When an extended care or limited nursing license is
1620 requested during a facility's biennial license period, the fee
1621 shall be prorated in order to permit the additional license to
1622 expire at the end of the biennial license period. The fee shall
1623 be calculated as of the date the additional license application
1624 is received by the agency.
1625 (7) The department may by rule establish renewal
1626 procedures, identify forms, and specify documentation necessary
1627 to administer this section.
1628 Section 40. Section 400.4174, Florida Statutes, is
1629 renumbered as section 429.174, Florida Statutes, and amended to
1630 read:
1631 429.174 ~~400.4174~~ Background screening; exemptions.--
1632 (1)(a) Level 2 background screening must be conducted on
1633 each of the following persons, who shall be considered employees
1634 for the purposes of conducting screening under chapter 435:
1635 1. The facility owner if an individual, the administrator,
1636 and the financial officer.
1637 2. An officer or board member if the facility owner is a
1638 firm, corporation, partnership, or association, or any person
1639 owning 5 percent or more of the facility if the agency has
1640 probable cause to believe that such person has been convicted of
1641 any offense prohibited by s. 435.04. For each officer, board
1642 member, or person owning 5 percent or more who has been
1643 convicted of any such offense, the facility shall submit to the
1644 agency a description and explanation of the conviction at the
1645 time of license application. This subparagraph does not apply to
1646 a board member of a not-for-profit corporation or organization
1647 if the board member serves solely in a voluntary capacity, does
1648 not regularly take part in the day-to-day operational decisions
1649 of the corporation or organization, receives no remuneration for

1650 his or her services, and has no financial interest and has no
1651 family members with a financial interest in the corporation or
1652 organization, provided that the board member and facility submit
1653 a statement affirming that the board member's relationship to
1654 the facility satisfies the requirements of this subparagraph.
1655 (b) Proof of compliance with level 2 screening standards
1656 which has been submitted within the previous 5 years to meet any
1657 facility or professional licensure requirements of the agency or
1658 the Department of Health satisfies the requirements of this
1659 subsection, provided that such proof is accompanied, under
1660 penalty of perjury, by an affidavit of compliance with the
1661 provisions of chapter 435. Proof of compliance with the
1662 background screening requirements of the Financial Services
1663 Commission and the Office of Insurance Regulation for applicants
1664 for a certificate of authority to operate a continuing care
1665 retirement community under chapter 651, submitted within the
1666 last 5 years, satisfies the Department of Law Enforcement and
1667 Federal Bureau of Investigation portions of a level 2 background
1668 check.
1669 (c) The agency may grant a provisional license to a
1670 facility applying for an initial license when each individual
1671 required by this subsection to undergo screening has completed
1672 the Department of Law Enforcement background checks, but has not
1673 yet received results from the Federal Bureau of Investigation,
1674 or when a request for an exemption from disqualification has
1675 been submitted to the agency pursuant to s. 435.07, but a
1676 response has not been issued.
1677 (2) The owner or administrator of an assisted living
1678 facility must conduct level 1 background screening, as set forth
1679 in chapter 435, on all employees hired on or after October 1,
1680 1998, who perform personal services as defined in s. 429.02(17)

1681 ~~s. 400.402(17)~~. The agency may exempt an individual from
1682 employment disqualification as set forth in chapter 435. Such
1683 persons shall be considered as having met this requirement if:
1684 (a) Proof of compliance with level 1 screening
1685 requirements obtained to meet any professional license
1686 requirements in this state is provided and accompanied, under
1687 penalty of perjury, by a copy of the person's current
1688 professional license and an affidavit of current compliance with
1689 the background screening requirements.
1690 (b) The person required to be screened has been
1691 continuously employed in the same type of occupation for which
1692 the person is seeking employment without a breach in service
1693 which exceeds 180 days, and proof of compliance with the level 1
1694 screening requirement which is no more than 2 years old is
1695 provided. Proof of compliance shall be provided directly from
1696 one employer or contractor to another, and not from the person
1697 screened. Upon request, a copy of screening results shall be
1698 provided by the employer retaining documentation of the
1699 screening to the person screened.
1700 (c) The person required to be screened is employed by a
1701 corporation or business entity or related corporation or
1702 business entity that owns, operates, or manages more than one
1703 facility or agency licensed under this chapter, and for whom a
1704 level 1 screening was conducted by the corporation or business
1705 entity as a condition of initial or continued employment.
1706 Section 41. Section 400.4176, Florida Statutes, is
1707 renumbered as section 429.176, Florida Statutes, and amended to
1708 read:
1709 429.176 ~~400.4176~~ Notice of change of administrator.--If,
1710 during the period for which a license is issued, the owner
1711 changes administrators, the owner must notify the agency of the

1712 change within 10 days and provide documentation within 90 days
1713 that the new administrator has completed the applicable core
1714 educational requirements under s. 429.52 ~~s. 400.452~~. Background
1715 screening shall be completed on any new administrator as
1716 specified in s. 429.174 ~~s. 400.4174~~.
1717 Section 42. Section 400.4178, Florida Statutes, is
1718 renumbered as section 429.178, Florida Statutes, and amended to
1719 read:
1720 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
1721 disease or other related disorders.--
1722 (1) A facility which advertises that it provides special
1723 care for persons with Alzheimer's disease or other related
1724 disorders must meet the following standards of operation:
1725 (a)1. If the facility has 17 or more residents, have an
1726 awake staff member on duty at all hours of the day and night; or
1727 2. If the facility has fewer than 17 residents, have an
1728 awake staff member on duty at all hours of the day and night or
1729 have mechanisms in place to monitor and ensure the safety of the
1730 facility's residents.
1731 (b) Offer activities specifically designed for persons who
1732 are cognitively impaired.
1733 (c) Have a physical environment that provides for the
1734 safety and welfare of the facility's residents.
1735 (d) Employ staff who have completed the training and
1736 continuing education required in subsection (2).
1737 (2)(a) An individual who is employed by a facility that
1738 provides special care for residents with Alzheimer's disease or
1739 other related disorders, and who has regular contact with such
1740 residents, must complete up to 4 hours of initial dementia-
1741 specific training developed or approved by the department. The
1742 training shall be completed within 3 months after beginning

1743 employment and shall satisfy the core training requirements of
1744 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1745 (b) A direct caregiver who is employed by a facility that
1746 provides special care for residents with Alzheimer's disease or
1747 other related disorders, and who provides direct care to such
1748 residents, must complete the required initial training and 4
1749 additional hours of training developed or approved by the
1750 department. The training shall be completed within 9 months
1751 after beginning employment and shall satisfy the core training
1752 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1753 (c) An individual who is employed by a facility that
1754 provides special care for residents with Alzheimer's disease or
1755 other related disorders, but who only has incidental contact
1756 with such residents, must be given, at a minimum, general
1757 information on interacting with individuals with Alzheimer's
1758 disease or other related disorders, within 3 months after
1759 beginning employment.
1760 (3) In addition to the training required under subsection
1761 (2), a direct caregiver must participate in a minimum of 4
1762 contact hours of continuing education each calendar year. The
1763 continuing education must include one or more topics included in
1764 the dementia-specific training developed or approved by the
1765 department, in which the caregiver has not received previous
1766 training.
1767 (4) Upon completing any training listed in subsection (2),
1768 the employee or direct caregiver shall be issued a certificate
1769 that includes the name of the training provider, the topic
1770 covered, and the date and signature of the training provider.
1771 The certificate is evidence of completion of training in the
1772 identified topic, and the employee or direct caregiver is not
1773 required to repeat training in that topic if the employee or

1774 direct caregiver changes employment to a different facility.
1775 The employee or direct caregiver must comply with other
1776 applicable continuing education requirements.
1777 (5) The department, or its designee, shall approve the
1778 initial and continuing education courses and providers.
1779 (6) The department shall keep a current list of providers
1780 who are approved to provide initial and continuing education for
1781 staff of facilities that provide special care for persons with
1782 Alzheimer's disease or other related disorders.
1783 (7) Any facility more than 90 percent of whose residents
1784 receive monthly optional supplementation payments is not
1785 required to pay for the training and education programs required
1786 under this section. A facility that has one or more such
1787 residents shall pay a reduced fee that is proportional to the
1788 percentage of such residents in the facility. A facility that
1789 does not have any residents who receive monthly optional
1790 supplementation payments must pay a reasonable fee, as
1791 established by the department, for such training and education
1792 programs.
1793 (8) The department shall adopt rules to establish
1794 standards for trainers and training and to implement this
1795 section.
1796 Section 43. Section 400.418, Florida Statutes, is
1797 renumbered as section 429.18, Florida Statutes, and amended to
1798 read:
1799 429.18 ~~400.418~~ Disposition of fees and administrative
1800 fines.--
1801 (1) Income from license fees, inspection fees, late fees,
1802 and administrative fines generated pursuant to ss. 429.07,
1803 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
1804 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health

1805 Care Trust Fund administered by the agency. Such funds shall be
1806 directed to and used by the agency for the following purposes:
1807 (a) Up to 50 percent of the trust funds accrued each
1808 fiscal year under this part may be used to offset the expenses
1809 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
1810 determines that the income and assets of the facility are
1811 insufficient to provide for adequate management and operation.
1812 (b) An amount of $5,000 of the trust funds accrued each
1813 year under this part shall be allocated to pay for inspection-
1814 related physical and mental health examinations requested by the
1815 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
1816 either recipients of supplemental security income or have
1817 monthly incomes not in excess of the maximum combined federal
1818 and state cash subsidies available to supplemental security
1819 income recipients, as provided for in s. 409.212. Such funds
1820 shall only be used where the resident is ineligible for
1821 Medicaid.
1822 (c) Any trust funds accrued each year under this part and
1823 not used for the purposes specified in paragraphs (a) and (b)
1824 shall be used to offset the costs of the licensure program,
1825 including the costs of conducting background investigations,
1826 verifying information submitted, defraying the costs of
1827 processing the names of applicants, and conducting inspections
1828 and monitoring visits pursuant to this part.
1829 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
1830 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
1831 used to offset the costs of printing and postage.
1832 Section 44. Section 400.419, Florida Statutes, is
1833 renumbered as section 429.19, Florida Statutes, and amended to
1834 read:

1835 429.19 ~~400.419~~ Violations; imposition of administrative
1836 fines; grounds.--
1837 (1) The agency shall impose an administrative fine in the
1838 manner provided in chapter 120 for any of the actions or
1839 violations as set forth within this section by an assisted
1840 living facility, for the actions of any person subject to level
1841 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
1842 actions of any facility employee, or for an intentional or
1843 negligent act seriously affecting the health, safety, or welfare
1844 of a resident of the facility.
1845 (2) Each violation of this part and adopted rules shall be
1846 classified according to the nature of the violation and the
1847 gravity of its probable effect on facility residents. The agency
1848 shall indicate the classification on the written notice of the
1849 violation as follows:
1850 (a) Class "I" violations are those conditions or
1851 occurrences related to the operation and maintenance of a
1852 facility or to the personal care of residents which the agency
1853 determines present an imminent danger to the residents or guests
1854 of the facility or a substantial probability that death or
1855 serious physical or emotional harm would result therefrom. The
1856 condition or practice constituting a class I violation shall be
1857 abated or eliminated within 24 hours, unless a fixed period, as
1858 determined by the agency, is required for correction. The agency
1859 shall impose an administrative fine for a cited class I
1860 violation in an amount not less than $5,000 and not exceeding
1861 $10,000 for each violation. A fine may be levied notwithstanding
1862 the correction of the violation.
1863 (b) Class "II" violations are those conditions or
1864 occurrences related to the operation and maintenance of a
1865 facility or to the personal care of residents which the agency

1866 determines directly threaten the physical or emotional health,
1867 safety, or security of the facility residents, other than class
1868 I violations. The agency shall impose an administrative fine for
1869 a cited class II violation in an amount not less than $1,000 and
1870 not exceeding $5,000 for each violation. A fine shall be levied
1871 notwithstanding the correction of the violation.
1872 (c) Class "III" violations are those conditions or
1873 occurrences related to the operation and maintenance of a
1874 facility or to the personal care of residents which the agency
1875 determines indirectly or potentially threaten the physical or
1876 emotional health, safety, or security of facility residents,
1877 other than class I or class II violations. The agency shall
1878 impose an administrative fine for a cited class III violation in
1879 an amount not less than $500 and not exceeding $1,000 for each
1880 violation. A citation for a class III violation must specify the
1881 time within which the violation is required to be corrected. If
1882 a class III violation is corrected within the time specified, no
1883 fine may be imposed, unless it is a repeated offense.
1884 (d) Class "IV" violations are those conditions or
1885 occurrences related to the operation and maintenance of a
1886 building or to required reports, forms, or documents that do not
1887 have the potential of negatively affecting residents. These
1888 violations are of a type that the agency determines do not
1889 threaten the health, safety, or security of residents of the
1890 facility. The agency shall impose an administrative fine for a
1891 cited class IV violation in an amount not less than $100 and not
1892 exceeding $200 for each violation. A citation for a class IV
1893 violation must specify the time within which the violation is
1894 required to be corrected. If a class IV violation is corrected
1895 within the time specified, no fine shall be imposed. Any class
1896 IV violation that is corrected during the time an agency survey

1897 is being conducted will be identified as an agency finding and
1898 not as a violation.
1899 (3) In determining if a penalty is to be imposed and in
1900 fixing the amount of the fine, the agency shall consider the
1901 following factors:
1902 (a) The gravity of the violation, including the
1903 probability that death or serious physical or emotional harm to
1904 a resident will result or has resulted, the severity of the
1905 action or potential harm, and the extent to which the provisions
1906 of the applicable laws or rules were violated.
1907 (b) Actions taken by the owner or administrator to correct
1908 violations.
1909 (c) Any previous violations.
1910 (d) The financial benefit to the facility of committing or
1911 continuing the violation.
1912 (e) The licensed capacity of the facility.
1913 (4) Each day of continuing violation after the date fixed
1914 for termination of the violation, as ordered by the agency,
1915 constitutes an additional, separate, and distinct violation.
1916 (5) Any action taken to correct a violation shall be
1917 documented in writing by the owner or administrator of the
1918 facility and verified through followup visits by agency
1919 personnel. The agency may impose a fine and, in the case of an
1920 owner-operated facility, revoke or deny a facility's license
1921 when a facility administrator fraudulently misrepresents action
1922 taken to correct a violation.
1923 (6) For fines that are upheld following administrative or
1924 judicial review, the violator shall pay the fine, plus interest
1925 at the rate as specified in s. 55.03, for each day beyond the
1926 date set by the agency for payment of the fine.

1927 (7) Any unlicensed facility that continues to operate
1928 after agency notification is subject to a $1,000 fine per day.
1929 (8) Any licensed facility whose owner or administrator
1930 concurrently operates an unlicensed facility shall be subject to
1931 an administrative fine of $5,000 per day.
1932 (9) Any facility whose owner fails to apply for a change-
1933 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
1934 operates the facility under the new ownership is subject to a
1935 fine of $5,000.
1936 (10) In addition to any administrative fines imposed, the
1937 agency may assess a survey fee, equal to the lesser of one half
1938 of the facility's biennial license and bed fee or $500, to cover
1939 the cost of conducting initial complaint investigations that
1940 result in the finding of a violation that was the subject of the
1941 complaint or monitoring visits conducted under s. 429.28(3)(c)
1942 ~~s. 400.428(3)(c)~~ to verify the correction of the violations.
1943 (11) The agency, as an alternative to or in conjunction
1944 with an administrative action against a facility for violations
1945 of this part and adopted rules, shall make a reasonable attempt
1946 to discuss each violation and recommended corrective action with
1947 the owner or administrator of the facility, prior to written
1948 notification. The agency, instead of fixing a period within
1949 which the facility shall enter into compliance with standards,
1950 may request a plan of corrective action from the facility which
1951 demonstrates a good faith effort to remedy each violation by a
1952 specific date, subject to the approval of the agency.
1953 (12) Administrative fines paid by any facility under this
1954 section shall be deposited into the Health Care Trust Fund and
1955 expended as provided in s. 429.18 ~~s. 400.418~~.
1956 (13) The agency shall develop and disseminate an annual
1957 list of all facilities sanctioned or fined $5,000 or more for

1958 violations of state standards, the number and class of
1959 violations involved, the penalties imposed, and the current
1960 status of cases. The list shall be disseminated, at no charge,
1961 to the Department of Elderly Affairs, the Department of Health,
1962 the Department of Children and Family Services, the area
1963 agencies on aging, the Florida Statewide Advocacy Council, and
1964 the state and local ombudsman councils. The Department of
1965 Children and Family Services shall disseminate the list to
1966 service providers under contract to the department who are
1967 responsible for referring persons to a facility for residency.
1968 The agency may charge a fee commensurate with the cost of
1969 printing and postage to other interested parties requesting a
1970 copy of this list.
1971 Section 45. Section 400.42, Florida Statutes, is
1972 renumbered as section 429.20, Florida Statutes, and amended to
1973 read:
1974 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
1975 supplementation.--
1976 (1) A person may not, in connection with the solicitation
1977 of contributions by or on behalf of an assisted living facility
1978 or facilities, misrepresent or mislead any person, by any
1979 manner, means, practice, or device whatsoever, to believe that
1980 the receipts of such solicitation will be used for charitable
1981 purposes, if that is not the fact.
1982 (2) Solicitation of contributions of any kind in a
1983 threatening, coercive, or unduly forceful manner by or on behalf
1984 of an assisted living facility or facilities by any agent,
1985 employee, owner, or representative of any assisted living
1986 facility or facilities is grounds for denial, suspension, or
1987 revocation of the license of the assisted living facility or

1988 facilities by or on behalf of which such contributions were
1989 solicited.
1990 (3) The admission or maintenance of assisted living
1991 facility residents whose care is supported, in whole or in part,
1992 by state funds may not be conditioned upon the receipt of any
1993 manner of contribution or donation from any person. The
1994 solicitation or receipt of contributions in violation of this
1995 subsection is grounds for denial, suspension, or revocation of
1996 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
1997 living facility by or on behalf of which such contributions were
1998 solicited.
1999 (4) An assisted living facility may accept additional
2000 supplementation from third parties on behalf of residents
2001 receiving optional state supplementation in accordance with s.
2002 409.212.
2003 Section 46. Section 400.422, Florida Statutes, is
2004 renumbered as section 429.22, Florida Statutes, and amended to
2005 read:
2006 429.22 ~~400.422~~ Receivership proceedings.--
2007 (1) As an alternative to or in conjunction with an
2008 injunctive proceeding, the agency may petition a court of
2009 competent jurisdiction for the appointment of a receiver, if
2010 suitable alternate placements are not available, when any of the
2011 following conditions exist:
2012 (a) The facility is operating without a license and
2013 refuses to make application for a license as required by ss.
2014 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.
2015 (b) The facility is closing or has informed the agency
2016 that it intends to close and adequate arrangements have not been
2017 made for relocation of the residents within 7 days, exclusive of
2018 weekends and holidays, of the closing of the facility.

2019 (c) The agency determines there exist in the facility
2020 conditions which present an imminent danger to the health,
2021 safety, or welfare of the residents of the facility or a
2022 substantial probability that death or serious physical harm
2023 would result therefrom.
2024 (d) The facility cannot meet its financial obligation for
2025 providing food, shelter, care, and utilities.
2026 (2) Petitions for receivership shall take precedence over
2027 other court business unless the court determines that some other
2028 pending proceeding, having similar statutory precedence, shall
2029 have priority. A hearing shall be conducted within 5 days of
2030 the filing of the petition, at which time all interested parties
2031 shall have the opportunity to present evidence pertaining to the
2032 petition. The agency shall notify, by certified mail, the owner
2033 or administrator of the facility named in the petition and the
2034 facility resident or, if applicable, the resident's
2035 representative or designee, or the resident's surrogate,
2036 guardian, or attorney in fact, of its filing, the substance of
2037 the violation, and the date and place set for the hearing. The
2038 court shall grant the petition only upon finding that the
2039 health, safety, or welfare of facility residents would be
2040 threatened if a condition existing at the time the petition was
2041 filed is permitted to continue. A receiver shall not be
2042 appointed ex parte unless the court determines that one or more
2043 of the conditions in subsection (1) exist; that the facility
2044 owner or administrator cannot be found; that all reasonable
2045 means of locating the owner or administrator and notifying him
2046 or her of the petition and hearing have been exhausted; or that
2047 the owner or administrator after notification of the hearing
2048 chooses not to attend. After such findings, the court may
2049 appoint any qualified person as a receiver, except it may not

2050 appoint any owner or affiliate of the facility which is in
2051 receivership. The receiver may be selected from a list of
2052 persons qualified to act as receivers developed by the agency
2053 and presented to the court with each petition for receivership.
2054 Under no circumstances may the agency or designated agency
2055 employee be appointed as a receiver for more than 60 days;
2056 however, the receiver may petition the court, one time only, for
2057 a 30-day extension. The court shall grant the extension upon a
2058 showing of good cause.
2059 (3) The receiver must make provisions for the continued
2060 health, safety, and welfare of all residents of the facility
2061 and:
2062 (a) Shall exercise those powers and perform those duties
2063 set out by the court.
2064 (b) Shall operate the facility in such a manner as to
2065 assure safety and adequate health care for the residents.
2066 (c) Shall take such action as is reasonably necessary to
2067 protect or conserve the assets or property of the facility for
2068 which the receiver is appointed, or the proceeds from any
2069 transfer thereof, and may use them only in the performance of
2070 the powers and duties set forth in this section and by order of
2071 the court.
2072 (d) May use the building, fixtures, furnishings, and any
2073 accompanying consumable goods in the provision of care and
2074 services to residents and to any other persons receiving
2075 services from the facility at the time the petition for
2076 receivership was filed. The receiver shall collect payments for
2077 all goods and services provided to residents or others during
2078 the period of the receivership at the same rate of payment
2079 charged by the owners at the time the petition for receivership

2080 was filed, or at a fair and reasonable rate otherwise approved
2081 by the court.
2082 (e) May correct or eliminate any deficiency in the
2083 structure or furnishings of the facility which endangers the
2084 safety or health of residents while they remain in the facility,
2085 if the total cost of correction does not exceed $10,000. The
2086 court may order expenditures for this purpose in excess of
2087 $10,000 on application from the receiver after notice to the
2088 owner and a hearing.
2089 (f) May let contracts and hire agents and employees to
2090 carry out the powers and duties of the receiver.
2091 (g) Shall honor all leases, mortgages, and secured
2092 transactions governing the building in which the facility is
2093 located and all goods and fixtures in the building of which the
2094 receiver has taken possession, but only to the extent of
2095 payments which, in the case of a rental agreement, are for the
2096 use of the property during the period of the receivership, or
2097 which, in the case of a purchase agreement, become due during
2098 the period of the receivership.
2099 (h) Shall have full power to direct and manage and to
2100 discharge employees of the facility, subject to any contract
2101 rights they may have. The receiver shall pay employees at the
2102 rate of compensation, including benefits, approved by the court.
2103 A receivership does not relieve the owner of any obligation to
2104 employees made prior to the appointment of a receiver and not
2105 carried out by the receiver.
2106 (i) Shall be entitled to and take possession of all
2107 property or assets of residents which are in the possession of a
2108 facility or its owner. The receiver shall preserve all property,
2109 assets, and records of residents of which the receiver takes
2110 possession and shall provide for the prompt transfer of the

2111 property, assets, and records to the new placement of any
2112 transferred resident. An inventory list certified by the owner
2113 and receiver shall be made immediately at the time the receiver
2114 takes possession of the facility.
2115 (4)(a) A person who is served with notice of an order of
2116 the court appointing a receiver and of the receiver's name and
2117 address shall be liable to pay the receiver for any goods or
2118 services provided by the receiver after the date of the order if
2119 the person would have been liable for the goods or services as
2120 supplied by the owner. The receiver shall give a receipt for
2121 each payment and shall keep a copy of each receipt on file. The
2122 receiver shall deposit accounts received in a separate account
2123 and shall use this account for all disbursements.
2124 (b) The receiver may bring an action to enforce the
2125 liability created by paragraph (a).
2126 (c) A payment to the receiver of any sum owing to the
2127 facility or its owner shall discharge any obligation to the
2128 facility to the extent of the payment.
2129 (5)(a) A receiver may petition the court that he or she
2130 not be required to honor any lease, mortgage, secured
2131 transaction, or other wholly or partially executory contract
2132 entered into by the owner of the facility if the rent, price, or
2133 rate of interest required to be paid under the agreement was
2134 substantially in excess of a reasonable rent, price, or rate of
2135 interest at the time the contract was entered into, or if any
2136 material provision of the agreement was unreasonable, when
2137 compared to contracts negotiated under similar conditions. Any
2138 relief in this form provided by the court shall be limited to
2139 the life of the receivership, unless otherwise determined by the
2140 court.

2141 (b) If the receiver is in possession of real estate or
2142 goods subject to a lease, mortgage, or security interest which
2143 the receiver has obtained a court order to avoid under paragraph
2144 (a), and if the real estate or goods are necessary for the
2145 continued operation of the facility under this section, the
2146 receiver may apply to the court to set a reasonable rental,
2147 price, or rate of interest to be paid by the receiver during the
2148 duration of the receivership. The court shall hold a hearing on
2149 the application within 15 days. The receiver shall send notice
2150 of the application to any known persons who own the property
2151 involved at least 10 days prior to the hearing. Payment by the
2152 receiver of the amount determined by the court to be reasonable
2153 is a defense to any action against the receiver for payment or
2154 for possession of the goods or real estate subject to the lease,
2155 security interest, or mortgage involved by any person who
2156 received such notice, but the payment does not relieve the owner
2157 of the facility of any liability for the difference between the
2158 amount paid by the receiver and the amount due under the
2159 original lease, security interest, or mortgage involved.
2160 (6) The court shall set the compensation of the receiver,
2161 which will be considered a necessary expense of a receivership.
2162 (7) A receiver may be held liable in a personal capacity
2163 only for the receiver's own gross negligence, intentional acts,
2164 or breach of fiduciary duty.
2165 (8) The court may require a receiver to post a bond.
2166 (9) The court may direct the agency to allocate funds from
2167 the Health Care Trust Fund to the receiver, subject to the
2168 provisions of s. 429.18(1) ~~s. 400.418(1)~~.
2169 (10) The court may terminate a receivership when:
2170 (a) The court determines that the receivership is no
2171 longer necessary because the conditions which gave rise to the

2172 receivership no longer exist or the agency grants the facility a
2173 new license; or
2174 (b) All of the residents in the facility have been
2175 transferred or discharged.
2176 (11) Within 30 days after termination, the receiver shall
2177 give the court a complete accounting of all property of which
2178 the receiver has taken possession, of all funds collected, and
2179 of the expenses of the receivership.
2180 (12) Nothing in this section shall be deemed to relieve
2181 any owner, administrator, or employee of a facility placed in
2182 receivership of any civil or criminal liability incurred, or any
2183 duty imposed by law, by reason of acts or omissions of the
2184 owner, administrator, or employee prior to the appointment of a
2185 receiver; nor shall anything contained in this section be
2186 construed to suspend during the receivership any obligation of
2187 the owner, administrator, or employee for payment of taxes or
2188 other operating and maintenance expenses of the facility or of
2189 the owner, administrator, employee, or any other person for the
2190 payment of mortgages or liens. The owner shall retain the right
2191 to sell or mortgage any facility under receivership, subject to
2192 approval of the court which ordered the receivership.
2193 Section 47. Section 400.424, Florida Statutes, is
2194 renumbered as section 429.24, Florida Statutes, and amended to
2195 read:
2196 429.24 ~~400.424~~ Contracts.--
2197 (1) The presence of each resident in a facility shall be
2198 covered by a contract, executed at the time of admission or
2199 prior thereto, between the licensee and the resident or his or
2200 her designee or legal representative. Each party to the contract
2201 shall be provided with a duplicate original thereof, and the
2202 licensee shall keep on file in the facility all such contracts.

2203 The licensee may not destroy or otherwise dispose of any such
2204 contract until 5 years after its expiration.
2205 (2) Each contract must contain express provisions
2206 specifically setting forth the services and accommodations to be
2207 provided by the facility; the rates or charges; provision for at
2208 least 30 days' written notice of a rate increase; the rights,
2209 duties, and obligations of the residents, other than those
2210 specified in s. 429.28 ~~s. 400.428~~; and other matters that the
2211 parties deem appropriate. Whenever money is deposited or
2212 advanced by a resident in a contract as security for performance
2213 of the contract agreement or as advance rent for other than the
2214 next immediate rental period:
2215 (a) Such funds shall be deposited in a banking institution
2216 in this state that is located, if possible, in the same
2217 community in which the facility is located; shall be kept
2218 separate from the funds and property of the facility; may not be
2219 represented as part of the assets of the facility on financial
2220 statements; and shall be used, or otherwise expended, only for
2221 the account of the resident.
2222 (b) The licensee shall, within 30 days of receipt of
2223 advance rent or a security deposit, notify the resident or
2224 residents in writing of the manner in which the licensee is
2225 holding the advance rent or security deposit and state the name
2226 and address of the depository where the moneys are being held.
2227 The licensee shall notify residents of the facility's policy on
2228 advance deposits.
2229 (3)(a) The contract shall include a refund policy to be
2230 implemented at the time of a resident's transfer, discharge, or
2231 death. The refund policy shall provide that the resident or
2232 responsible party is entitled to a prorated refund based on the
2233 daily rate for any unused portion of payment beyond the

2234 termination date after all charges, including the cost of
2235 damages to the residential unit resulting from circumstances
2236 other than normal use, have been paid to the licensee. For the
2237 purpose of this paragraph, the termination date shall be the
2238 date the unit is vacated by the resident and cleared of all
2239 personal belongings. If the amount of belongings does not
2240 preclude renting the unit, the facility may clear the unit and
2241 charge the resident or his or her estate for moving and storing
2242 the items at a rate equal to the actual cost to the facility,
2243 not to exceed 20 percent of the regular rate for the unit,
2244 provided that 14 days' advance written notification is given.
2245 If the resident's possessions are not claimed within 45 days
2246 after notification, the facility may dispose of them. The
2247 contract shall also specify any other conditions under which
2248 claims will be made against the refund due the resident. Except
2249 in the case of death or a discharge due to medical reasons, the
2250 refunds shall be computed in accordance with the notice of
2251 relocation requirements specified in the contract. However, a
2252 resident may not be required to provide the licensee with more
2253 than 30 days' notice of termination. If after a contract is
2254 terminated, the facility intends to make a claim against a
2255 refund due the resident, the facility shall notify the resident
2256 or responsible party in writing of the claim and shall provide
2257 said party with a reasonable time period of no less than 14
2258 calendar days to respond. The facility shall provide a refund
2259 to the resident or responsible party within 45 days after the
2260 transfer, discharge, or death of the resident. The agency shall
2261 impose a fine upon a facility that fails to comply with the
2262 refund provisions of the paragraph, which fine shall be equal to
2263 three times the amount due to the resident. One-half of the fine
2264 shall be remitted to the resident or his or her estate, and the

2265 other half to the Health Care Trust Fund to be used for the
2266 purpose specified in s. 429.18 ~~s. 400.418~~.
2267 (b) If a licensee agrees to reserve a bed for a resident
2268 who is admitted to a medical facility, including, but not
2269 limited to, a nursing home, health care facility, or psychiatric
2270 facility, the resident or his or her responsible party shall
2271 notify the licensee of any change in status that would prevent
2272 the resident from returning to the facility. Until such notice
2273 is received, the agreed-upon daily rate may be charged by the
2274 licensee.
2275 (c) The purpose of any advance payment and a refund policy
2276 for such payment, including any advance payment for housing,
2277 meals, or personal services, shall be covered in the contract.
2278 (4) The contract shall state whether or not the facility
2279 is affiliated with any religious organization and, if so, which
2280 organization and its general responsibility to the facility.
2281 (5) Neither the contract nor any provision thereof
2282 relieves any licensee of any requirement or obligation imposed
2283 upon it by this part or rules adopted under this part.
2284 (6) In lieu of the provisions of this section, facilities
2285 certified under chapter 651 shall comply with the requirements
2286 of s. 651.055.
2287 (7) Notwithstanding the provisions of this section,
2288 facilities which consist of 60 or more apartments may require
2289 refund policies and termination notices in accordance with the
2290 provisions of part II of chapter 83, provided that the lease is
2291 terminated automatically without financial penalty in the event
2292 of a resident's death or relocation due to psychiatric
2293 hospitalization or to medical reasons which necessitate services
2294 or care beyond which the facility is licensed to provide. The
2295 date of termination in such instances shall be the date the unit

2296 is fully vacated. A lease may be substituted for the contract
2297 if it meets the disclosure requirements of this section. For
2298 the purpose of this section, the term "apartment" means a room
2299 or set of rooms with a kitchen or kitchenette and lavatory
2300 located within one or more buildings containing other similar or
2301 like residential units.
2302 (8) The department may by rule clarify terms, establish
2303 procedures, clarify refund policies and contract provisions, and
2304 specify documentation as necessary to administer this section.
2305 Section 48. Section 400.4255, Florida Statutes, is
2306 renumbered as section 429.255, Florida Statutes, and amended to
2307 read:
2308 429.255 ~~400.4255~~ Use of personnel; emergency care.--
2309 (1)(a) Persons under contract to the facility, facility
2310 staff, or volunteers, who are licensed according to part I of
2311 chapter 464, or those persons exempt under s. 464.022(1), and
2312 others as defined by rule, may administer medications to
2313 residents, take residents' vital signs, manage individual weekly
2314 pill organizers for residents who self-administer medication,
2315 give prepackaged enemas ordered by a physician, observe
2316 residents, document observations on the appropriate resident's
2317 record, report observations to the resident's physician, and
2318 contract or allow residents or a resident's representative,
2319 designee, surrogate, guardian, or attorney in fact to contract
2320 with a third party, provided residents meet the criteria for
2321 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.
2322 Nursing assistants certified pursuant to part II of chapter 464
2323 may take residents' vital signs as directed by a licensed nurse
2324 or physician.
2325 (b) All staff in facilities licensed under this part shall
2326 exercise their professional responsibility to observe residents,

2327 to document observations on the appropriate resident's record,
2328 and to report the observations to the resident's physician.
2329 However, the owner or administrator of the facility shall be
2330 responsible for determining that the resident receiving services
2331 is appropriate for residence in the facility.
2332 (c) In an emergency situation, licensed personnel may
2333 carry out their professional duties pursuant to part I of
2334 chapter 464 until emergency medical personnel assume
2335 responsibility for care.
2336 (2) In facilities licensed to provide extended congregate
2337 care, persons under contract to the facility, facility staff, or
2338 volunteers, who are licensed according to part I of chapter 464,
2339 or those persons exempt under s. 464.022(1), or those persons
2340 certified as nursing assistants pursuant to part II of chapter
2341 464, may also perform all duties within the scope of their
2342 license or certification, as approved by the facility
2343 administrator and pursuant to this part.
2344 (3) Facility staff may withhold or withdraw
2345 cardiopulmonary resuscitation if presented with an order not to
2346 resuscitate executed pursuant to s. 401.45. The department shall
2347 adopt rules providing for the implementation of such orders.
2348 Facility staff and facilities shall not be subject to criminal
2349 prosecution or civil liability, nor be considered to have
2350 engaged in negligent or unprofessional conduct, for withholding
2351 or withdrawing cardiopulmonary resuscitation pursuant to such an
2352 order and rules adopted by the department. The absence of an
2353 order to resuscitate executed pursuant to s. 401.45 does not
2354 preclude a physician from withholding or withdrawing
2355 cardiopulmonary resuscitation as otherwise permitted by law.

2356 Section 49. Section 400.4256, Florida Statutes, is
2357 renumbered as section 429.256, Florida Statutes, and amended to
2358 read:
2359 429.256 ~~400.4256~~ Assistance with self-administration of
2360 medication.--
2361 (1) For the purposes of this section, the term:
2362 (a) "Informed consent" means advising the resident, or the
2363 resident's surrogate, guardian, or attorney in fact, that an
2364 assisted living facility is not required to have a licensed
2365 nurse on staff, that the resident may be receiving assistance
2366 with self-administration of medication from an unlicensed
2367 person, and that such assistance, if provided by an unlicensed
2368 person, will or will not be overseen by a licensed nurse.
2369 (b) "Unlicensed person" means an individual not currently
2370 licensed to practice nursing or medicine who is employed by or
2371 under contract to an assisted living facility and who has
2372 received training with respect to assisting with the self-
2373 administration of medication in an assisted living facility as
2374 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
2375 assistance as described in this section.
2376 (2) Residents who are capable of self-administering their
2377 own medications without assistance shall be encouraged and
2378 allowed to do so. However, an unlicensed person may, consistent
2379 with a dispensed prescription's label or the package directions
2380 of an over-the-counter medication, assist a resident whose
2381 condition is medically stable with the self-administration of
2382 routine, regularly scheduled medications that are intended to be
2383 self-administered. Assistance with self-medication by an
2384 unlicensed person may occur only upon a documented request by,
2385 and the written informed consent of, a resident or the
2386 resident's surrogate, guardian, or attorney in fact. For the

2387 purposes of this section, self-administered medications include
2388 both legend and over-the-counter oral dosage forms, topical
2389 dosage forms and topical ophthalmic, otic, and nasal dosage
2390 forms including solutions, suspensions, sprays, and inhalers.
2391 (3) Assistance with self-administration of medication
2392 includes:
2393 (a) Taking the medication, in its previously dispensed,
2394 properly labeled container, from where it is stored, and
2395 bringing it to the resident.
2396 (b) In the presence of the resident, reading the label,
2397 opening the container, removing a prescribed amount of
2398 medication from the container, and closing the container.
2399 (c) Placing an oral dosage in the resident's hand or
2400 placing the dosage in another container and helping the resident
2401 by lifting the container to his or her mouth.
2402 (d) Applying topical medications.
2403 (e) Returning the medication container to proper storage.
2404 (f) Keeping a record of when a resident receives
2405 assistance with self-administration under this section.
2406 (4) Assistance with self-administration does not include:
2407 (a) Mixing, compounding, converting, or calculating
2408 medication doses, except for measuring a prescribed amount of
2409 liquid medication or breaking a scored tablet or crushing a
2410 tablet as prescribed.
2411 (b) The preparation of syringes for injection or the
2412 administration of medications by any injectable route.
2413 (c) Administration of medications through intermittent
2414 positive pressure breathing machines or a nebulizer.
2415 (d) Administration of medications by way of a tube
2416 inserted in a cavity of the body.
2417 (e) Administration of parenteral preparations.

2418 (f) Irrigations or debriding agents used in the treatment
2419 of a skin condition.
2420 (g) Rectal, urethral, or vaginal preparations.
2421 (h) Medications ordered by the physician or health care
2422 professional with prescriptive authority to be given "as
2423 needed," unless the order is written with specific parameters
2424 that preclude independent judgment on the part of the unlicensed
2425 person, and at the request of a competent resident.
2426 (i) Medications for which the time of administration, the
2427 amount, the strength of dosage, the method of administration, or
2428 the reason for administration requires judgment or discretion on
2429 the part of the unlicensed person.
2430 (5) Assistance with the self-administration of medication
2431 by an unlicensed person as described in this section shall not
2432 be considered administration as defined in s. 465.003.
2433 (6) The department may by rule establish facility
2434 procedures and interpret terms as necessary to implement this
2435 section.
2436 Section 50. Section 400.426, Florida Statutes, is
2437 renumbered as section 429.26, Florida Statutes, and amended to
2438 read:
2439 429.26 ~~400.426~~ Appropriateness of placements; examinations
2440 of residents.--
2441 (1) The owner or administrator of a facility is
2442 responsible for determining the appropriateness of admission of
2443 an individual to the facility and for determining the continued
2444 appropriateness of residence of an individual in the facility.
2445 A determination shall be based upon an assessment of the
2446 strengths, needs, and preferences of the resident, the care and
2447 services offered or arranged for by the facility in accordance
2448 with facility policy, and any limitations in law or rule related

2449 to admission criteria or continued residency for the type of
2450 license held by the facility under this part. A resident may
2451 not be moved from one facility to another without consultation
2452 with and agreement from the resident or, if applicable, the
2453 resident's representative or designee or the resident's family,
2454 guardian, surrogate, or attorney in fact. In the case of a
2455 resident who has been placed by the department or the Department
2456 of Children and Family Services, the administrator must notify
2457 the appropriate contact person in the applicable department.
2458 (2) A physician or nurse practitioner who is employed by
2459 an assisted living facility to provide an initial examination
2460 for admission purposes may not have financial interest in the
2461 facility.
2462 (3) Persons licensed under part I of chapter 464 who are
2463 employed by or under contract with a facility shall, on a
2464 routine basis or at least monthly, perform a nursing assessment
2465 of the residents for whom they are providing nursing services
2466 ordered by a physician, except administration of medication, and
2467 shall document such assessment, including any substantial
2468 changes in a resident's status which may necessitate relocation
2469 to a nursing home, hospital, or specialized health care
2470 facility. Such records shall be maintained in the facility for
2471 inspection by the agency and shall be forwarded to the
2472 resident's case manager, if applicable.
2473 (4) If possible, each resident shall have been examined by
2474 a licensed physician or a licensed nurse practitioner within 60
2475 days before admission to the facility. The signed and completed
2476 medical examination report shall be submitted to the owner or
2477 administrator of the facility who shall use the information
2478 contained therein to assist in the determination of the
2479 appropriateness of the resident's admission and continued stay

2480 in the facility. The medical examination report shall become a
2481 permanent part of the record of the resident at the facility and
2482 shall be made available to the agency during inspection or upon
2483 request. An assessment that has been completed through the
2484 Comprehensive Assessment and Review for Long-Term Care Services
2485 (CARES) Program fulfills the requirements for a medical
2486 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~
2487 ~~400.407(3)(b)6.~~
2488 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
2489 medical examination has not been completed within 60 days before
2490 the admission of the resident to the facility, a licensed
2491 physician or licensed nurse practitioner shall examine the
2492 resident and complete a medical examination form provided by the
2493 agency within 30 days following the admission to the facility to
2494 enable the facility owner or administrator to determine the
2495 appropriateness of the admission. The medical examination form
2496 shall become a permanent part of the record of the resident at
2497 the facility and shall be made available to the agency during
2498 inspection by the agency or upon request.
2499 (6) Any resident accepted in a facility and placed by the
2500 department or the Department of Children and Family Services
2501 shall have been examined by medical personnel within 30 days
2502 before placement in the facility. The examination shall include
2503 an assessment of the appropriateness of placement in a facility.
2504 The findings of this examination shall be recorded on the
2505 examination form provided by the agency. The completed form
2506 shall accompany the resident and shall be submitted to the
2507 facility owner or administrator. Additionally, in the case of a
2508 mental health resident, the Department of Children and Family
2509 Services must provide documentation that the individual has been
2510 assessed by a psychiatrist, clinical psychologist, clinical

2511 social worker, or psychiatric nurse, or an individual who is
2512 supervised by one of these professionals, and determined to be
2513 appropriate to reside in an assisted living facility. The
2514 documentation must be in the facility within 30 days after the
2515 mental health resident has been admitted to the facility. An
2516 evaluation completed upon discharge from a state mental hospital
2517 meets the requirements of this subsection related to
2518 appropriateness for placement as a mental health resident
2519 providing it was completed within 90 days prior to admission to
2520 the facility. The applicable department shall provide to the
2521 facility administrator any information about the resident that
2522 would help the administrator meet his or her responsibilities
2523 under subsection (1). Further, department personnel shall
2524 explain to the facility operator any special needs of the
2525 resident and advise the operator whom to call should problems
2526 arise. The applicable department shall advise and assist the
2527 facility administrator where the special needs of residents who
2528 are recipients of optional state supplementation require such
2529 assistance.
2530 (7) The facility must notify a licensed physician when a
2531 resident exhibits signs of dementia or cognitive impairment or
2532 has a change of condition in order to rule out the presence of
2533 an underlying physiological condition that may be contributing
2534 to such dementia or impairment. The notification must occur
2535 within 30 days after the acknowledgment of such signs by
2536 facility staff. If an underlying condition is determined to
2537 exist, the facility shall arrange, with the appropriate health
2538 care provider, the necessary care and services to treat the
2539 condition.
2540 (8) The Department of Children and Family Services may
2541 require an examination for supplemental security income and

2542 optional state supplementation recipients residing in facilities
2543 at any time and shall provide the examination whenever a
2544 resident's condition requires it. Any facility administrator;
2545 personnel of the agency, the department, or the Department of
2546 Children and Family Services; or long-term care ombudsman
2547 council member who believes a resident needs to be evaluated
2548 shall notify the resident's case manager, who shall take
2549 appropriate action. A report of the examination findings shall
2550 be provided to the resident's case manager and the facility
2551 administrator to help the administrator meet his or her
2552 responsibilities under subsection (1).
2553 (9) If, at any time after admission to a facility, a
2554 resident appears to need care beyond that which the facility is
2555 licensed to provide, the agency shall require the resident to be
2556 physically examined by a licensed physician or licensed nurse
2557 practitioner. This examination shall, to the extent possible,
2558 be performed by the resident's preferred physician or nurse
2559 practitioner and shall be paid for by the resident with personal
2560 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.
2561 Following this examination, the examining physician or licensed
2562 nurse practitioner shall complete and sign a medical form
2563 provided by the agency. The completed medical form shall be
2564 submitted to the agency within 30 days after the date the
2565 facility owner or administrator is notified by the agency that
2566 the physical examination is required. After consultation with
2567 the physician or licensed nurse practitioner who performed the
2568 examination, a medical review team designated by the agency
2569 shall then determine whether the resident is appropriately
2570 residing in the facility. The medical review team shall base
2571 its decision on a comprehensive review of the resident's
2572 physical and functional status, including the resident's

2573 preferences, and not on an isolated health-related problem. In
2574 the case of a mental health resident, if the resident appears to
2575 have needs in addition to those identified in the community
2576 living support plan, the agency may require an evaluation by a
2577 mental health professional, as determined by the Department of
2578 Children and Family Services. A facility may not be required to
2579 retain a resident who requires more services or care than the
2580 facility is able to provide in accordance with its policies and
2581 criteria for admission and continued residency. Members of the
2582 medical review team making the final determination may not
2583 include the agency personnel who initially questioned the
2584 appropriateness of a resident's placement. Such determination is
2585 final and binding upon the facility and the resident. Any
2586 resident who is determined by the medical review team to be
2587 inappropriately residing in a facility shall be given 30 days'
2588 written notice to relocate by the owner or administrator, unless
2589 the resident's continued residence in the facility presents an
2590 imminent danger to the health, safety, or welfare of the
2591 resident or a substantial probability exists that death or
2592 serious physical harm would result to the resident if allowed to
2593 remain in the facility.
2594 (10) A terminally ill resident who no longer meets the
2595 criteria for continued residency may remain in the facility if
2596 the arrangement is mutually agreeable to the resident and the
2597 facility; additional care is rendered through a licensed
2598 hospice, and the resident is under the care of a physician who
2599 agrees that the physical needs of the resident are being met.
2600 (11) Facilities licensed to provide extended congregate
2601 care services shall promote aging in place by determining
2602 appropriateness of continued residency based on a comprehensive
2603 review of the resident's physical and functional status; the

2604 ability of the facility, family members, friends, or any other
2605 pertinent individuals or agencies to provide the care and
2606 services required; and documentation that a written service plan
2607 consistent with facility policy has been developed and
2608 implemented to ensure that the resident's needs and preferences
2609 are addressed.
2610 (12) No resident who requires 24-hour nursing supervision,
2611 except for a resident who is an enrolled hospice patient
2612 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
2613 a facility licensed under this part.
2614 Section 51. Section 400.427, Florida Statutes, is
2615 renumbered as section 429.27, Florida Statutes, and amended to
2616 read:
2617 429.27 ~~400.427~~ Property and personal affairs of
2618 residents.--
2619 (1)(a) A resident shall be given the option of using his
2620 or her own belongings, as space permits; choosing his or her
2621 roommate; and, whenever possible, unless the resident is
2622 adjudicated incompetent or incapacitated under state law,
2623 managing his or her own affairs.
2624 (b) The admission of a resident to a facility and his or
2625 her presence therein shall not confer on the facility or its
2626 owner, administrator, employees, or representatives any
2627 authority to manage, use, or dispose of any property of the
2628 resident; nor shall such admission or presence confer on any of
2629 such persons any authority or responsibility for the personal
2630 affairs of the resident, except that which may be necessary for
2631 the safe management of the facility or for the safety of the
2632 resident.
2633 (2) A facility, or an owner, administrator, employee, or
2634 representative thereof, may not act as the guardian, trustee, or

2635 conservator for any resident of the assisted living facility or
2636 any of such resident's property. An owner, administrator, or
2637 staff member, or representative thereof, may not act as a
2638 competent resident's payee for social security, veteran's, or
2639 railroad benefits without the consent of the resident. Any
2640 facility whose owner, administrator, or staff, or representative
2641 thereof, serves as representative payee for any resident of the
2642 facility shall file a surety bond with the agency in an amount
2643 equal to twice the average monthly aggregate income or personal
2644 funds due to residents, or expendable for their account, which
2645 are received by a facility. Any facility whose owner,
2646 administrator, or staff, or a representative thereof, is granted
2647 power of attorney for any resident of the facility shall file a
2648 surety bond with the agency for each resident for whom such
2649 power of attorney is granted. The surety bond shall be in an
2650 amount equal to twice the average monthly income of the
2651 resident, plus the value of any resident's property under the
2652 control of the attorney in fact. The bond shall be executed by
2653 the facility as principal and a licensed surety company. The
2654 bond shall be conditioned upon the faithful compliance of the
2655 facility with this section and shall run to the agency for the
2656 benefit of any resident who suffers a financial loss as a result
2657 of the misuse or misappropriation by a facility of funds held
2658 pursuant to this subsection. Any surety company that cancels or
2659 does not renew the bond of any licensee shall notify the agency
2660 in writing not less than 30 days in advance of such action,
2661 giving the reason for the cancellation or nonrenewal. Any
2662 facility owner, administrator, or staff, or representative
2663 thereof, who is granted power of attorney for any resident of
2664 the facility shall, on a monthly basis, be required to provide
2665 the resident a written statement of any transaction made on

2666 behalf of the resident pursuant to this subsection, and a copy
2667 of such statement given to the resident shall be retained in
2668 each resident's file and available for agency inspection.
2669 (3) A facility, upon mutual consent with the resident,
2670 shall provide for the safekeeping in the facility of personal
2671 effects not in excess of $500 and funds of the resident not in
2672 excess of $200 cash, and shall keep complete and accurate
2673 records of all such funds and personal effects received. If a
2674 resident is absent from a facility for 24 hours or more, the
2675 facility may provide for the safekeeping of the resident's
2676 personal effects in excess of $500.
2677 (4) Any funds or other property belonging to or due to a
2678 resident, or expendable for his or her account, which is
2679 received by a facility shall be trust funds which shall be kept
2680 separate from the funds and property of the facility and other
2681 residents or shall be specifically credited to such resident.
2682 Such trust funds shall be used or otherwise expended only for
2683 the account of the resident. At least once every 3 months,
2684 unless upon order of a court of competent jurisdiction, the
2685 facility shall furnish the resident and his or her guardian,
2686 trustee, or conservator, if any, a complete and verified
2687 statement of all funds and other property to which this
2688 subsection applies, detailing the amount and items received,
2689 together with their sources and disposition. In any event, the
2690 facility shall furnish such statement annually and upon the
2691 discharge or transfer of a resident. Any governmental agency or
2692 private charitable agency contributing funds or other property
2693 to the account of a resident shall also be entitled to receive
2694 such statement annually and upon the discharge or transfer of
2695 the resident.

2696 (5) Any personal funds available to facility residents may
2697 be used by residents as they choose to obtain clothing, personal
2698 items, leisure activities, and other supplies and services for
2699 their personal use. A facility may not demand, require, or
2700 contract for payment of all or any part of the personal funds in
2701 satisfaction of the facility rate for supplies and services
2702 beyond that amount agreed to in writing and may not levy an
2703 additional charge to the individual or the account for any
2704 supplies or services that the facility has agreed by contract to
2705 provide as part of the standard monthly rate. Any service or
2706 supplies provided by the facility which are charged separately
2707 to the individual or the account may be provided only with the
2708 specific written consent of the individual, who shall be
2709 furnished in advance of the provision of the services or
2710 supplies with an itemized written statement to be attached to
2711 the contract setting forth the charges for the services or
2712 supplies.
2713 (6)(a) In addition to any damages or civil penalties to
2714 which a person is subject, any person who:
2715 1. Intentionally withholds a resident's personal funds,
2716 personal property, or personal needs allowance, or who demands,
2717 beneficially receives, or contracts for payment of all or any
2718 part of a resident's personal property or personal needs
2719 allowance in satisfaction of the facility rate for supplies and
2720 services; or
2721 2. Borrows from or pledges any personal funds of a
2722 resident, other than the amount agreed to by written contract
2723 under s. 429.24 ~~s. 400.424~~,
2724
2725 commits a misdemeanor of the first degree, punishable as
2726 provided in s. 775.082 or s. 775.083.

2727 (b) Any facility owner, administrator, or staff, or
2728 representative thereof, who is granted power of attorney for any
2729 resident of the facility and who misuses or misappropriates
2730 funds obtained through this power commits a felony of the third
2731 degree, punishable as provided in s. 775.082, s. 775.083, or s.
2732 775.084.
2733 (7) In the event of the death of a resident, a licensee
2734 shall return all refunds, funds, and property held in trust to
2735 the resident's personal representative, if one has been
2736 appointed at the time the facility disburses such funds, and, if
2737 not, to the resident's spouse or adult next of kin named in a
2738 beneficiary designation form provided by the facility to the
2739 resident. If the resident has no spouse or adult next of kin or
2740 such person cannot be located, funds due the resident shall be
2741 placed in an interest-bearing account, and all property held in
2742 trust by the facility shall be safeguarded until such time as
2743 the funds and property are disbursed pursuant to the Florida
2744 Probate Code. Such funds shall be kept separate from the funds
2745 and property of the facility and other residents of the
2746 facility. If the funds of the deceased resident are not
2747 disbursed pursuant to the Florida Probate Code within 2 years
2748 after the resident's death, the funds shall be deposited in the
2749 Health Care Trust Fund administered by the agency.
2750 (8) The department may by rule clarify terms and specify
2751 procedures and documentation necessary to administer the
2752 provisions of this section relating to the proper management of
2753 residents' funds and personal property and the execution of
2754 surety bonds.
2755 Section 52. Section 400.428, Florida Statutes, is
2756 renumbered as section 429.28, Florida Statutes, and amended to
2757 read:

2758 429.28 ~~400.428~~ Resident bill of rights.--
2759 (1) No resident of a facility shall be deprived of any
2760 civil or legal rights, benefits, or privileges guaranteed by
2761 law, the Constitution of the State of Florida, or the
2762 Constitution of the United States as a resident of a facility.
2763 Every resident of a facility shall have the right to:
2764 (a) Live in a safe and decent living environment, free
2765 from abuse and neglect.
2766 (b) Be treated with consideration and respect and with due
2767 recognition of personal dignity, individuality, and the need for
2768 privacy.
2769 (c) Retain and use his or her own clothes and other
2770 personal property in his or her immediate living quarters, so as
2771 to maintain individuality and personal dignity, except when the
2772 facility can demonstrate that such would be unsafe, impractical,
2773 or an infringement upon the rights of other residents.
2774 (d) Unrestricted private communication, including
2775 receiving and sending unopened correspondence, access to a
2776 telephone, and visiting with any person of his or her choice, at
2777 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
2778 Upon request, the facility shall make provisions to extend
2779 visiting hours for caregivers and out-of-town guests, and in
2780 other similar situations.
2781 (e) Freedom to participate in and benefit from community
2782 services and activities and to achieve the highest possible
2783 level of independence, autonomy, and interaction within the
2784 community.
2785 (f) Manage his or her financial affairs unless the
2786 resident or, if applicable, the resident's representative,
2787 designee, surrogate, guardian, or attorney in fact authorizes

2788 the administrator of the facility to provide safekeeping for
2789 funds as provided in s. 429.27 ~~s. 400.427~~.
2790 (g) Share a room with his or her spouse if both are
2791 residents of the facility.
2792 (h) Reasonable opportunity for regular exercise several
2793 times a week and to be outdoors at regular and frequent
2794 intervals except when prevented by inclement weather.
2795 (i) Exercise civil and religious liberties, including the
2796 right to independent personal decisions. No religious beliefs
2797 or practices, nor any attendance at religious services, shall be
2798 imposed upon any resident.
2799 (j) Access to adequate and appropriate health care
2800 consistent with established and recognized standards within the
2801 community.
2802 (k) At least 45 days' notice of relocation or termination
2803 of residency from the facility unless, for medical reasons, the
2804 resident is certified by a physician to require an emergency
2805 relocation to a facility providing a more skilled level of care
2806 or the resident engages in a pattern of conduct that is harmful
2807 or offensive to other residents. In the case of a resident who
2808 has been adjudicated mentally incapacitated, the guardian shall
2809 be given at least 45 days' notice of a nonemergency relocation
2810 or residency termination. Reasons for relocation shall be set
2811 forth in writing. In order for a facility to terminate the
2812 residency of an individual without notice as provided herein,
2813 the facility shall show good cause in a court of competent
2814 jurisdiction.
2815 (l) Present grievances and recommend changes in policies,
2816 procedures, and services to the staff of the facility, governing
2817 officials, or any other person without restraint, interference,
2818 coercion, discrimination, or reprisal. Each facility shall

2819 establish a grievance procedure to facilitate the residents'
2820 exercise of this right. This right includes access to ombudsman
2821 volunteers and advocates and the right to be a member of, to be
2822 active in, and to associate with advocacy or special interest
2823 groups.
2824 (2) The administrator of a facility shall ensure that a
2825 written notice of the rights, obligations, and prohibitions set
2826 forth in this part is posted in a prominent place in each
2827 facility and read or explained to residents who cannot read.
2828 This notice shall include the name, address, and telephone
2829 numbers of the local ombudsman council and central abuse hotline
2830 and, when applicable, the Advocacy Center for Persons with
2831 Disabilities, Inc., and the Florida local advocacy council,
2832 where complaints may be lodged. The facility must ensure a
2833 resident's access to a telephone to call the local ombudsman
2834 council, central abuse hotline, Advocacy Center for Persons with
2835 Disabilities, Inc., and the Florida local advocacy council.
2836 (3)(a) The agency shall conduct a survey to determine
2837 general compliance with facility standards and compliance with
2838 residents' rights as a prerequisite to initial licensure or
2839 licensure renewal.
2840 (b) In order to determine whether the facility is
2841 adequately protecting residents' rights, the biennial survey
2842 shall include private informal conversations with a sample of
2843 residents and consultation with the ombudsman council in the
2844 planning and service area in which the facility is located to
2845 discuss residents' experiences within the facility.
2846 (c) During any calendar year in which no survey is
2847 conducted, the agency shall conduct at least one monitoring
2848 visit of each facility cited in the previous year for a class I

2849 or class II violation, or more than three uncorrected class III
2850 violations.
2851 (d) The agency may conduct periodic followup inspections
2852 as necessary to monitor the compliance of facilities with a
2853 history of any class I, class II, or class III violations that
2854 threaten the health, safety, or security of residents.
2855 (e) The agency may conduct complaint investigations as
2856 warranted to investigate any allegations of noncompliance with
2857 requirements required under this part or rules adopted under
2858 this part.
2859 (4) The facility shall not hamper or prevent residents
2860 from exercising their rights as specified in this section.
2861 (5) No facility or employee of a facility may serve notice
2862 upon a resident to leave the premises or take any other
2863 retaliatory action against any person who:
2864 (a) Exercises any right set forth in this section.
2865 (b) Appears as a witness in any hearing, inside or outside
2866 the facility.
2867 (c) Files a civil action alleging a violation of the
2868 provisions of this part or notifies a state attorney or the
2869 Attorney General of a possible violation of such provisions.
2870 (6) Any facility which terminates the residency of an
2871 individual who participated in activities specified in
2872 subsection (5) shall show good cause in a court of competent
2873 jurisdiction.
2874 (7) Any person who submits or reports a complaint
2875 concerning a suspected violation of the provisions of this part
2876 or concerning services and conditions in facilities, or who
2877 testifies in any administrative or judicial proceeding arising
2878 from such a complaint, shall have immunity from any civil or
2879 criminal liability therefor, unless such person has acted in bad

2880 faith or with malicious purpose or the court finds that there
2881 was a complete absence of a justiciable issue of either law or
2882 fact raised by the losing party.
2883 Section 53. Section 400.429, Florida Statutes, is
2884 renumbered as section 429.29, Florida Statutes, and amended to
2885 read:
2886 429.29 ~~400.429~~ Civil actions to enforce rights.--
2887 (1) Any person or resident whose rights as specified in
2888 this part are violated shall have a cause of action. The action
2889 may be brought by the resident or his or her guardian, or by a
2890 person or organization acting on behalf of a resident with the
2891 consent of the resident or his or her guardian, or by the
2892 personal representative of the estate of a deceased resident
2893 regardless of the cause of death. If the action alleges a claim
2894 for the resident's rights or for negligence that caused the
2895 death of the resident, the claimant shall be required to elect
2896 either survival damages pursuant to s. 46.021 or wrongful death
2897 damages pursuant to s. 768.21. If the action alleges a claim for
2898 the resident's rights or for negligence that did not cause the
2899 death of the resident, the personal representative of the estate
2900 may recover damages for the negligence that caused injury to the
2901 resident. The action may be brought in any court of competent
2902 jurisdiction to enforce such rights and to recover actual
2903 damages, and punitive damages for violation of the rights of a
2904 resident or negligence. Any resident who prevails in seeking
2905 injunctive relief or a claim for an administrative remedy is
2906 entitled to recover the costs of the action and a reasonable
2907 attorney's fee assessed against the defendant not to exceed
2908 $25,000. Fees shall be awarded solely for the injunctive or
2909 administrative relief and not for any claim or action for
2910 damages whether such claim or action is brought together with a

2911 request for an injunction or administrative relief or as a
2912 separate action, except as provided under s. 768.79 or the
2913 Florida Rules of Civil Procedure. Sections 429.29-429.298
2914 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
2915 action for recovery of damages for the personal injury or death
2916 of a resident arising out of negligence or a violation of rights
2917 specified in s. 429.28 ~~s. 400.428~~. This section does not
2918 preclude theories of recovery not arising out of negligence or
2919 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
2920 agency. The provisions of chapter 766 do not apply to any cause
2921 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.
2922 (2) In any claim brought pursuant to this part alleging a
2923 violation of resident's rights or negligence causing injury to
2924 or the death of a resident, the claimant shall have the burden
2925 of proving, by a preponderance of the evidence, that:
2926 (a) The defendant owed a duty to the resident;
2927 (b) The defendant breached the duty to the resident;
2928 (c) The breach of the duty is a legal cause of loss,
2929 injury, death, or damage to the resident; and
2930 (d) The resident sustained loss, injury, death, or damage
2931 as a result of the breach.
2932
2933 Nothing in this part shall be interpreted to create strict
2934 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
2935 ~~400.428~~ or in any other standard or guidelines specified in this
2936 part or in any applicable administrative standard or guidelines
2937 of this state or a federal regulatory agency shall be evidence
2938 of negligence but shall not be considered negligence per se.
2939 (3) In any claim brought pursuant to this section, a
2940 licensee, person, or entity shall have a duty to exercise
2941 reasonable care. Reasonable care is that degree of care which a

2942 reasonably careful licensee, person, or entity would use under
2943 like circumstances.
2944 (4) In any claim for resident's rights violation or
2945 negligence by a nurse licensed under part I of chapter 464, such
2946 nurse shall have the duty to exercise care consistent with the
2947 prevailing professional standard of care for a nurse. The
2948 prevailing professional standard of care for a nurse shall be
2949 that level of care, skill, and treatment which, in light of all
2950 relevant surrounding circumstances, is recognized as acceptable
2951 and appropriate by reasonably prudent similar nurses.
2952 (5) Discovery of financial information for the purpose of
2953 determining the value of punitive damages may not be had unless
2954 the plaintiff shows the court by proffer or evidence in the
2955 record that a reasonable basis exists to support a claim for
2956 punitive damages.
2957 (6) In addition to any other standards for punitive
2958 damages, any award of punitive damages must be reasonable in
2959 light of the actual harm suffered by the resident and the
2960 egregiousness of the conduct that caused the actual harm to the
2961 resident.
2962 (7) The resident or the resident's legal representative
2963 shall serve a copy of any complaint alleging in whole or in part
2964 a violation of any rights specified in this part to the Agency
2965 for Health Care Administration at the time of filing the initial
2966 complaint with the clerk of the court for the county in which
2967 the action is pursued. The requirement of providing a copy of
2968 the complaint to the agency does not impair the resident's legal
2969 rights or ability to seek relief for his or her claim.
2970 Section 54. Section 400.4293, Florida Statutes, is
2971 renumbered as section 429.293, Florida Statutes, and amended to
2972 read:

2973 429.293 ~~400.4293~~ Presuit notice; investigation;
2974 notification of violation of residents' rights or alleged
2975 negligence; claims evaluation procedure; informal discovery;
2976 review; settlement offer; mediation.--
2977 (1) As used in this section, the term:
2978 (a) "Claim for residents' rights violation or negligence"
2979 means a negligence claim alleging injury to or the death of a
2980 resident arising out of an asserted violation of the rights of a
2981 resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
2982 from the applicable standard of care.
2983 (b) "Insurer" means any self-insurer authorized under s.
2984 627.357, liability insurance carrier, joint underwriting
2985 association, or uninsured prospective defendant.
2986 (2) Prior to filing a claim for a violation of a
2987 resident's rights or a claim for negligence, a claimant alleging
2988 injury to or the death of a resident shall notify each
2989 prospective defendant by certified mail, return receipt
2990 requested, of an asserted violation of a resident's rights
2991 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
2992 of care. Such notification shall include an identification of
2993 the rights the prospective defendant has violated and the
2994 negligence alleged to have caused the incident or incidents and
2995 a brief description of the injuries sustained by the resident
2996 which are reasonably identifiable at the time of notice. The
2997 notice shall contain a certificate of counsel that counsel's
2998 reasonable investigation gave rise to a good faith belief that
2999 grounds exist for an action against each prospective defendant.
3000 (3)(a) No suit may be filed for a period of 75 days after
3001 notice is mailed to any prospective defendant. During the 75-day
3002 period, the prospective defendants or their insurers shall
3003 conduct an evaluation of the claim to determine the liability of

3004 each defendant and to evaluate the damages of the claimants.
3005 Each defendant or insurer of the defendant shall have a
3006 procedure for the prompt evaluation of claims during the 75-day
3007 period. The procedure shall include one or more of the
3008 following:
3009 1. Internal review by a duly qualified facility risk
3010 manager or claims adjuster;
3011 2. Internal review by counsel for each prospective
3012 defendant;
3013 3. A quality assurance committee authorized under any
3014 applicable state or federal statutes or regulations; or
3015 4. Any other similar procedure that fairly and promptly
3016 evaluates the claims.
3017
3018 Each defendant or insurer of the defendant shall evaluate the
3019 claim in good faith.
3020 (b) At or before the end of the 75 days, the defendant or
3021 insurer of the defendant shall provide the claimant with a
3022 written response:
3023 1. Rejecting the claim; or
3024 2. Making a settlement offer.
3025 (c) The response shall be delivered to the claimant if not
3026 represented by counsel or to the claimant's attorney, by
3027 certified mail, return receipt requested. Failure of the
3028 prospective defendant or insurer of the defendant to reply to
3029 the notice within 75 days after receipt shall be deemed a
3030 rejection of the claim for purposes of this section.
3031 (4) The notification of a violation of a resident's rights
3032 or alleged negligence shall be served within the applicable
3033 statute of limitations period; however, during the 75-day
3034 period, the statute of limitations is tolled as to all

3035 prospective defendants. Upon stipulation by the parties, the 75-
3036 day period may be extended and the statute of limitations is
3037 tolled during any such extension. Upon receiving written notice
3038 by certified mail, return receipt requested, of termination of
3039 negotiations in an extended period, the claimant shall have 60
3040 days or the remainder of the period of the statute of
3041 limitations, whichever is greater, within which to file suit.
3042 (5) No statement, discussion, written document, report, or
3043 other work product generated by presuit claims evaluation
3044 procedures under this section is discoverable or admissible in
3045 any civil action for any purpose by the opposing party. All
3046 participants, including, but not limited to, physicians,
3047 investigators, witnesses, and employees or associates of the
3048 defendant, are immune from civil liability arising from
3049 participation in the presuit claims evaluation procedure. Any
3050 licensed physician or registered nurse may be retained by either
3051 party to provide an opinion regarding the reasonable basis of
3052 the claim. The presuit opinions of the expert are not
3053 discoverable or admissible in any civil action for any purpose
3054 by the opposing party.
3055 (6) Upon receipt by a prospective defendant of a notice of
3056 claim, the parties shall make discoverable information available
3057 without formal discovery as provided in subsection (7).
3058 (7) Informal discovery may be used by a party to obtain
3059 unsworn statements and the production of documents or things, as
3060 follows:
3061 (a) Unsworn statements.--Any party may require other
3062 parties to appear for the taking of an unsworn statement. Such
3063 statements may be used only for the purpose of claims evaluation
3064 and are not discoverable or admissible in any civil action for
3065 any purpose by any party. A party seeking to take the unsworn

3066 statement of any party must give reasonable notice in writing to
3067 all parties. The notice must state the time and place for taking
3068 the statement and the name and address of the party to be
3069 examined. Unless otherwise impractical, the examination of any
3070 party must be done at the same time by all other parties. Any
3071 party may be represented by counsel at the taking of an unsworn
3072 statement. An unsworn statement may be recorded electronically,
3073 stenographically, or on videotape. The taking of unsworn
3074 statements is subject to the provisions of the Florida Rules of
3075 Civil Procedure and may be terminated for abuses.
3076 (b) Documents or things.--Any party may request discovery
3077 of relevant documents or things. The documents or things must be
3078 produced, at the expense of the requesting party, within 20 days
3079 after the date of receipt of the request. A party is required to
3080 produce relevant and discoverable documents or things within
3081 that party's possession or control, if in good faith it can
3082 reasonably be done within the timeframe of the claims evaluation
3083 process.
3084 (8) Each request for and notice concerning informal
3085 discovery pursuant to this section must be in writing, and a
3086 copy thereof must be sent to all parties. Such a request or
3087 notice must bear a certificate of service identifying the name
3088 and address of the person to whom the request or notice is
3089 served, the date of the request or notice, and the manner of
3090 service thereof.
3091 (9) If a prospective defendant makes a written settlement
3092 offer, the claimant shall have 15 days from the date of receipt
3093 to accept the offer. An offer shall be deemed rejected unless
3094 accepted by delivery of a written notice of acceptance.

3095 (10) To the extent not inconsistent with this part, the
3096 provisions of the Florida Mediation Code, Florida Rules of Civil
3097 Procedure, shall be applicable to such proceedings.
3098 (11) Within 30 days after the claimant's receipt of
3099 defendant's response to the claim, the parties or their
3100 designated representatives shall meet in mediation to discuss
3101 the issues of liability and damages in accordance with the
3102 mediation rules of practice and procedures adopted by the
3103 Supreme Court. Upon stipulation of the parties, this 30-day
3104 period may be extended and the statute of limitations is tolled
3105 during the mediation and any such extension. At the conclusion
3106 of mediation, the claimant shall have 60 days or the remainder
3107 of the period of the statute of limitations, whichever is
3108 greater, within which to file suit.
3109 Section 55. Section 400.431, Florida Statutes, is
3110 renumbered as section 429.31, Florida Statutes, and amended to
3111 read:
3112 429.31 ~~400.431~~ Closing of facility; notice; penalty.--
3113 (1) Whenever a facility voluntarily discontinues
3114 operation, it shall inform the agency in writing at least 90
3115 days prior to the discontinuance of operation. The facility
3116 shall also inform each resident or the next of kin, legal
3117 representative, or agency acting on each resident's behalf, of
3118 the fact and the proposed time of such discontinuance, following
3119 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
3120 ~~400.428(1)(k)~~. In the event a resident has no person to
3121 represent him or her, the facility shall be responsible for
3122 referral to an appropriate social service agency for placement.
3123 (2) Immediately upon the notice by the agency of the
3124 voluntary or involuntary termination of such operation, the
3125 agency shall monitor the transfer of residents to other

3126 facilities and ensure that residents' rights are being
3127 protected. The department, in consultation with the Department
3128 of Children and Family Services, shall specify procedures for
3129 ensuring that all residents who receive services are
3130 appropriately relocated.
3131 (3) All charges shall be prorated as of the date on which
3132 the facility discontinues operation, and if any payments have
3133 been made in advance, the payments for services not received
3134 shall be refunded to the resident or the resident's guardian
3135 within 10 working days of voluntary or involuntary closure of
3136 the facility, whether or not such refund is requested by the
3137 resident or guardian.
3138 (4) Immediately upon discontinuance of the operation of a
3139 facility, the owner shall surrender the license therefor to the
3140 agency, and the license shall be canceled.
3141 (5) The agency may levy a fine in an amount no greater
3142 than $5,000 upon each person or business entity that owns any
3143 interest in a facility that terminates operation without
3144 providing notice to the agency and the residents of the facility
3145 at least 30 days before operation ceases. This fine shall not
3146 be levied against any facility involuntarily closed at the
3147 initiation of the agency. The agency shall use the proceeds of
3148 the fines to operate the facility until all residents of the
3149 facility are relocated and shall deposit any balance of the
3150 proceeds into the Health Care Trust Fund established pursuant to
3151 s. 429.18 ~~s. 400.418~~.
3152 Section 56. Section 400.441, Florida Statutes, is
3153 renumbered as section 429.41, Florida Statutes, and amended to
3154 read:
3155 429.41 ~~400.441~~ Rules establishing standards.--

3156 (1) It is the intent of the Legislature that rules
3157 published and enforced pursuant to this section shall include
3158 criteria by which a reasonable and consistent quality of
3159 resident care and quality of life may be ensured and the results
3160 of such resident care may be demonstrated. Such rules shall
3161 also ensure a safe and sanitary environment that is residential
3162 and noninstitutional in design or nature. It is further
3163 intended that reasonable efforts be made to accommodate the
3164 needs and preferences of residents to enhance the quality of
3165 life in a facility. In order to provide safe and sanitary
3166 facilities and the highest quality of resident care
3167 accommodating the needs and preferences of residents, the
3168 department, in consultation with the agency, the Department of
3169 Children and Family Services, and the Department of Health,
3170 shall adopt rules, policies, and procedures to administer this
3171 part, which must include reasonable and fair minimum standards
3172 in relation to:
3173 (a) The requirements for and maintenance of facilities,
3174 not in conflict with the provisions of chapter 553, relating to
3175 plumbing, heating, cooling, lighting, ventilation, living space,
3176 and other housing conditions, which will ensure the health,
3177 safety, and comfort of residents and protection from fire
3178 hazard, including adequate provisions for fire alarm and other
3179 fire protection suitable to the size of the structure. Uniform
3180 firesafety standards shall be established and enforced by the
3181 State Fire Marshal in cooperation with the agency, the
3182 department, and the Department of Health.
3183 1. Evacuation capability determination.--
3184 a. The provisions of the National Fire Protection
3185 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3186 for determining the ability of the residents, with or without

3187 staff assistance, to relocate from or within a licensed facility
3188 to a point of safety as provided in the fire codes adopted
3189 herein. An evacuation capability evaluation for initial
3190 licensure shall be conducted within 6 months after the date of
3191 licensure. For existing licensed facilities that are not
3192 equipped with an automatic fire sprinkler system, the
3193 administrator shall evaluate the evacuation capability of
3194 residents at least annually. The evacuation capability
3195 evaluation for each facility not equipped with an automatic fire
3196 sprinkler system shall be validated, without liability, by the
3197 State Fire Marshal, by the local fire marshal, or by the local
3198 authority having jurisdiction over firesafety, before the
3199 license renewal date. If the State Fire Marshal, local fire
3200 marshal, or local authority having jurisdiction over firesafety
3201 has reason to believe that the evacuation capability of a
3202 facility as reported by the administrator may have changed, it
3203 may, with assistance from the facility administrator, reevaluate
3204 the evacuation capability through timed exiting drills.
3205 Translation of timed fire exiting drills to evacuation
3206 capability may be determined:
3207 (I) Three minutes or less: prompt.
3208 (II) More than 3 minutes, but not more than 13 minutes:
3209 slow.
3210 (III) More than 13 minutes: impractical.
3211 b. The Office of the State Fire Marshal shall provide or
3212 cause the provision of training and education on the proper
3213 application of Chapter 5, NFPA 101A, 1995 edition, to its
3214 employees, to staff of the Agency for Health Care Administration
3215 who are responsible for regulating facilities under this part,
3216 and to local governmental inspectors. The Office of the State
3217 Fire Marshal shall provide or cause the provision of this

3218 training within its existing budget, but may charge a fee for
3219 this training to offset its costs. The initial training must be
3220 delivered within 6 months after July 1, 1995, and as needed
3221 thereafter.
3222 c. The Office of the State Fire Marshal, in cooperation
3223 with provider associations, shall provide or cause the provision
3224 of a training program designed to inform facility operators on
3225 how to properly review bid documents relating to the
3226 installation of automatic fire sprinklers. The Office of the
3227 State Fire Marshal shall provide or cause the provision of this
3228 training within its existing budget, but may charge a fee for
3229 this training to offset its costs. The initial training must be
3230 delivered within 6 months after July 1, 1995, and as needed
3231 thereafter.
3232 d. The administrator of a licensed facility shall sign an
3233 affidavit verifying the number of residents occupying the
3234 facility at the time of the evacuation capability evaluation.
3235 2. Firesafety requirements.--
3236 a. Except for the special applications provided herein,
3237 effective January 1, 1996, the provisions of the National Fire
3238 Protection Association, Life Safety Code, NFPA 101, 1994
3239 edition, Chapter 22 for new facilities and Chapter 23 for
3240 existing facilities shall be the uniform fire code applied by
3241 the State Fire Marshal for assisted living facilities, pursuant
3242 to s. 633.022.
3243 b. Any new facility, regardless of size, that applies for
3244 a license on or after January 1, 1996, must be equipped with an
3245 automatic fire sprinkler system. The exceptions as provided in
3246 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
3247 apply to any new facility housing eight or fewer residents. On
3248 July 1, 1995, local governmental entities responsible for the

3249 issuance of permits for construction shall inform, without
3250 liability, any facility whose permit for construction is
3251 obtained prior to January 1, 1996, of this automatic fire
3252 sprinkler requirement. As used in this part, the term "a new
3253 facility" does not mean an existing facility that has undergone
3254 change of ownership.

3255 c. Notwithstanding any provision of s. 633.022 or of the
3256 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
3257 edition, to the contrary, any existing facility housing eight or
3258 fewer residents is not required to install an automatic fire
3259 sprinkler system, nor to comply with any other requirement in
3260 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
3261 requirements of NFPA 101, 1988 edition, that applies to this
3262 size facility, unless the facility has been classified as
3263 impractical to evacuate. Any existing facility housing eight or
3264 fewer residents that is classified as impractical to evacuate
3265 must install an automatic fire sprinkler system within the
3266 timeframes granted in this section.

3267 d. Any existing facility that is required to install an
3268 automatic fire sprinkler system under this paragraph need not
3269 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
3270 edition, which exceed the provisions of NFPA 101, 1988 edition.
3271 The mandate contained in this paragraph which requires certain
3272 facilities to install an automatic fire sprinkler system
3273 supersedes any other requirement.

3274 e. This paragraph does not supersede the exceptions
3275 granted in NFPA 101, 1988 edition or 1994 edition.

3276 f. This paragraph does not exempt facilities from other
3277 firesafety provisions adopted under s. 633.022 and local
3278 building code requirements in effect before July 1, 1995.

3279 g. A local government may charge fees only in an amount
3280 not to exceed the actual expenses incurred by local government
3281 relating to the installation and maintenance of an automatic
3282 fire sprinkler system in an existing and properly licensed
3283 assisted living facility structure as of January 1, 1996.
3284 h. If a licensed facility undergoes major reconstruction
3285 or addition to an existing building on or after January 1, 1996,
3286 the entire building must be equipped with an automatic fire
3287 sprinkler system. Major reconstruction of a building means
3288 repair or restoration that costs in excess of 50 percent of the
3289 value of the building as reported on the tax rolls, excluding
3290 land, before reconstruction. Multiple reconstruction projects
3291 within a 5-year period the total costs of which exceed 50
3292 percent of the initial value of the building at the time the
3293 first reconstruction project was permitted are to be considered
3294 as major reconstruction. Application for a permit for an
3295 automatic fire sprinkler system is required upon application for
3296 a permit for a reconstruction project that creates costs that go
3297 over the 50-percent threshold.
3298 i. Any facility licensed before January 1, 1996, that is
3299 required to install an automatic fire sprinkler system shall
3300 ensure that the installation is completed within the following
3301 timeframes based upon evacuation capability of the facility as
3302 determined under subparagraph 1.:
3303 (I) Impractical evacuation capability, 24 months.
3304 (II) Slow evacuation capability, 48 months.
3305 (III) Prompt evacuation capability, 60 months.
3306
3307 The beginning date from which the deadline for the automatic
3308 fire sprinkler installation requirement must be calculated is
3309 upon receipt of written notice from the local fire official that

3310 an automatic fire sprinkler system must be installed. The local
3311 fire official shall send a copy of the document indicating the
3312 requirement of a fire sprinkler system to the Agency for Health
3313 Care Administration.
3314 j. It is recognized that the installation of an automatic
3315 fire sprinkler system may create financial hardship for some
3316 facilities. The appropriate local fire official shall, without
3317 liability, grant two 1-year extensions to the timeframes for
3318 installation established herein, if an automatic fire sprinkler
3319 installation cost estimate and proof of denial from two
3320 financial institutions for a construction loan to install the
3321 automatic fire sprinkler system are submitted. However, for any
3322 facility with a class I or class II, or a history of uncorrected
3323 class III, firesafety deficiencies, an extension must not be
3324 granted. The local fire official shall send a copy of the
3325 document granting the time extension to the Agency for Health
3326 Care Administration.
3327 k. A facility owner whose facility is required to be
3328 equipped with an automatic fire sprinkler system under Chapter
3329 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
3330 any potential buyer of the facility that an installation of an
3331 automatic fire sprinkler requirement exists. The sale of the
3332 facility does not alter the timeframe for the installation of
3333 the automatic fire sprinkler system.
3334 l. Existing facilities required to install an automatic
3335 fire sprinkler system as a result of construction-type
3336 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
3337 herein, or evacuation capability requirements shall be notified
3338 by the local fire official in writing of the automatic fire
3339 sprinkler requirement, as well as the appropriate date for final
3340 compliance as provided in this subparagraph. The local fire

3341 official shall send a copy of the document to the Agency for
3342 Health Care Administration.
3343 m. Except in cases of life-threatening fire hazards, if an
3344 existing facility experiences a change in the evacuation
3345 capability, or if the local authority having jurisdiction
3346 identifies a construction-type restriction, such that an
3347 automatic fire sprinkler system is required, it shall be
3348 afforded time for installation as provided in this subparagraph.
3349
3350 Facilities that are fully sprinkled and in compliance with other
3351 firesafety standards are not required to conduct more than one
3352 of the required fire drills between the hours of 11 p.m. and 7
3353 a.m., per year. In lieu of the remaining drills, staff
3354 responsible for residents during such hours may be required to
3355 participate in a mock drill that includes a review of evacuation
3356 procedures. Such standards must be included or referenced in the
3357 rules adopted by the State Fire Marshal. Pursuant to s.
3358 633.022(1)(b), the State Fire Marshal is the final
3359 administrative authority for firesafety standards established
3360 and enforced pursuant to this section. All licensed facilities
3361 must have an annual fire inspection conducted by the local fire
3362 marshal or authority having jurisdiction.
3363 3. Resident elopement requirements.--Facilities are
3364 required to conduct a minimum of two resident elopement
3365 prevention and response drills per year. All administrators and
3366 direct care staff must participate in the drills which shall
3367 include a review of procedures to address resident elopement.
3368 Facilities must document the implementation of the drills and
3369 ensure that the drills are conducted in a manner consistent with
3370 the facility's resident elopement policies and procedures.

3371 (b) The preparation and annual update of a comprehensive
3372 emergency management plan. Such standards must be included in
3373 the rules adopted by the department after consultation with the
3374 Department of Community Affairs. At a minimum, the rules must
3375 provide for plan components that address emergency evacuation
3376 transportation; adequate sheltering arrangements; postdisaster
3377 activities, including provision of emergency power, food, and
3378 water; postdisaster transportation; supplies; staffing;
3379 emergency equipment; individual identification of residents and
3380 transfer of records; communication with families; and responses
3381 to family inquiries. The comprehensive emergency management
3382 plan is subject to review and approval by the local emergency
3383 management agency. During its review, the local emergency
3384 management agency shall ensure that the following agencies, at a
3385 minimum, are given the opportunity to review the plan: the
3386 Department of Elderly Affairs, the Department of Health, the
3387 Agency for Health Care Administration, and the Department of
3388 Community Affairs. Also, appropriate volunteer organizations
3389 must be given the opportunity to review the plan. The local
3390 emergency management agency shall complete its review within 60
3391 days and either approve the plan or advise the facility of
3392 necessary revisions.
3393 (c) The number, training, and qualifications of all
3394 personnel having responsibility for the care of residents. The
3395 rules must require adequate staff to provide for the safety of
3396 all residents. Facilities licensed for 17 or more residents are
3397 required to maintain an alert staff for 24 hours per day.
3398 (d) All sanitary conditions within the facility and its
3399 surroundings which will ensure the health and comfort of
3400 residents. The rules must clearly delineate the
3401 responsibilities of the agency's licensure and survey staff, the

3402 county health departments, and the local authority having
3403 jurisdiction over fire safety and ensure that inspections are
3404 not duplicative. The agency may collect fees for food service
3405 inspections conducted by the county health departments and
3406 transfer such fees to the Department of Health.
3407 (e) License application and license renewal, transfer of
3408 ownership, proper management of resident funds and personal
3409 property, surety bonds, resident contracts, refund policies,
3410 financial ability to operate, and facility and staff records.
3411 (f) Inspections, complaint investigations, moratoriums,
3412 classification of deficiencies, levying and enforcement of
3413 penalties, and use of income from fees and fines.
3414 (g) The enforcement of the resident bill of rights
3415 specified in s. 429.28 ~~s. 400.428~~.
3416 (h) The care and maintenance of residents, which must
3417 include, but is not limited to:
3418 1. The supervision of residents;
3419 2. The provision of personal services;
3420 3. The provision of, or arrangement for, social and
3421 leisure activities;
3422 4. The arrangement for appointments and transportation to
3423 appropriate medical, dental, nursing, or mental health services,
3424 as needed by residents;
3425 5. The management of medication;
3426 6. The nutritional needs of residents;
3427 7. Resident records; and
3428 8. Internal risk management and quality assurance.
3429 (i) Facilities holding a limited nursing, extended
3430 congregate care, or limited mental health license.
3431 (j) The establishment of specific criteria to define
3432 appropriateness of resident admission and continued residency in

3433 a facility holding a standard, limited nursing, extended
3434 congregate care, and limited mental health license.
3435 (k) The use of physical or chemical restraints. The use
3436 of physical restraints is limited to half-bed rails as
3437 prescribed and documented by the resident's physician with the
3438 consent of the resident or, if applicable, the resident's
3439 representative or designee or the resident's surrogate,
3440 guardian, or attorney in fact. The use of chemical restraints
3441 is limited to prescribed dosages of medications authorized by
3442 the resident's physician and must be consistent with the
3443 resident's diagnosis. Residents who are receiving medications
3444 that can serve as chemical restraints must be evaluated by their
3445 physician at least annually to assess:
3446 1. The continued need for the medication.
3447 2. The level of the medication in the resident's blood.
3448 3. The need for adjustments in the prescription.
3449 (l) The establishment of specific policies and procedures
3450 on resident elopement. Facilities shall conduct a minimum of two
3451 resident elopement drills each year. All administrators and
3452 direct care staff shall participate in the drills. Facilities
3453 shall document the drills.
3454 (2) In adopting any rules pursuant to this part, the
3455 department, in conjunction with the agency, shall make distinct
3456 standards for facilities based upon facility size; the types of
3457 care provided; the physical and mental capabilities and needs of
3458 residents; the type, frequency, and amount of services and care
3459 offered; and the staffing characteristics of the facility. Rules
3460 developed pursuant to this section shall not restrict the use of
3461 shared staffing and shared programming in facilities that are
3462 part of retirement communities that provide multiple levels of
3463 care and otherwise meet the requirements of law and rule.

3464 Except for uniform firesafety standards, the department shall
3465 adopt by rule separate and distinct standards for facilities
3466 with 16 or fewer beds and for facilities with 17 or more beds.
3467 The standards for facilities with 16 or fewer beds shall be
3468 appropriate for a noninstitutional residential environment,
3469 provided that the structure is no more than two stories in
3470 height and all persons who cannot exit the facility unassisted
3471 in an emergency reside on the first floor. The department, in
3472 conjunction with the agency, may make other distinctions among
3473 types of facilities as necessary to enforce the provisions of
3474 this part. Where appropriate, the agency shall offer alternate
3475 solutions for complying with established standards, based on
3476 distinctions made by the department and the agency relative to
3477 the physical characteristics of facilities and the types of care
3478 offered therein.
3479 (3) The department shall submit a copy of proposed rules
3480 to the Speaker of the House of Representatives, the President of
3481 the Senate, and appropriate committees of substance for review
3482 and comment prior to the promulgation thereof.
3483 (a) Rules promulgated by the department shall encourage
3484 the development of homelike facilities which promote the
3485 dignity, individuality, personal strengths, and decisionmaking
3486 ability of residents.
3487 (b) The agency, in consultation with the department, may
3488 waive rules promulgated pursuant to this part in order to
3489 demonstrate and evaluate innovative or cost-effective congregate
3490 care alternatives which enable individuals to age in place.
3491 Such waivers may be granted only in instances where there is
3492 reasonable assurance that the health, safety, or welfare of
3493 residents will not be endangered. To apply for a waiver, the
3494 licensee shall submit to the agency a written description of the

3495 concept to be demonstrated, including goals, objectives, and
3496 anticipated benefits; the number and types of residents who will
3497 be affected, if applicable; a brief description of how the
3498 demonstration will be evaluated; and any other information
3499 deemed appropriate by the agency. Any facility granted a waiver
3500 shall submit a report of findings to the agency and the
3501 department within 12 months. At such time, the agency may renew
3502 or revoke the waiver or pursue any regulatory or statutory
3503 changes necessary to allow other facilities to adopt the same
3504 practices. The department may by rule clarify terms and
3505 establish waiver application procedures, criteria for reviewing
3506 waiver proposals, and procedures for reporting findings, as
3507 necessary to implement this subsection.
3508 (4) The agency may use an abbreviated biennial standard
3509 licensure inspection that consists of a review of key quality-
3510 of-care standards in lieu of a full inspection in facilities
3511 which have a good record of past performance. However, a full
3512 inspection shall be conducted in facilities which have had a
3513 history of class I or class II violations, uncorrected class III
3514 violations, confirmed ombudsman council complaints, or confirmed
3515 licensure complaints, within the previous licensure period
3516 immediately preceding the inspection or when a potentially
3517 serious problem is identified during the abbreviated inspection.
3518 The agency, in consultation with the department, shall develop
3519 the key quality-of-care standards with input from the State
3520 Long-Term Care Ombudsman Council and representatives of provider
3521 groups for incorporation into its rules. The department, in
3522 consultation with the agency, shall report annually to the
3523 Legislature concerning its implementation of this subsection.
3524 The report shall include, at a minimum, the key quality-of-care
3525 standards which have been developed; the number of facilities

3526 identified as being eligible for the abbreviated inspection; the
3527 number of facilities which have received the abbreviated
3528 inspection and, of those, the number that were converted to full
3529 inspection; the number and type of subsequent complaints
3530 received by the agency or department on facilities which have
3531 had abbreviated inspections; any recommendations for
3532 modification to this subsection; any plans by the agency to
3533 modify its implementation of this subsection; and any other
3534 information which the department believes should be reported.
3535 (5) A fee shall be charged by the department to any person
3536 requesting a copy of this part or rules promulgated under this
3537 part. Such fees shall not exceed the actual cost of duplication
3538 and postage.
3539 Section 57. Section 400.442, Florida Statutes, is
3540 renumbered as section 429.42, Florida Statutes, and amended to
3541 read:
3542 429.42 ~~400.442~~ Pharmacy and dietary services.--
3543 (1) Any assisted living facility in which the agency has
3544 documented a class I or class II deficiency or uncorrected class
3545 III deficiencies regarding medicinal drugs or over-the-counter
3546 preparations, including their storage, use, delivery, or
3547 administration, or dietary services, or both, during a biennial
3548 survey or a monitoring visit or an investigation in response to
3549 a complaint, shall, in addition to or as an alternative to any
3550 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
3551 employ the consultant services of a licensed pharmacist, a
3552 licensed registered nurse, or a registered or licensed
3553 dietitian, as applicable. The consultant shall, at a minimum,
3554 provide onsite quarterly consultation until the inspection team
3555 from the agency determines that such consultation services are
3556 no longer required.

3557 (2) A corrective action plan for deficiencies related to
3558 assistance with the self-administration of medication or the
3559 administration of medication must be developed and implemented
3560 by the facility within 48 hours after notification of such
3561 deficiency, or sooner if the deficiency is determined by the
3562 agency to be life-threatening.
3563 (3) The agency shall employ at least two pharmacists
3564 licensed pursuant to chapter 465 among its personnel who
3565 biennially inspect assisted living facilities licensed under
3566 this part, to participate in biennial inspections or consult
3567 with the agency regarding deficiencies relating to medicinal
3568 drugs or over-the-counter preparations.
3569 (4) The department may by rule establish procedures and
3570 specify documentation as necessary to implement this section.
3571 Section 58. Section 400.444, Florida Statutes, is
3572 renumbered as section 429.44, Florida Statutes, and amended to
3573 read:
3574 429.44 ~~400.444~~ Construction and renovation;
3575 requirements.--
3576 (1) The requirements for the construction and renovation
3577 of a facility shall comply with the provisions of chapter 553
3578 which pertain to building construction standards, including
3579 plumbing, electrical code, glass, manufactured buildings,
3580 accessibility for persons with disabilities, and the state
3581 minimum building code and with the provisions of s. 633.022,
3582 which pertain to uniform firesafety standards.
3583 (2) Upon notification by the local authority having
3584 jurisdiction over life-threatening violations which seriously
3585 threaten the health, safety, or welfare of a resident of a
3586 facility, the agency shall take action as specified in s. 429.14
3587 ~~s. 400.414~~.

3588 (3) The department may adopt rules to establish procedures
3589 and specify the documentation necessary to implement this
3590 section.
3591 Section 59. Section 400.447, Florida Statutes, is
3592 renumbered as section 429.47, Florida Statutes, and amended to
3593 read:
3594 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--
3595 (1) It is unlawful for any person or public body to offer
3596 or advertise to the public, in any way by any medium whatever,
3597 personal services as defined in this act, without obtaining a
3598 valid current license. It is unlawful for any holder of a
3599 license issued pursuant to the provisions of this act to
3600 advertise or hold out to the public that it holds a license for
3601 a facility other than that for which it actually holds a
3602 license.
3603 (2) It is unlawful for any holder of a license issued
3604 pursuant to the provisions of this act to withhold from the
3605 agency any evidence of financial instability, including, but not
3606 limited to, bad checks, delinquent accounts, nonpayment of
3607 withholding taxes, unpaid utility expenses, nonpayment for
3608 essential services, or adverse court action concerning the
3609 financial viability of the facility or any other facility
3610 licensed under this part or under part II of chapter 400 ~~or part~~
3611 ~~III of this chapter~~ which is owned by the licensee.
3612 (3) Any person found guilty of violating subsection (1) or
3613 subsection (2) commits a misdemeanor of the second degree,
3614 punishable as provided in s. 775.083. Each day of continuing
3615 violation shall be considered a separate offense.
3616 (4) While a facility is under construction, the owner may
3617 advertise to the public prior to obtaining a license. Facilities
3618 that are certified under chapter 651 shall comply with the

3619 advertising provisions of s. 651.095 rather than those provided
3620 for in this subsection.
3621 (5) A freestanding facility shall not advertise or imply
3622 that any part of it is a nursing home. For the purpose of this
3623 subsection, "freestanding facility" means a facility that is not
3624 operated in conjunction with a nursing home to which residents
3625 of the facility are given priority when nursing care is
3626 required. A person who violates this subsection is subject to
3627 fine as specified in s. 429.19 ~~s. 400.419~~.
3628 (6) Any facility which is affiliated with any religious
3629 organization or which has a name implying religious affiliation
3630 shall include in its advertising whether or not it is affiliated
3631 with any religious organization and, if so, which organization.
3632 (7) A facility licensed under this part which is not part
3633 of a facility authorized under chapter 651 shall include the
3634 facility's license number as given by the agency in all
3635 advertising. A company or person owning more than one facility
3636 shall include at least one license number per advertisement.
3637 All advertising shall include the term "assisted living
3638 facility" before the license number.
3639 Section 60. Section 400.452, Florida Statutes, is
3640 renumbered as section 429.52, Florida Statutes, and amended to
3641 read:
3642 429.52 ~~400.452~~ Staff training and educational programs;
3643 core educational requirement.--
3644 (1) Administrators and other assisted living facility
3645 staff must meet minimum training and education requirements
3646 established by the Department of Elderly Affairs by rule. This
3647 training and education is intended to assist facilities to
3648 appropriately respond to the needs of residents, to maintain

3649 resident care and facility standards, and to meet licensure
3650 requirements.
3651 (2) The department shall establish a competency test and a
3652 minimum required score to indicate successful completion of the
3653 training and educational requirements. The competency test must
3654 be developed by the department in conjunction with the agency
3655 and providers. The required training and education must cover at
3656 least the following topics:
3657 (a) State law and rules relating to assisted living
3658 facilities.
3659 (b) Resident rights and identifying and reporting abuse,
3660 neglect, and exploitation.
3661 (c) Special needs of elderly persons, persons with mental
3662 illness, and persons with developmental disabilities and how to
3663 meet those needs.
3664 (d) Nutrition and food service, including acceptable
3665 sanitation practices for preparing, storing, and serving food.
3666 (e) Medication management, recordkeeping, and proper
3667 techniques for assisting residents with self-administered
3668 medication.
3669 (f) Firesafety requirements, including fire evacuation
3670 drill procedures and other emergency procedures.
3671 (g) Care of persons with Alzheimer's disease and related
3672 disorders.
3673 (3) Effective January 1, 2004, a new facility
3674 administrator must complete the required training and education,
3675 including the competency test, within a reasonable time after
3676 being employed as an administrator, as determined by the
3677 department. Failure to do so is a violation of this part and
3678 subjects the violator to an administrative fine as prescribed in
3679 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with

3680 chapter 468, part II, are exempt from this requirement. Other
3681 licensed professionals may be exempted, as determined by the
3682 department by rule.
3683 (4) Administrators are required to participate in
3684 continuing education for a minimum of 12 contact hours every 2
3685 years.
3686 (5) Staff involved with the management of medications and
3687 assisting with the self-administration of medications under s.
3688 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
3689 hours of training provided by a registered nurse, licensed
3690 pharmacist, or department staff. The department shall establish
3691 by rule the minimum requirements of this additional training.
3692 (6) Other facility staff shall participate in training
3693 relevant to their job duties as specified by rule of the
3694 department.
3695 (7) If the department or the agency determines that there
3696 are problems in a facility that could be reduced through
3697 specific staff training or education beyond that already
3698 required under this section, the department or the agency may
3699 require, and provide, or cause to be provided, the training or
3700 education of any personal care staff in the facility.
3701 (8) The department shall adopt rules related to these
3702 training requirements, the competency test, necessary
3703 procedures, and competency test fees.
3704 Section 61. Subsections (1), (10), and (18) of section
3705 400.462, Florida Statutes, are amended to read:
3706 400.462 Definitions.--As used in this part, the term:
3707 (1) "Administrator" means a direct employee, as defined in
3708 subsection (9). The administrator must be a licensed physician,
3709 physician assistant, or registered nurse licensed to practice in
3710 this state or an individual having at least 1 year of

3711 supervisory or administrative experience in home health care or
3712 in a facility licensed under chapter 395, ~~or under~~ part II ~~or~~
3713 ~~part III~~ of this chapter, or chapter 429. An administrator may
3714 manage a maximum of five licensed home health agencies located
3715 within one agency service district or within an immediately
3716 contiguous county. If the home health agency is licensed under
3717 this chapter and is part of a retirement community that provides
3718 multiple levels of care, an employee of the retirement community
3719 may administer the home health agency and up to a maximum of
3720 four entities licensed under this chapter or chapter 429 that
3721 are owned, operated, or managed by the same corporate entity. An
3722 administrator shall designate, in writing, for each licensed
3723 entity, a qualified alternate administrator to serve during
3724 absences.
3725 (10) "Director of nursing" means a registered nurse who is
3726 a direct employee, as defined in subsection (9), of the agency
3727 and who is a graduate of an approved school of nursing and is
3728 licensed in this state; who has at least 1 year of supervisory
3729 experience as a registered nurse; and who is responsible for
3730 overseeing the professional nursing and home health aid delivery
3731 of services of the agency. A director of nursing may be the
3732 director of a maximum of five licensed home health agencies
3733 operated by a related business entity and located within one
3734 agency service district or within an immediately contiguous
3735 county. If the home health agency is licensed under this chapter
3736 and is part of a retirement community that provides multiple
3737 levels of care, an employee of the retirement community may
3738 serve as the director of nursing of the home health agency and
3739 of up to four entities licensed under this chapter or chapter
3740 429 which are owned, operated, or managed by the same corporate
3741 entity.

3742 (18) "Nurse registry" means any person that procures,
3743 offers, promises, or attempts to secure health-care-related
3744 contracts for registered nurses, licensed practical nurses,
3745 certified nursing assistants, home health aides, companions, or
3746 homemakers, who are compensated by fees as independent
3747 contractors, including, but not limited to, contracts for the
3748 provision of services to patients and contracts to provide
3749 private duty or staffing services to health care facilities
3750 licensed under chapter 395, ~~or~~ this chapter, or chapter 429 or
3751 other business entities.
3752 Section 62. Paragraphs (h), (i), and (n) of subsection (5)
3753 of section 400.464, Florida Statutes, are amended to read:
3754 400.464 Home health agencies to be licensed; expiration of
3755 license; exemptions; unlawful acts; penalties.--
3756 (5) The following are exempt from the licensure
3757 requirements of this part:
3758 (h) The delivery of assisted living facility services for
3759 which the assisted living facility is licensed under part I ~~III~~
3760 of ~~this~~ chapter 429, to serve its residents in its facility.
3761 (i) The delivery of hospice services for which the hospice
3762 is licensed under part IV ~~VI~~ of this chapter, to serve hospice
3763 patients admitted to its service.
3764 (n) The delivery of adult family care home services for
3765 which the adult family care home is licensed under part II ~~VII~~
3766 of ~~this~~ chapter 429, to serve the residents in its facility.
3767 Section 63. Subsection (2) of section 400.497, Florida
3768 Statutes, is amended to read:
3769 400.497 Rules establishing minimum standards.--The agency
3770 shall adopt, publish, and enforce rules to implement this part,
3771 including, as applicable, ss. 400.506 and 400.509, which must
3772 provide reasonable and fair minimum standards relating to:

3773 (2) Shared staffing. The agency shall allow shared
3774 staffing if the home health agency is part of a retirement
3775 community that provides multiple levels of care, is located on
3776 one campus, is licensed under this chapter or chapter 429, and
3777 otherwise meets the requirements of law and rule.
3778 Section 64. Section 400.552, Florida Statutes, is
3779 renumbered as section 429.903, Florida Statutes, and amended to
3780 read:
3781 429.903 ~~400.552~~ Applicability.--Any facility that comes
3782 within the definition of an adult day care center which is not
3783 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
3784 agency as an adult day care center.
3785 Section 65. Section 400.555, Florida Statutes, is
3786 renumbered as section 429.909, Florida Statutes, and amended to
3787 read:
3788 429.909 ~~400.555~~ Application for license.--
3789 (1) An application for a license to operate an adult day
3790 care center must be made to the agency on forms furnished by the
3791 agency and must be accompanied by the appropriate license fee
3792 unless the applicant is exempt from payment of the fee as
3793 provided in s. 429.907(4) ~~s. 400.554(4)~~.
3794 (2) The applicant for licensure must furnish:
3795 (a) A description of the physical and mental capabilities
3796 and needs of the participants to be served and the availability,
3797 frequency, and intensity of basic services and of supportive and
3798 optional services to be provided;
3799 (b) Satisfactory proof of financial ability to operate and
3800 conduct the center in accordance with the requirements of this
3801 part, which must include, in the case of an initial application,
3802 a 1-year operating plan and proof of a 3-month operating reserve
3803 fund; and

3804 (c) Proof of adequate liability insurance coverage.
3805 (d) Proof of compliance with level 2 background screening
3806 as required under s. 429.919 ~~s. 400.5572~~.
3807 (e) A description and explanation of any exclusions,
3808 permanent suspensions, or terminations of the application from
3809 the Medicare or Medicaid programs. Proof of compliance with
3810 disclosure of ownership and control interest requirements of the
3811 Medicare or Medicaid programs shall be accepted in lieu of this
3812 submission.
3813 Section 66. Section 400.556, Florida Statutes, is
3814 renumbered as section 429.911, Florida Statutes, and amended to
3815 read:
3816 429.911 ~~400.556~~ Denial, suspension, revocation of license;
3817 administrative fines; investigations and inspections.--
3818 (1) The agency may deny, revoke, or suspend a license
3819 under this part or may impose an administrative fine against the
3820 owner of an adult day care center or its operator or employee in
3821 the manner provided in chapter 120.
3822 (2) Each of the following actions by the owner of an adult
3823 day care center or by its operator or employee is a ground for
3824 action by the agency against the owner of the center or its
3825 operator or employee:
3826 (a) An intentional or negligent act materially affecting
3827 the health or safety of center participants.
3828 (b) A violation of this part or of any standard or rule
3829 under this part.
3830 (c) A failure of persons subject to level 2 background
3831 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
3832 screening standards of s. 435.04, or the retention by the center
3833 of an employee subject to level 1 background screening standards
3834 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the

3835 screening standards of s. 435.03 and for whom exemptions from
3836 disqualification have not been provided by the agency.
3837 (d) Failure to follow the criteria and procedures provided
3838 under part I of chapter 394 relating to the transportation,
3839 voluntary admission, and involuntary examination of center
3840 participants.
3841 (e) Multiple or repeated violations of this part or of any
3842 standard or rule adopted under this part.
3843 (f) Exclusion, permanent suspension, or termination of the
3844 owner, if an individual, officer, or board member of the adult
3845 day care center, if the owner is a firm, corporation,
3846 partnership, or association, or any person owning 5 percent or
3847 more of the center, from the Medicare or Medicaid program.
3848 (3) The agency is responsible for all investigations and
3849 inspections conducted pursuant to this part.
3850 Section 67. Section 400.557, Florida Statutes, is
3851 renumbered as section 429.915, Florida Statutes, and amended to
3852 read:
3853 429.915 ~~400.557~~ Expiration of license; renewal;
3854 conditional license or permit.--
3855 (1) A license issued for the operation of an adult day
3856 care center, unless sooner suspended or revoked, expires 2 years
3857 after the date of issuance. The agency shall notify a licensee
3858 at least 120 days before the expiration date that license
3859 renewal is required to continue operation. The notification must
3860 be provided electronically or by mail delivery. At least 90 days
3861 prior to the expiration date, an application for renewal must be
3862 submitted to the agency. A license shall be renewed, upon the
3863 filing of an application on forms furnished by the agency, if
3864 the applicant has first met the requirements of this part and of
3865 the rules adopted under this part. The applicant must file with

3866 the application satisfactory proof of financial ability to
3867 operate the center in accordance with the requirements of this
3868 part and in accordance with the needs of the participants to be
3869 served and an affidavit of compliance with the background
3870 screening requirements of s. 429.919 ~~s. 400.5572~~.
3871 (2) A licensee against whom a revocation or suspension
3872 proceeding is pending at the time for license renewal may be
3873 issued a conditional license effective until final disposition
3874 by the agency of the proceeding. If judicial relief is sought
3875 from the final disposition, the court having jurisdiction may
3876 issue a conditional permit effective for the duration of the
3877 judicial proceeding.
3878 (3) The agency may issue a conditional license to an
3879 applicant for license renewal or change of ownership if the
3880 applicant fails to meet all standards and requirements for
3881 licensure. A conditional license issued under this subsection
3882 must be limited to a specific period not exceeding 6 months, as
3883 determined by the agency, and must be accompanied by an approved
3884 plan of correction.
3885 Section 68. Section 400.5572, Florida Statutes, is
3886 renumbered as section 429.919, Florida Statutes, and amended to
3887 read:
3888 429.919 ~~400.5572~~ Background screening.--
3889 (1)(a) Level 2 background screening must be conducted on
3890 each of the following persons, who shall be considered employees
3891 for the purposes of conducting screening under chapter 435:
3892 1. The adult day care center owner if an individual, the
3893 operator, and the financial officer.
3894 2. An officer or board member if the owner of the adult
3895 day care center is a firm, corporation, partnership, or
3896 association, or any person owning 5 percent or more of the

3897 facility, if the agency has probable cause to believe that such
3898 person has been convicted of any offense prohibited by s.
3899 435.04. For each officer, board member, or person owning 5
3900 percent or more who has been convicted of any such offense, the
3901 facility shall submit to the agency a description and
3902 explanation of the conviction at the time of license
3903 application. This subparagraph does not apply to a board member
3904 of a not-for-profit corporation or organization if the board
3905 member serves solely in a voluntary capacity, does not regularly
3906 take part in the day-to-day operational decisions of the
3907 corporation or organization, receives no remuneration for his or
3908 her services, and has no financial interest and has no family
3909 members with a financial interest in the corporation or
3910 organization, provided that the board member and facility submit
3911 a statement affirming that the board member's relationship to
3912 the facility satisfies the requirements of this subparagraph.
3913 (b) Proof of compliance with level 2 screening standards
3914 which has been submitted within the previous 5 years to meet any
3915 facility or professional licensure requirements of the agency or
3916 the Department of Health satisfies the requirements of this
3917 subsection.
3918 (c) The agency may grant a provisional license to an adult
3919 day care center applying for an initial license when each
3920 individual required by this subsection to undergo screening has
3921 completed the Department of Law Enforcement background check,
3922 but has not yet received results from the Federal Bureau of
3923 Investigation, or when a request for an exemption from
3924 disqualification has been submitted to the agency pursuant to s.
3925 435.07, but a response has not been issued.
3926 (2) The owner or administrator of an adult day care center
3927 must conduct level 1 background screening as set forth in

3928 chapter 435 on all employees hired on or after October 1, 1998,
3929 who provide basic services or supportive and optional services
3930 to the participants. Such persons satisfy this requirement if:
3931 (a) Proof of compliance with level 1 screening
3932 requirements obtained to meet any professional license
3933 requirements in this state is provided and accompanied, under
3934 penalty of perjury, by a copy of the person's current
3935 professional license and an affidavit of current compliance with
3936 the background screening requirements.
3937 (b) The person required to be screened has been
3938 continuously employed, without a breach in service that exceeds
3939 180 days, in the same type of occupation for which the person is
3940 seeking employment and provides proof of compliance with the
3941 level 1 screening requirement which is no more than 2 years old.
3942 Proof of compliance must be provided directly from one employer
3943 or contractor to another, and not from the person screened. Upon
3944 request, a copy of screening results shall be provided to the
3945 person screened by the employer retaining documentation of the
3946 screening.
3947 (c) The person required to be screened is employed by a
3948 corporation or business entity or related corporation or
3949 business entity that owns, operates, or manages more than one
3950 facility or agency licensed under this chapter <u>or under chapter</u>
3951 <u>400</u>, and for whom a level 1 screening was conducted by the
3952 corporation or business entity as a condition of initial or
3953 continued employment.
3954 Section 69. Subsection (5) of section 400.601, Florida
3955 Statutes, is amended to read:
3956 400.601 Definitions.--As used in this part, the term:
3957 (5) "Hospice residential unit" means a homelike living
3958 facility, other than a facility licensed under other parts of

3959 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
3960 is operated by a hospice for the benefit of its patients and is
3961 considered by a patient who lives there to be his or her primary
3962 residence.
3963 Section 70. Section 400.618, Florida Statutes, is
3964 renumbered as section 429.65, Florida Statutes, and amended to
3965 read:
3966 429.65 ~~400.618~~ Definitions.--As used in this part, the
3967 term:
3968 (1) "Activities of daily living" means functions and tasks
3969 for self-care, including eating, bathing, grooming, dressing,
3970 ambulating, and other similar tasks.
3971 (2) "Adult family-care home" means a full-time, family-
3972 type living arrangement, in a private home, under which a person
3973 who owns or rents the home provides room, board, and personal
3974 care, on a 24-hour basis, for no more than five disabled adults
3975 or frail elders who are not relatives. The following family-type
3976 living arrangements are not required to be licensed as an adult
3977 family-care home:
3978 (a) An arrangement whereby the person who owns or rents
3979 the home provides room, board, and personal services for not
3980 more than two adults who do not receive optional state
3981 supplementation under s. 409.212. The person who provides the
3982 housing, meals, and personal care must own or rent the home and
3983 reside therein.
3984 (b) An arrangement whereby the person who owns or rents
3985 the home provides room, board, and personal services only to his
3986 or her relatives.
3987 (c) An establishment that is licensed as an assisted
3988 living facility under this chapter ~~part III~~.

3989 (3) "Agency" means the Agency for Health Care
3990 Administration.
3991 (4) "Aging in place" means remaining in a noninstitutional
3992 living environment despite the physical or mental changes that
3993 may occur in a person who is aging. For aging in place to occur,
3994 needed services are added, increased, or adjusted to compensate
3995 for a person's physical or mental changes.
3996 (5) "Appropriate placement" means that the resident's
3997 needs can be met by the adult family-care home or can be met by
3998 services arranged by the adult family-care home or the resident.
3999 (6) "Chemical restraint" means a pharmacologic drug that
4000 physically limits, restricts, or deprives an individual of
4001 movement or mobility, and is used for discipline or convenience
4002 and not required for the treatment of medical symptoms.
4003 (7) "Department" means the Department of Elderly Affairs.
4004 (8) "Disabled adult" means any person between 18 and 59
4005 years of age, inclusive, who is a resident of the state and who
4006 has one or more permanent physical or mental limitations that
4007 restrict the person's ability to perform the normal activities
4008 of daily living.
4009 (9) "Frail elder" means a functionally impaired elderly
4010 person who is 60 years of age or older and who has physical or
4011 mental limitations that restrict the person's ability to perform
4012 the normal activities of daily living and that impede the
4013 person's capacity to live independently.
4014 (10) "Personal services" or "personal care" includes
4015 individual assistance with or supervision of the activities of
4016 daily living and the self-administration of medication, and
4017 other similar services.
4018 (11) "Provider" means a person who is licensed to operate
4019 an adult family-care home.

4020 (12) "Relative" means an individual who is the father,
4021 mother, son, daughter, brother, sister, grandfather,
4022 grandmother, great-grandfather, great-grandmother, uncle, aunt,
4023 first cousin, nephew, niece, husband, wife, father-in-law,
4024 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4025 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
4026 stepbrother, stepsister, half brother, or half sister of a
4027 provider.
4028 (13) "Relief person" means an adult designated by the
4029 provider to supervise the residents during the provider's
4030 absence.
4031 (14) "Resident" means a person receiving room, board, and
4032 personal care in an adult family-care home.
4033 Section 71. Section 400.6194, Florida Statutes, is
4034 renumbered as section 429.69, Florida Statutes, and amended to
4035 read:
4036 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
4037 license.--The agency may deny, suspend, or revoke a license for
4038 any of the following reasons:
4039 (1) Failure of any of the persons required to undergo
4040 background screening under s. 429.67 ~~s. 400.619~~ to meet the
4041 level 1 screening standards of s. 435.03, unless an exemption
4042 from disqualification has been provided by the agency.
4043 (2) An intentional or negligent act materially affecting
4044 the health, safety, or welfare of the adult family-care home
4045 residents.
4046 (3) Submission of fraudulent information or omission of
4047 any material fact on a license application or any other document
4048 required by the agency.
4049 (4) Failure to pay an administrative fine assessed under
4050 this part.

4051 (5) A violation of this part or adopted rules which
4052 results in conditions or practices that directly threaten the
4053 physical or emotional health, safety, or welfare of residents.
4054 (6) Failure to correct cited fire code violations that
4055 threaten the health, safety, or welfare of residents.
4056 (7) Failure to submit a completed initial license
4057 application or to complete an application for license renewal
4058 within the specified timeframes.
4059 (8) Exclusion, permanent suspension, or termination of the
4060 provider from the Medicare or Medicaid program.
4061 Section 72. Section 400.621, Florida Statutes, is
4062 renumbered as section 429.73, Florida Statutes, and amended to
4063 read:
4064 429.73 ~~400.621~~ Rules and standards relating to adult
4065 family-care homes.--
4066 (1) The department, in consultation with the Department of
4067 Health, the Department of Children and Family Services, and the
4068 agency shall, by rule, establish minimum standards to ensure the
4069 health, safety, and well-being of each resident in the adult
4070 family-care home. The rules must address:
4071 (a) Requirements for the physical site of the facility and
4072 facility maintenance.
4073 (b) Services that must be provided to all residents of an
4074 adult family-care home and standards for such services, which
4075 must include, but need not be limited to:
4076 1. Room and board.
4077 2. Assistance necessary to perform the activities of daily
4078 living.
4079 3. Assistance necessary to administer medication.
4080 4. Supervision of residents.
4081 5. Health monitoring.

4082 6. Social and leisure activities.
4083 (c) Standards and procedures for license application and
4084 annual license renewal, advertising, proper management of each
4085 resident's funds and personal property and personal affairs,
4086 financial ability to operate, medication management,
4087 inspections, complaint investigations, and facility, staff, and
4088 resident records.
4089 (d) Qualifications, training, standards, and
4090 responsibilities for providers and staff.
4091 (e) Compliance with chapter 419, relating to community
4092 residential homes.
4093 (f) Criteria and procedures for determining the
4094 appropriateness of a resident's placement and continued
4095 residency in an adult family-care home. A resident who requires
4096 24-hour nursing supervision may not be retained in an adult
4097 family-care home unless such resident is an enrolled hospice
4098 patient and the resident's continued residency is mutually
4099 agreeable to the resident and the provider.
4100 (g) Procedures for providing notice and assuring the least
4101 possible disruption of residents' lives when residents are
4102 relocated, an adult family-care home is closed, or the ownership
4103 of an adult family-care home is transferred.
4104 (h) Procedures to protect the residents' rights as
4105 provided in s. 429.85 ~~s. 400.628~~.
4106 (i) Procedures to promote the growth of adult family-care
4107 homes as a component of a long-term care system.
4108 (j) Procedures to promote the goal of aging in place for
4109 residents of adult family-care homes.
4110 (2) The department shall by rule provide minimum standards
4111 and procedures for emergencies. Pursuant to s. 633.022, the
4112 State Fire Marshal, in consultation with the department and the

4113 agency, shall adopt uniform firesafety standards for adult
4114 family-care homes.
4115 (3) The department shall adopt rules providing for the
4116 implementation of orders not to resuscitate. The provider may
4117 withhold or withdraw cardiopulmonary resuscitation if presented
4118 with an order not to resuscitate executed pursuant to s. 401.45.
4119 The provider shall not be subject to criminal prosecution or
4120 civil liability, nor be considered to have engaged in negligent
4121 or unprofessional conduct, for withholding or withdrawing
4122 cardiopulmonary resuscitation pursuant to such an order and
4123 rules adopted by the department.
4124 (4) The provider of any adult family-care home that is in
4125 operation at the time any rules are adopted or amended under
4126 this part may be given a reasonable time, not exceeding 6
4127 months, within which to comply with the new or revised rules and
4128 standards.
4129 Section 73. Section 400.628, Florida Statutes, is
4130 renumbered as section 429.85, Florida Statutes, and amended to
4131 read:
4132 429.85 ~~400.628~~ Residents' bill of rights.--
4133 (1) A resident of an adult family-care home may not be
4134 deprived of any civil or legal rights, benefits, or privileges
4135 guaranteed by law, the State Constitution, or the Constitution
4136 of the United States solely by reason of status as a resident of
4137 the home. Each resident has the right to:
4138 (a) Live in a safe and decent living environment, free
4139 from abuse and neglect.
4140 (b) Be treated with consideration and respect and with due
4141 recognition of personal dignity, individuality, and privacy.
4142 (c) Keep and use the resident's own clothes and other
4143 personal property in the resident's immediate living quarters,

4144 so as to maintain individuality and personal dignity, except
4145 when the provider can demonstrate that to do so would be unsafe
4146 or an infringement upon the rights of other residents.
4147 (d) Have unrestricted private communication, including
4148 receiving and sending unopened correspondence, having access to
4149 a telephone, and visiting with any person of his or her choice,
4150 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.
4151 (e) Be free to participate in and benefit from community
4152 services and activities and to achieve the highest possible
4153 level of independence, autonomy, and interaction within the
4154 community.
4155 (f) Manage the resident's own financial affairs unless the
4156 resident or the resident's guardian authorizes the provider to
4157 provide safekeeping for funds in accordance with procedures
4158 equivalent to those provided in s. 429.27 ~~s. 400.427~~.
4159 (g) Share a room with the resident's spouse if both are
4160 residents of the home.
4161 (h) Have reasonable opportunity for regular exercise
4162 several times a week and to be outdoors at regular and frequent
4163 intervals.
4164 (i) Exercise civil and religious liberties, including the
4165 right to independent personal decisions. Religious beliefs or
4166 practices and attendance at religious services may not be
4167 imposed upon a resident.
4168 (j) Have access to adequate and appropriate health care.
4169 (k) Be free from chemical and physical restraints.
4170 (l) Have at least 30 days' notice of relocation or
4171 termination of residency from the home unless, for medical
4172 reasons, the resident is certified by a physician to require an
4173 emergency relocation to a facility providing a more skilled
4174 level of care or the resident engages in a pattern of conduct

4175 that is harmful or offensive to other residents. If a resident
4176 has been adjudicated mentally incompetent, the resident's
4177 guardian must be given at least 30 days' notice, except in an
4178 emergency, of the relocation of a resident or of the termination
4179 of a residency. The reasons for relocating a resident must be
4180 set forth in writing.
4181 (m) Present grievances and recommend changes to the
4182 provider, to staff, or to any other person without restraint,
4183 interference, coercion, discrimination, or reprisal. This right
4184 includes the right to have access to ombudsman volunteers and
4185 advocates and the right to be a member of, to be active in, and
4186 to associate with advocacy or special interest groups.
4187 (2) The provider shall ensure that residents and their
4188 legal representatives are made aware of the rights, obligations,
4189 and prohibitions set forth in this part. Residents must also be
4190 given the names, addresses, and telephone numbers of the local
4191 ombudsman council and the central abuse hotline where they may
4192 lodge complaints.
4193 (3) The adult family-care home may not hamper or prevent
4194 residents from exercising the rights specified in this section.
4195 (4) A provider or staff of an adult family-care home may
4196 not serve notice upon a resident to leave the premises or take
4197 any other retaliatory action against any person who:
4198 (a) Exercises any right set forth in this section.
4199 (b) Appears as a witness in any hearing, in or out of the
4200 adult family-care home.
4201 (c) Files a civil action alleging a violation of this part
4202 or notifies a state attorney or the Attorney General of a
4203 possible violation of this part.
4204 (5) Any adult family-care home that terminates the
4205 residency of an individual who has participated in activities

4206 specified in subsection (4) must show good cause for the
4207 termination in a court of competent jurisdiction.
4208 (6) Any person who reports a complaint concerning a
4209 suspected violation of this part or the services and conditions
4210 in an adult family-care home, or who testifies in any
4211 administrative or judicial proceeding arising from such a
4212 complaint, is immune from any civil or criminal liability
4213 therefor, unless the person acted in bad faith or with malicious
4214 purpose or the court finds that there was a complete absence of
4215 a justiciable issue of either law or fact raised by the losing
4216 party.
4217 Section 74. Paragraphs (c), (d), (e), and (f) of
4218 subsection (5) of section 400.93, Florida Statutes, are amended
4219 to read:
4220 400.93 Licensure required; exemptions; unlawful acts;
4221 penalties.--
4222 (5) The following are exempt from home medical equipment
4223 provider licensure, unless they have a separate company,
4224 corporation, or division that is in the business of providing
4225 home medical equipment and services for sale or rent to
4226 consumers at their regular or temporary place of residence
4227 pursuant to the provisions of this part:
4228 (c) Assisted living facilities licensed under chapter 429
4229 ~~part III~~, when serving their residents.
4230 (d) Home health agencies licensed under part III ~~IV~~.
4231 (e) Hospices licensed under part IV ~~VI~~.
4232 (f) Intermediate care facilities, homes for special
4233 services, and transitional living facilities licensed under part
4234 V ~~VIII~~.
4235 Section 75. Paragraph (c) of subsection (10) of section
4236 400.962, Florida Statutes, is amended to read:

4237 400.962 License required; license application.--
4238 (10)
4239 (c) Proof of compliance with the level 2 background
4240 screening requirements of chapter 435 which has been submitted
4241 within the previous 5 years in compliance with any other
4242 licensure requirements under this chapter or chapter 429
4243 satisfies the requirements of paragraph (a). Proof of compliance
4244 with background screening which has been submitted within the
4245 previous 5 years to fulfill the requirements of the Financial
4246 Services Commission and the Office of Insurance Regulation under
4247 chapter 651 as part of an application for a certificate of
4248 authority to operate a continuing care retirement community
4249 satisfies the requirements for the Department of Law Enforcement
4250 and Federal Bureau of Investigation background checks.
4251 Section 76. Paragraph (b) of subsection (1) of section
4252 400.980, Florida Statutes, is amended to read:
4253 400.980 Health care services pools.--
4254 (1) As used in this section, the term:
4255 (b) "Health care services pool" means any person, firm,
4256 corporation, partnership, or association engaged for hire in the
4257 business of providing temporary employment in health care
4258 facilities, residential facilities, and agencies for licensed,
4259 certified, or trained health care personnel including, without
4260 limitation, nursing assistants, nurses' aides, and orderlies.
4261 However, the term does not include nursing registries, a
4262 facility licensed under this chapter or chapter 429 ~~400~~, a
4263 health care services pool established within a health care
4264 facility to provide services only within the confines of such
4265 facility, or any individual contractor directly providing
4266 temporary services to a health care facility without use or
4267 benefit of a contracting agent.

4268 Section 77. Paragraphs (a), (b), (c), and (d) of
4269 subsection (4) of section 400.9905, Florida Statutes, are
4270 amended to read:
4271 400.9905 Definitions.--
4272 (4) "Clinic" means an entity at which health care services
4273 are provided to individuals and which tenders charges for
4274 reimbursement for such services, including a mobile clinic and a
4275 portable equipment provider. For purposes of this part, the term
4276 does not include and the licensure requirements of this part do
4277 not apply to:
4278 (a) Entities licensed or registered by the state under
4279 chapter 395; or entities licensed or registered by the state and
4280 providing only health care services within the scope of services
4281 authorized under their respective licenses granted under ss.
4282 383.30-383.335, chapter 390, chapter 394, chapter 397, this
4283 chapter except part X ~~XIII~~, chapter 429, chapter 463, chapter
4284 465, chapter 466, chapter 478, part I of chapter 483, chapter
4285 484, or chapter 651; end-stage renal disease providers
4286 authorized under 42 C.F.R. part 405, subpart U; or providers
4287 certified under 42 C.F.R. part 485, subpart B or subpart H; or
4288 any entity that provides neonatal or pediatric hospital-based
4289 health care services by licensed practitioners solely within a
4290 hospital licensed under chapter 395.
4291 (b) Entities that own, directly or indirectly, entities
4292 licensed or registered by the state pursuant to chapter 395; or
4293 entities that own, directly or indirectly, entities licensed or
4294 registered by the state and providing only health care services
4295 within the scope of services authorized pursuant to their
4296 respective licenses granted under ss. 383.30-383.335, chapter
4297 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4298 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,

4299 part I of chapter 483, chapter 484, chapter 651; end-stage renal
4300 disease providers authorized under 42 C.F.R. part 405, subpart
4301 U; or providers certified under 42 C.F.R. part 485, subpart B or
4302 subpart H; or any entity that provides neonatal or pediatric
4303 hospital-based health care services by licensed practitioners
4304 solely within a hospital licensed under chapter 395.
4305 (c) Entities that are owned, directly or indirectly, by an
4306 entity licensed or registered by the state pursuant to chapter
4307 395; or entities that are owned, directly or indirectly, by an
4308 entity licensed or registered by the state and providing only
4309 health care services within the scope of services authorized
4310 pursuant to their respective licenses granted under ss. 383.30-
4311 383.335, chapter 390, chapter 394, chapter 397, this chapter
4312 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,
4313 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
4314 chapter 651; end-stage renal disease providers authorized under
4315 42 C.F.R. part 405, subpart U; or providers certified under 42
4316 C.F.R. part 485, subpart B or subpart H; or any entity that
4317 provides neonatal or pediatric hospital-based health care
4318 services by licensed practitioners solely within a hospital
4319 under chapter 395.
4320 (d) Entities that are under common ownership, directly or
4321 indirectly, with an entity licensed or registered by the state
4322 pursuant to chapter 395; or entities that are under common
4323 ownership, directly or indirectly, with an entity licensed or
4324 registered by the state and providing only health care services
4325 within the scope of services authorized pursuant to their
4326 respective licenses granted under ss. 383.30-383.335, chapter
4327 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4328 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4329 part I of chapter 483, chapter 484, or chapter 651; end-stage

4330 renal disease providers authorized under 42 C.F.R. part 405,
4331 subpart U; or providers certified under 42 C.F.R. part 485,
4332 subpart B or subpart H; or any entity that provides neonatal or
4333 pediatric hospital-based health care services by licensed
4334 practitioners solely within a hospital licensed under chapter
4335 395.
4336 Section 78. Subsection (12) of section 401.23, Florida
4337 Statutes, is amended to read:
4338 401.23 Definitions.--As used in this part, the term:
4339 (12) "Interfacility transfer" means the transportation by
4340 ambulance of a patient between two facilities licensed under
4341 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
4342 pursuant to this part.
4343 Section 79. Paragraph (b) of subsection (2) of section
4344 402.164, Florida Statutes, is amended to read:
4345 402.164 Legislative intent; definitions.--
4346 (2) As used in ss. 402.164-402.167, the term:
4347 (b) "Client" means a client as defined in s. 393.063, s.
4348 394.67, s. 397.311, or s. 400.960, a forensic client or client
4349 as defined in s. 916.106, a child or youth as defined in s.
4350 39.01, a child as defined in s. 827.01, a family as defined in
4351 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
4352 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
4353 recipient or recipient as defined in s. 409.901, a child
4354 receiving child care as defined in s. 402.302, a disabled adult
4355 as defined in s. 410.032 or s. 410.603, or a victim as defined
4356 in s. 39.01 or s. 415.102 as each definition applies within its
4357 respective chapter.
4358 Section 80. Subsection (10) of section 408.032, Florida
4359 Statutes, is amended to read:

4360 408.032 Definitions relating to Health Facility and
4361 Services Development Act.--As used in ss. 408.031-408.045, the
4362 term:
4363 (10) "Hospice" or "hospice program" means a hospice as
4364 defined in part IV ~~VI~~ of chapter 400.
4365 Section 81. Paragraph (b) of subsection (2) of section
4366 408.033, Florida Statutes, is amended to read:
4367 408.033 Local and state health planning.--
4368 (2) FUNDING.--
4369 (b)1. A hospital licensed under chapter 395, a nursing
4370 home licensed under chapter 400, and an assisted living facility
4371 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
4372 based on number of beds.
4373 2. All other facilities and organizations listed in
4374 paragraph (a) shall each be assessed an annual fee of $150.
4375 3. Facilities operated by the Department of Children and
4376 Family Services, the Department of Health, or the Department of
4377 Corrections and any hospital which meets the definition of rural
4378 hospital pursuant to s. 395.602 are exempt from the assessment
4379 required in this subsection.
4380 Section 82. Subsection (2) of section 408.034, Florida
4381 Statutes, is amended to read:
4382 408.034 Duties and responsibilities of agency; rules.--
4383 (2) In the exercise of its authority to issue licenses to
4384 health care facilities and health service providers, as provided
4385 under chapters 393 and~~,~~ 395~~,~~ and parts II and IV ~~VI~~ of chapter
4386 400, the agency may not issue a license to any health care
4387 facility or health service provider that fails to receive a
4388 certificate of need or an exemption for the licensed facility or
4389 service.

4390 Section 83. Subsections (28) and (29) of section 408.07,
4391 Florida Statutes, are amended to read:
4392 408.07 Definitions.--As used in this chapter, with the
4393 exception of ss. 408.031-408.045, the term:
4394 (28) "Home health agency" means an organization licensed
4395 under part III ~~IV~~ of chapter 400.
4396 (29) "Hospice" means an organization licensed under part
4397 IV ~~VI~~ of chapter 400.
4398 Section 84. Subsection (3) of section 408.831, Florida
4399 Statutes, is amended to read:
4400 408.831 Denial, suspension, or revocation of a license,
4401 registration, certificate, or application.--
4402 (3) This section provides standards of enforcement
4403 applicable to all entities licensed or regulated by the Agency
4404 for Health Care Administration. This section controls over any
4405 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
4406 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
4407 pursuant to those chapters.
4408 Section 85. Subsection (2) of section 409.212, Florida
4409 Statutes, is amended to read:
4410 409.212 Optional supplementation.--
4411 (2) The base rate of payment for optional state
4412 supplementation shall be established by the department within
4413 funds appropriated. Additional amounts may be provided for
4414 mental health residents in facilities designed to provide
4415 limited mental health services as provided for in s. 429.075 ~~s.~~
4416 ~~400.4075~~. The base rate of payment does not include the personal
4417 needs allowance.
4418 Section 86. Paragraph (e) of subsection (4) of section
4419 409.221, Florida Statutes, is amended to read:
4420 409.221 Consumer-directed care program.--

4421 (4) CONSUMER-DIRECTED CARE.--
4422 (e) Services.--Consumers shall use the budget allowance
4423 only to pay for home and community-based services that meet the
4424 consumer's long-term care needs and are a cost-efficient use of
4425 funds. Such services may include, but are not limited to, the
4426 following:
4427 1. Personal care.
4428 2. Homemaking and chores, including housework, meals,
4429 shopping, and transportation.
4430 3. Home modifications and assistive devices which may
4431 increase the consumer's independence or make it possible to
4432 avoid institutional placement.
4433 4. Assistance in taking self-administered medication.
4434 5. Day care and respite care services, including those
4435 provided by nursing home facilities pursuant to s. 400.141(6) or
4436 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
4437 ~~400.554~~.
4438 6. Personal care and support services provided in an
4439 assisted living facility.
4440 Section 87. Subsection (4) of section 409.905, Florida
4441 Statutes, is amended to read:
4442 409.905 Mandatory Medicaid services.--The agency may make
4443 payments for the following services, which are required of the
4444 state by Title XIX of the Social Security Act, furnished by
4445 Medicaid providers to recipients who are determined to be
4446 eligible on the dates on which the services were provided. Any
4447 service under this section shall be provided only when medically
4448 necessary and in accordance with state and federal law.
4449 Mandatory services rendered by providers in mobile units to
4450 Medicaid recipients may be restricted by the agency. Nothing in
4451 this section shall be construed to prevent or limit the agency

4452 from adjusting fees, reimbursement rates, lengths of stay,
4453 number of visits, number of services, or any other adjustments
4454 necessary to comply with the availability of moneys and any
4455 limitations or directions provided for in the General
4456 Appropriations Act or chapter 216.
4457 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
4458 nursing and home health aide services, supplies, appliances, and
4459 durable medical equipment, necessary to assist a recipient
4460 living at home. An entity that provides services pursuant to
4461 this subsection shall be licensed under part III ~~IV~~ of chapter
4462 400. These services, equipment, and supplies, or reimbursement
4463 therefor, may be limited as provided in the General
4464 Appropriations Act and do not include services, equipment, or
4465 supplies provided to a person residing in a hospital or nursing
4466 facility.
4467 (a) In providing home health care services, the agency may
4468 require prior authorization of care based on diagnosis.
4469 (b) The agency shall implement a comprehensive utilization
4470 management program that requires prior authorization of all
4471 private duty nursing services, an individualized treatment plan
4472 that includes information about medication and treatment orders,
4473 treatment goals, methods of care to be used, and plans for care
4474 coordination by nurses and other health professionals. The
4475 utilization management program shall also include a process for
4476 periodically reviewing the ongoing use of private duty nursing
4477 services. The assessment of need shall be based on a child's
4478 condition, family support and care supplements, a family's
4479 ability to provide care, and a family's and child's schedule
4480 regarding work, school, sleep, and care for other family
4481 dependents. When implemented, the private duty nursing
4482 utilization management program shall replace the current

4483 authorization program used by the Agency for Health Care
4484 Administration and the Children's Medical Services program of
4485 the Department of Health. The agency may competitively bid on a
4486 contract to select a qualified organization to provide
4487 utilization management of private duty nursing services. The
4488 agency is authorized to seek federal waivers to implement this
4489 initiative.
4490 Section 88. Subsection (14) of section 409.906, Florida
4491 Statutes, is amended to read:
4492 409.906 Optional Medicaid services.--Subject to specific
4493 appropriations, the agency may make payments for services which
4494 are optional to the state under Title XIX of the Social Security
4495 Act and are furnished by Medicaid providers to recipients who
4496 are determined to be eligible on the dates on which the services
4497 were provided. Any optional service that is provided shall be
4498 provided only when medically necessary and in accordance with
4499 state and federal law. Optional services rendered by providers
4500 in mobile units to Medicaid recipients may be restricted or
4501 prohibited by the agency. Nothing in this section shall be
4502 construed to prevent or limit the agency from adjusting fees,
4503 reimbursement rates, lengths of stay, number of visits, or
4504 number of services, or making any other adjustments necessary to
4505 comply with the availability of moneys and any limitations or
4506 directions provided for in the General Appropriations Act or
4507 chapter 216. If necessary to safeguard the state's systems of
4508 providing services to elderly and disabled persons and subject
4509 to the notice and review provisions of s. 216.177, the Governor
4510 may direct the Agency for Health Care Administration to amend
4511 the Medicaid state plan to delete the optional Medicaid service
4512 known as "Intermediate Care Facilities for the Developmentally
4513 Disabled." Optional services may include:

4514 (14) HOSPICE CARE SERVICES.--The agency may pay for all
4515 reasonable and necessary services for the palliation or
4516 management of a recipient's terminal illness, if the services
4517 are provided by a hospice that is licensed under part IV ~~VI~~ of
4518 chapter 400 and meets Medicare certification requirements.
4519 Section 89. Subsection (7) and paragraph (a) of subsection
4520 (8) of section 409.907, Florida Statutes, are amended to read:
4521 409.907 Medicaid provider agreements.--The agency may make
4522 payments for medical assistance and related services rendered to
4523 Medicaid recipients only to an individual or entity who has a
4524 provider agreement in effect with the agency, who is performing
4525 services or supplying goods in accordance with federal, state,
4526 and local law, and who agrees that no person shall, on the
4527 grounds of handicap, race, color, or national origin, or for any
4528 other reason, be subjected to discrimination under any program
4529 or activity for which the provider receives payment from the
4530 agency.
4531 (7) The agency may require, as a condition of
4532 participating in the Medicaid program and before entering into
4533 the provider agreement, that the provider submit information, in
4534 an initial and any required renewal applications, concerning the
4535 professional, business, and personal background of the provider
4536 and permit an onsite inspection of the provider's service
4537 location by agency staff or other personnel designated by the
4538 agency to perform this function. The agency shall perform a
4539 random onsite inspection, within 60 days after receipt of a
4540 fully complete new provider's application, of the provider's
4541 service location prior to making its first payment to the
4542 provider for Medicaid services to determine the applicant's
4543 ability to provide the services that the applicant is proposing
4544 to provide for Medicaid reimbursement. The agency is not

4545 required to perform an onsite inspection of a provider or
4546 program that is licensed by the agency, that provides services
4547 under waiver programs for home and community-based services, or
4548 that is licensed as a medical foster home by the Department of
4549 Children and Family Services. As a continuing condition of
4550 participation in the Medicaid program, a provider shall
4551 immediately notify the agency of any current or pending
4552 bankruptcy filing. Before entering into the provider agreement,
4553 or as a condition of continuing participation in the Medicaid
4554 program, the agency may also require that Medicaid providers
4555 reimbursed on a fee-for-services basis or fee schedule basis
4556 which is not cost-based, post a surety bond not to exceed
4557 $50,000 or the total amount billed by the provider to the
4558 program during the current or most recent calendar year,
4559 whichever is greater. For new providers, the amount of the
4560 surety bond shall be determined by the agency based on the
4561 provider's estimate of its first year's billing. If the
4562 provider's billing during the first year exceeds the bond
4563 amount, the agency may require the provider to acquire an
4564 additional bond equal to the actual billing level of the
4565 provider. A provider's bond shall not exceed $50,000 if a
4566 physician or group of physicians licensed under chapter 458,
4567 chapter 459, or chapter 460 has a 50 percent or greater
4568 ownership interest in the provider or if the provider is an
4569 assisted living facility licensed under ~~part III of~~ chapter 429
4570 ~~400~~. The bonds permitted by this section are in addition to the
4571 bonds referenced in s. 400.179(5)(d). If the provider is a
4572 corporation, partnership, association, or other entity, the
4573 agency may require the provider to submit information concerning
4574 the background of that entity and of any principal of the
4575 entity, including any partner or shareholder having an ownership

4576 interest in the entity equal to 5 percent or greater, and any
4577 treating provider who participates in or intends to participate
4578 in Medicaid through the entity. The information must include:
4579 (a) Proof of holding a valid license or operating
4580 certificate, as applicable, if required by the state or local
4581 jurisdiction in which the provider is located or if required by
4582 the Federal Government.
4583 (b) Information concerning any prior violation, fine,
4584 suspension, termination, or other administrative action taken
4585 under the Medicaid laws, rules, or regulations of this state or
4586 of any other state or the Federal Government; any prior
4587 violation of the laws, rules, or regulations relating to the
4588 Medicare program; any prior violation of the rules or
4589 regulations of any other public or private insurer; and any
4590 prior violation of the laws, rules, or regulations of any
4591 regulatory body of this or any other state.
4592 (c) Full and accurate disclosure of any financial or
4593 ownership interest that the provider, or any principal, partner,
4594 or major shareholder thereof, may hold in any other Medicaid
4595 provider or health care related entity or any other entity that
4596 is licensed by the state to provide health or residential care
4597 and treatment to persons.
4598 (d) If a group provider, identification of all members of
4599 the group and attestation that all members of the group are
4600 enrolled in or have applied to enroll in the Medicaid program.
4601 (8)(a) Each provider, or each principal of the provider if
4602 the provider is a corporation, partnership, association, or
4603 other entity, seeking to participate in the Medicaid program
4604 must submit a complete set of his or her fingerprints to the
4605 agency for the purpose of conducting a criminal history record
4606 check. Principals of the provider include any officer,

4607 director, billing agent, managing employee, or affiliated
4608 person, or any partner or shareholder who has an ownership
4609 interest equal to 5 percent or more in the provider. However, a
4610 director of a not-for-profit corporation or organization is not
4611 a principal for purposes of a background investigation as
4612 required by this section if the director: serves solely in a
4613 voluntary capacity for the corporation or organization, does not
4614 regularly take part in the day-to-day operational decisions of
4615 the corporation or organization, receives no remuneration from
4616 the not-for-profit corporation or organization for his or her
4617 service on the board of directors, has no financial interest in
4618 the not-for-profit corporation or organization, and has no
4619 family members with a financial interest in the not-for-profit
4620 corporation or organization; and if the director submits an
4621 affidavit, under penalty of perjury, to this effect to the
4622 agency and the not-for-profit corporation or organization
4623 submits an affidavit, under penalty of perjury, to this effect
4624 to the agency as part of the corporation's or organization's
4625 Medicaid provider agreement application. Notwithstanding the
4626 above, the agency may require a background check for any person
4627 reasonably suspected by the agency to have been convicted of a
4628 crime. This subsection shall not apply to:
4629 1. A hospital licensed under chapter 395;
4630 2. A nursing home licensed under chapter 400;
4631 3. A hospice licensed under chapter 400;
4632 4. An assisted living facility licensed under chapter 429;
4633 ~~400.~~
4634 5. A unit of local government, except that requirements of
4635 this subsection apply to nongovernmental providers and entities
4636 when contracting with the local government to provide Medicaid
4637 services. The actual cost of the state and national criminal

4638 history record checks must be borne by the nongovernmental
4639 provider or entity; or
4640 6. Any business that derives more than 50 percent of its
4641 revenue from the sale of goods to the final consumer, and the
4642 business or its controlling parent either is required to file a
4643 form 10-K or other similar statement with the Securities and
4644 Exchange Commission or has a net worth of $50 million or more.
4645 Section 90. Paragraph (c) of subsection (5) of section
4646 409.912, Florida Statutes, is amended to read:
4647 409.912 Cost-effective purchasing of health care.--The
4648 agency shall purchase goods and services for Medicaid recipients
4649 in the most cost-effective manner consistent with the delivery
4650 of quality medical care. To ensure that medical services are
4651 effectively utilized, the agency may, in any case, require a
4652 confirmation or second physician's opinion of the correct
4653 diagnosis for purposes of authorizing future services under the
4654 Medicaid program. This section does not restrict access to
4655 emergency services or poststabilization care services as defined
4656 in 42 C.F.R. part 438.114. Such confirmation or second opinion
4657 shall be rendered in a manner approved by the agency. The agency
4658 shall maximize the use of prepaid per capita and prepaid
4659 aggregate fixed-sum basis services when appropriate and other
4660 alternative service delivery and reimbursement methodologies,
4661 including competitive bidding pursuant to s. 287.057, designed
4662 to facilitate the cost-effective purchase of a case-managed
4663 continuum of care. The agency shall also require providers to
4664 minimize the exposure of recipients to the need for acute
4665 inpatient, custodial, and other institutional care and the
4666 inappropriate or unnecessary use of high-cost services. The
4667 agency shall contract with a vendor to monitor and evaluate the
4668 clinical practice patterns of providers in order to identify

4669 trends that are outside the normal practice patterns of a
4670 provider's professional peers or the national guidelines of a
4671 provider's professional association. The vendor must be able to
4672 provide information and counseling to a provider whose practice
4673 patterns are outside the norms, in consultation with the agency,
4674 to improve patient care and reduce inappropriate utilization.
4675 The agency may mandate prior authorization, drug therapy
4676 management, or disease management participation for certain
4677 populations of Medicaid beneficiaries, certain drug classes, or
4678 particular drugs to prevent fraud, abuse, overuse, and possible
4679 dangerous drug interactions. The Pharmaceutical and Therapeutics
4680 Committee shall make recommendations to the agency on drugs for
4681 which prior authorization is required. The agency shall inform
4682 the Pharmaceutical and Therapeutics Committee of its decisions
4683 regarding drugs subject to prior authorization. The agency is
4684 authorized to limit the entities it contracts with or enrolls as
4685 Medicaid providers by developing a provider network through
4686 provider credentialing. The agency may competitively bid single-
4687 source-provider contracts if procurement of goods or services
4688 results in demonstrated cost savings to the state without
4689 limiting access to care. The agency may limit its network based
4690 on the assessment of beneficiary access to care, provider
4691 availability, provider quality standards, time and distance
4692 standards for access to care, the cultural competence of the
4693 provider network, demographic characteristics of Medicaid
4694 beneficiaries, practice and provider-to-beneficiary standards,
4695 appointment wait times, beneficiary use of services, provider
4696 turnover, provider profiling, provider licensure history,
4697 previous program integrity investigations and findings, peer
4698 review, provider Medicaid policy and billing compliance records,
4699 clinical and medical record audits, and other factors. Providers

4700 shall not be entitled to enrollment in the Medicaid provider
4701 network. The agency shall determine instances in which allowing
4702 Medicaid beneficiaries to purchase durable medical equipment and
4703 other goods is less expensive to the Medicaid program than long-
4704 term rental of the equipment or goods. The agency may establish
4705 rules to facilitate purchases in lieu of long-term rentals in
4706 order to protect against fraud and abuse in the Medicaid program
4707 as defined in s. 409.913. The agency may seek federal waivers
4708 necessary to administer these policies.
4709 (5) By December 1, 2005, the Agency for Health Care
4710 Administration, in partnership with the Department of Elderly
4711 Affairs, shall create an integrated, fixed-payment delivery
4712 system for Medicaid recipients who are 60 years of age or older.
4713 The Agency for Health Care Administration shall implement the
4714 integrated system initially on a pilot basis in two areas of the
4715 state. In one of the areas enrollment shall be on a voluntary
4716 basis. The program must transfer all Medicaid services for
4717 eligible elderly individuals who choose to participate into an
4718 integrated-care management model designed to serve Medicaid
4719 recipients in the community. The program must combine all
4720 funding for Medicaid services provided to individuals 60 years
4721 of age or older into the integrated system, including funds for
4722 Medicaid home and community-based waiver services; all Medicaid
4723 services authorized in ss. 409.905 and 409.906, excluding funds
4724 for Medicaid nursing home services unless the agency is able to
4725 demonstrate how the integration of the funds will improve
4726 coordinated care for these services in a less costly manner; and
4727 Medicare coinsurance and deductibles for persons dually eligible
4728 for Medicaid and Medicare as prescribed in s. 409.908(13).
4729 (c) The agency must ensure that the capitation-rate-
4730 setting methodology for the integrated system is actuarially

4731 sound and reflects the intent to provide quality care in the
4732 least restrictive setting. The agency must also require
4733 integrated-system providers to develop a credentialing system
4734 for service providers and to contract with all Gold Seal nursing
4735 homes, where feasible, and exclude, where feasible, chronically
4736 poor-performing facilities and providers as defined by the
4737 agency. The integrated system must provide that if the recipient
4738 resides in a noncontracted residential facility licensed under
4739 chapter 400 or chapter 429 at the time the integrated system is
4740 initiated, the recipient must be permitted to continue to reside
4741 in the noncontracted facility as long as the recipient desires.
4742 The integrated system must also provide that, in the absence of
4743 a contract between the integrated-system provider and the
4744 residential facility licensed under chapter 400 or chapter 429,
4745 current Medicaid rates must prevail. The agency and the
4746 Department of Elderly Affairs must jointly develop procedures to
4747 manage the services provided through the integrated system in
4748 order to ensure quality and recipient choice.
4749 Section 91. Section 410.031, Florida Statutes, is amended
4750 to read:
4751 410.031 Legislative intent.--It is the intent of the
4752 Legislature to encourage the provision of care for disabled
4753 adults in family-type living arrangements in private homes as an
4754 alternative to institutional or nursing home care for such
4755 persons. The provisions of ss. 410.031-410.036 are intended to
4756 be supplemental to the provisions of chapters ~~chapter~~ 400 and
4757 429, relating to the licensing and regulation of nursing homes
4758 and assisted living facilities, and do not exempt any person who
4759 is otherwise subject to regulation under chapter 400 or chapter
4760 429.

4761 Section 92. Section 410.034, Florida Statutes, is amended
4762 to read:
4763 410.034 Department determination of fitness to provide
4764 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
4765 caring for an adult who is related to such person by blood or
4766 marriage is not subject to the Assisted Living Facilities Act.
4767 If, however, the person who plans to provide home care under
4768 this act is found by the department to be unable to provide this
4769 care, the department shall notify the person wishing to provide
4770 home care of this determination, and the person shall not be
4771 eligible for subsidy payments under ss. 410.031-410.036.
4772 Section 93. Section 415.1111, Florida Statutes, is amended
4773 to read:
4774 415.1111 Civil actions.--A vulnerable adult who has been
4775 abused, neglected, or exploited as specified in this chapter has
4776 a cause of action against any perpetrator and may recover actual
4777 and punitive damages for such abuse, neglect, or exploitation.
4778 The action may be brought by the vulnerable adult, or that
4779 person's guardian, by a person or organization acting on behalf
4780 of the vulnerable adult with the consent of that person or that
4781 person's guardian, or by the personal representative of the
4782 estate of a deceased victim without regard to whether the cause
4783 of death resulted from the abuse, neglect, or exploitation. The
4784 action may be brought in any court of competent jurisdiction to
4785 enforce such action and to recover actual and punitive damages
4786 for any deprivation of or infringement on the rights of a
4787 vulnerable adult. A party who prevails in any such action may be
4788 entitled to recover reasonable attorney's fees, costs of the
4789 action, and damages. The remedies provided in this section are
4790 in addition to and cumulative with other legal and
4791 administrative remedies available to a vulnerable adult.

4792 Notwithstanding the foregoing, any civil action for damages
4793 against any licensee or entity who establishes, controls,
4794 conducts, manages, or operates a facility licensed under part II
4795 of chapter 400 relating to its operation of the licensed
4796 facility shall be brought pursuant to s. 400.023, or against any
4797 licensee or entity who establishes, controls, conducts, manages,
4798 or operates a facility licensed under part I ~~III~~ of chapter 429
4799 ~~400~~ relating to its operation of the licensed facility shall be
4800 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
4801 entity shall not be vicariously liable for the acts or omissions
4802 of its employees or agents or any other third party in an action
4803 brought under this section.
4804 Section 94. Paragraph (d) of subsection (1) of section
4805 419.001, Florida Statutes, is amended to read:
4806 419.001 Site selection of community residential homes.--
4807 (1) For the purposes of this section, the following
4808 definitions shall apply:
4809 (d) "Resident" means any of the following: a frail elder
4810 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
4811 handicapped person as defined in s. 760.22(7)(a); a
4812 developmentally disabled person as defined in s. 393.063; a
4813 nondangerous mentally ill person as defined in s. 394.455(18);
4814 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
4815 s. 985.03(8).
4816 Section 95. Section 430.601, Florida Statutes, is amended
4817 to read:
4818 430.601 Home care for the elderly; legislative intent.--It
4819 is the intent of the Legislature to encourage the provision of
4820 care for the elderly in family-type living arrangements in
4821 private homes as an alternative to institutional or nursing home
4822 care for such persons. The provisions of ss. 430.601-430.606 are

4823 intended to be supplemental to the provisions of chapters
4824 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
4825 nursing homes and assisted living facilities, and do not exempt
4826 any person who is otherwise subject to regulation under those
4827 chapters ~~the provisions of that chapter~~.
4828 Section 96. Subsection (7) of section 430.703, Florida
4829 Statutes, is amended to read:
4830 430.703 Definitions.--As used in this act, the term:
4831 (7) "Other qualified provider" means an entity licensed
4832 under chapter 400 or chapter 429 that demonstrates a long-term
4833 care continuum and meets all requirements pursuant to an
4834 interagency agreement between the agency and the department.
4835 Section 97. Paragraph (a) of subsection (3) of section
4836 435.03, Florida Statutes, is amended to read:
4837 435.03 Level 1 screening standards.--
4838 (3) Standards must also ensure that the person:
4839 (a) For employees and employers licensed or registered
4840 pursuant to chapter 400 or chapter 429, and for employees and
4841 employers of developmental services institutions as defined in
4842 s. 393.063, intermediate care facilities for the developmentally
4843 disabled as defined in s. 393.063, and mental health treatment
4844 facilities as defined in s. 394.455, meets the requirements of
4845 this chapter.
4846 Section 98. Paragraph (a) of subsection (4) of section
4847 435.04, Florida Statutes, is amended to read:
4848 435.04 Level 2 screening standards.--
4849 (4) Standards must also ensure that the person:
4850 (a) For employees or employers licensed or registered
4851 pursuant to chapter 400 or chapter 429, does not have a
4852 confirmed report of abuse, neglect, or exploitation as defined

4853 in s. 415.102(6), which has been uncontested or upheld under s.
4854 415.103.
4855 Section 99. Paragraph (g) of subsection (1) of section
4856 440.13, Florida Statutes, is amended to read:
4857 440.13 Medical services and supplies; penalty for
4858 violations; limitations.--
4859 (1) DEFINITIONS.--As used in this section, the term:
4860 (g) "Health care facility" means any hospital licensed
4861 under chapter 395 and any health care institution licensed under
4862 chapter 400 or chapter 429.
4863 Section 100. Subsection (1) of section 465.0235, Florida
4864 Statutes, is amended to read:
4865 465.0235 Automated pharmacy systems used by long-term care
4866 facilities, hospices, or state correctional institutions.--
4867 (1) A pharmacy may provide pharmacy services to a long-
4868 term care facility or hospice licensed under chapter 400 or
4869 chapter 429 or a state correctional institution operated under
4870 chapter 944 through the use of an automated pharmacy system that
4871 need not be located at the same location as the pharmacy.
4872 Section 101. Subsection (8) of section 468.1685, Florida
4873 Statutes, is amended to read:
4874 468.1685 Powers and duties of board and department.--It is
4875 the function and duty of the board, together with the
4876 department, to:
4877 (8) Set up procedures by rule for advising and acting
4878 together with the Department of Health and other boards of other
4879 health professions in matters affecting procedures and methods
4880 for effectively enforcing the purpose of this part and the
4881 administration of chapters ~~chapter~~ 400 and 429.
4882 Section 102. Paragraph (k) of subsection (1) of section
4883 468.505, Florida Statutes, is amended to read:

4884 468.505 Exemptions; exceptions.--
4885 (1) Nothing in this part may be construed as prohibiting
4886 or restricting the practice, services, or activities of:
4887 (k) A person employed by a hospital licensed under chapter
4888 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
4889 under part II ~~or part III~~ of chapter 400, by an assisted living
4890 facility licensed under chapter 429, or by a continuing care
4891 facility certified under chapter 651, if the person is employed
4892 in compliance with the laws and rules adopted thereunder
4893 regarding the operation of its dietetic department.
4894 Section 103. Subsection (11) of section 477.025, Florida
4895 Statutes, is amended to read:
4896 477.025 Cosmetology salons; specialty salons; requisites;
4897 licensure; inspection; mobile cosmetology salons.--
4898 (11) Facilities licensed under part II ~~or part III~~ of
4899 chapter 400 or part I of chapter 429 are ~~shall be~~ exempt from
4900 ~~the provisions of~~ this section, and a cosmetologist licensed
4901 pursuant to s. 477.019 may provide salon services exclusively
4902 for facility residents.
4903 Section 104. Subsection (5) of section 483.285, Florida
4904 Statutes, is amended to read:
4905 483.285 Application of part; exemptions.--This part
4906 applies to all multiphasic health testing centers within the
4907 state, but does not apply to:
4908 (5) A home health agency licensed under part III ~~IV~~ of
4909 chapter 400.
4910 Section 105. Paragraph (a) of subsection (2) of section
4911 509.032, Florida Statutes, is amended to read:
4912 509.032 Duties.--
4913 (2) INSPECTION OF PREMISES.--

4914 (a) The division has responsibility and jurisdiction for
4915 all inspections required by this chapter. The division has
4916 responsibility for quality assurance. Each licensed
4917 establishment shall be inspected at least biannually, except for
4918 transient and nontransient apartments, which shall be inspected
4919 at least annually, and shall be inspected at such other times as
4920 the division determines is necessary to ensure the public's
4921 health, safety, and welfare. The division shall establish a
4922 system to determine inspection frequency. Public lodging units
4923 classified as resort condominiums or resort dwellings are not
4924 subject to this requirement, but shall be made available to the
4925 division upon request. If, during the inspection of a public
4926 lodging establishment classified for renting to transient or
4927 nontransient tenants, an inspector identifies vulnerable adults
4928 who appear to be victims of neglect, as defined in s. 415.102,
4929 or, in the case of a building that is not equipped with
4930 automatic sprinkler systems, tenants or clients who may be
4931 unable to self-preserve in an emergency, the division shall
4932 convene meetings with the following agencies as appropriate to
4933 the individual situation: the Department of Health, the
4934 Department of Elderly Affairs, the area agency on aging, the
4935 local fire marshal, the landlord and affected tenants and
4936 clients, and other relevant organizations, to develop a plan
4937 which improves the prospects for safety of affected residents
4938 and, if necessary, identifies alternative living arrangements
4939 such as facilities licensed under part II ~~or part III~~ of chapter
4940 400 <u>or under chapter 429</u>.
4941 Section 106. Subsection (1) of section 509.241, Florida
4942 Statutes, is amended to read:
4943 509.241 Licenses required; exceptions.--

4944 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
4945 establishment and public food service establishment shall obtain
4946 a license from the division. Such license may not be transferred
4947 from one place or individual to another. It shall be a
4948 misdemeanor of the second degree, punishable as provided in s.
4949 775.082 or s. 775.083, for such an establishment to operate
4950 without a license. Local law enforcement shall provide immediate
4951 assistance in pursuing an illegally operating establishment. The
4952 division may refuse a license, or a renewal thereof, to any
4953 establishment that is not constructed and maintained in
4954 accordance with law and with the rules of the division. The
4955 division may refuse to issue a license, or a renewal thereof, to
4956 any establishment an operator of which, within the preceding 5
4957 years, has been adjudicated guilty of, or has forfeited a bond
4958 when charged with, any crime reflecting on professional
4959 character, including soliciting for prostitution, pandering,
4960 letting premises for prostitution, keeping a disorderly place,
4961 or illegally dealing in controlled substances as defined in
4962 chapter 893, whether in this state or in any other jurisdiction
4963 within the United States, or has had a license denied, revoked,
4964 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
4965 renewed annually, and the division shall adopt a rule
4966 establishing a staggered schedule for license renewals. If any
4967 license expires while administrative charges are pending against
4968 the license, the proceedings against the license shall continue
4969 to conclusion as if the license were still in effect.
4970 Section 107. Subsection (1) of section 627.6617, Florida
4971 Statutes, is amended to read:
4972 627.6617 Coverage for home health care services.--
4973 (1) Any group health insurance policy providing coverage
4974 on an expense-incurred basis shall provide coverage for home

4975 health care by a home health care agency licensed pursuant to
4976 part III ~~IV~~ of chapter 400. Such coverage may be limited to home
4977 health care under a plan of treatment prescribed by a licensed
4978 physician. Services may be performed by a registered graduate
4979 nurse, a licensed practical nurse, a physical therapist, a
4980 speech therapist, an occupational therapist, or a home health
4981 aide. Provisions for utilization review may be imposed, provided
4982 that similar provisions apply to all other types of health care
4983 services.
4984 Section 108. Subsection (1) of section 627.732, Florida
4985 Statutes, is amended to read:
4986 627.732 Definitions.--As used in ss. 627.730-627.7405, the
4987 term:
4988 (1) "Broker" means any person not possessing a license
4989 under chapter 395, chapter 400, chapter 429, chapter 458,
4990 chapter 459, chapter 460, chapter 461, or chapter 641 who
4991 charges or receives compensation for any use of medical
4992 equipment and is not the 100-percent owner or the 100-percent
4993 lessee of such equipment. For purposes of this section, such
4994 owner or lessee may be an individual, a corporation, a
4995 partnership, or any other entity and any of its 100-percent-
4996 owned affiliates and subsidiaries. For purposes of this
4997 subsection, the term "lessee" means a long-term lessee under a
4998 capital or operating lease, but does not include a part-time
4999 lessee. The term "broker" does not include a hospital or
5000 physician management company whose medical equipment is
5001 ancillary to the practices managed, a debt collection agency, or
5002 an entity that has contracted with the insurer to obtain a
5003 discounted rate for such services; nor does the term include a
5004 management company that has contracted to provide general
5005 management services for a licensed physician or health care

5006 facility and whose compensation is not materially affected by
5007 the usage or frequency of usage of medical equipment or an
5008 entity that is 100-percent owned by one or more hospitals or
5009 physicians. The term "broker" does not include a person or
5010 entity that certifies, upon request of an insurer, that:
5011 (a) It is a clinic licensed under ss. 400.990-400.995;
5012 (b) It is a 100-percent owner of medical equipment; and
5013 (c) The owner's only part-time lease of medical equipment
5014 for personal injury protection patients is on a temporary basis
5015 not to exceed 30 days in a 12-month period, and such lease is
5016 solely for the purposes of necessary repair or maintenance of
5017 the 100-percent-owned medical equipment or pending the arrival
5018 and installation of the newly purchased or a replacement for the
5019 100-percent-owned medical equipment, or for patients for whom,
5020 because of physical size or claustrophobia, it is determined by
5021 the medical director or clinical director to be medically
5022 necessary that the test be performed in medical equipment that
5023 is open-style. The leased medical equipment cannot be used by
5024 patients who are not patients of the registered clinic for
5025 medical treatment of services. Any person or entity making a
5026 false certification under this subsection commits insurance
5027 fraud as defined in s. 817.234. However, the 30-day period
5028 provided in this paragraph may be extended for an additional 60
5029 days as applicable to magnetic resonance imaging equipment if
5030 the owner certifies that the extension otherwise complies with
5031 this paragraph.
5032 Section 109. Subsection (2) of section 651.011, Florida
5033 Statutes, is amended to read:
5034 651.011 Definitions.--For the purposes of this chapter,
5035 the term:

5036 (2) "Continuing care" or "care" means furnishing pursuant
5037 to a contract shelter and either nursing care or personal
5038 services as defined in s. 429.02 ~~s. 400.402~~, whether such
5039 nursing care or personal services are provided in the facility
5040 or in another setting designated by the contract for continuing
5041 care, to an individual not related by consanguinity or affinity
5042 to the provider furnishing such care, upon payment of an
5043 entrance fee. Other personal services provided shall be
5044 designated in the continuing care contract. Contracts to provide
5045 continuing care include agreements to provide care for any
5046 duration, including contracts that are terminable by either
5047 party.
5048 Section 110. Paragraph (c) of subsection (2) of section
5049 651.022, Florida Statutes, is amended to read:
5050 651.022 Provisional certificate of authority;
5051 application.--
5052 (2) The application for a provisional certificate of
5053 authority shall be on a form prescribed by the commission and
5054 shall contain the following information:
5055 (c)1. Evidence that the applicant is reputable and of
5056 responsible character. If the applicant is a firm, association,
5057 organization, partnership, business trust, corporation, or
5058 company, the form shall require evidence that the members or
5059 shareholders are reputable and of responsible character, and the
5060 person in charge of providing care under a certificate of
5061 authority shall likewise be required to produce evidence of
5062 being reputable and of responsible character.
5063 2. Evidence satisfactory to the office of the ability of
5064 the applicant to comply with the provisions of this chapter and
5065 with rules adopted by the commission pursuant to this chapter.

5066 3. A statement of whether a person identified in the
5067 application for a provisional certificate of authority or the
5068 administrator or manager of the facility, if such person has
5069 been designated, or any such person living in the same location:
5070 a. Has been convicted of a felony or has pleaded nolo
5071 contendere to a felony charge, or has been held liable or has
5072 been enjoined in a civil action by final judgment, if the felony
5073 or civil action involved fraud, embezzlement, fraudulent
5074 conversion, or misappropriation of property.
5075 b. Is subject to a currently effective injunctive or
5076 restrictive order or federal or state administrative order
5077 relating to business activity or health care as a result of an
5078 action brought by a public agency or department, including,
5079 without limitation, an action affecting a license under chapter
5080 400 <u>or chapter 429</u>.
5081
5082 The statement shall set forth the court or agency, the date of
5083 conviction or judgment, and the penalty imposed or damages
5084 assessed, or the date, nature, and issuer of the order. Before
5085 determining whether a provisional certificate of authority is to
5086 be issued, the office may make an inquiry to determine the
5087 accuracy of the information submitted pursuant to subparagraphs
5088 1. and 2.
5089 Section 111. Subsection (6) of section 651.023, Florida
5090 Statutes, is amended to read:
5091 651.023 Certificate of authority; application.--
5092 (6) The timeframes provided under s. 651.022(5) and (6)
5093 apply to applications submitted under s. 651.021(2). The office
5094 may not issue a certificate of authority under this chapter to
5095 any facility which does not have a component which is to be
5096 licensed pursuant to part II ~~or part III~~ of chapter 400 or <u>part</u>

5097 I of chapter 429 or which will not offer personal services or
5098 nursing services through written contractual agreement. Any
5099 written contractual agreement must be disclosed in the
5100 continuing care contract and is subject to the provisions of s.
5101 651.1151, relating to administrative, vendor, and management
5102 contracts.
5103 Section 112. Subsection (8) of section 651.055, Florida
5104 Statutes, is amended to read:
5105 651.055 Contracts; right to rescind.--
5106 (8) The provisions of this section shall control over any
5107 conflicting provisions contained in part II ~~or part III~~ of
5108 chapter 400 or in part I of chapter 429.
5109 Section 113. Subsection (5) of section 651.095, Florida
5110 Statutes, is amended to read:
5111 651.095 Advertisements; requirements; penalties.--
5112 (5) The provisions of this section shall control over any
5113 conflicting provisions contained in part II ~~or part III~~ of
5114 chapter 400 or in part I of chapter 429.
5115 Section 114. Subsections (1), (4), (6), (7), and (8) of
5116 section 651.118, Florida Statutes, are amended to read:
5117 651.118 Agency for Health Care Administration;
5118 certificates of need; sheltered beds; community beds.--
5119 (1) The provisions of this section shall control in the
5120 case of conflict with the provisions of the Health Facility and
5121 Services Development Act, ss. 408.031-408.045; the provisions of
5122 chapter 395; ~~or~~ the provisions of part II ~~parts II and III~~ of
5123 chapter 400; or the provisions of part I of chapter 429.
5124 (4) The Agency for Health Care Administration shall
5125 approve one sheltered nursing home bed for every four proposed
5126 residential units, including those that are licensed under part
5127 I of chapter 429 ~~part III of chapter 400~~, in the continuing care

5128 facility unless the provider demonstrates the need for a lesser
5129 number of sheltered nursing home beds based on proposed
5130 utilization by prospective residents or demonstrates the need
5131 for additional sheltered nursing home beds based on actual
5132 utilization and demand by current residents.
5133 (6) Unless the provider already has a component that is to
5134 be a part of the continuing care facility and that is licensed
5135 under chapter 395, ~~or~~ part II ~~or part III~~ of chapter 400, or
5136 part I of chapter 429 at the time of construction of the
5137 continuing care facility, the provider must construct the
5138 nonnursing home portion of the facility and the nursing home
5139 portion of the facility at the same time. If a provider
5140 constructs less than the number of residential units approved in
5141 the certificate of authority, the number of licensed sheltered
5142 nursing home beds shall be reduced by a proportionate share.
5143 (7) Notwithstanding the provisions of subsection (2), at
5144 the discretion of the continuing care provider, sheltered
5145 nursing home beds may be used for persons who are not residents
5146 of the continuing care facility and who are not parties to a
5147 continuing care contract for a period of up to 5 years after the
5148 date of issuance of the initial nursing home license. A provider
5149 whose 5-year period has expired or is expiring may request the
5150 Agency for Health Care Administration for an extension, not to
5151 exceed 30 percent of the total sheltered nursing home beds, if
5152 the utilization by residents of the nursing home facility in the
5153 sheltered beds will not generate sufficient income to cover
5154 nursing home facility expenses, as evidenced by one of the
5155 following:
5156 (a) The nursing home facility has a net loss for the most
5157 recent fiscal year as determined under generally accepted
5158 accounting principles, excluding the effects of extraordinary or

5159 unusual items, as demonstrated in the most recently audited
5160 financial statement; or
5161 (b) The nursing home facility would have had a pro forma
5162 loss for the most recent fiscal year, excluding the effects of
5163 extraordinary or unusual items, if revenues were reduced by the
5164 amount of revenues from persons in sheltered beds who were not
5165 residents, as reported on by a certified public accountant.
5166
5167 The agency shall be authorized to grant an extension to the
5168 provider based on the evidence required in this subsection. The
5169 agency may request a continuing care facility to use up to 25
5170 percent of the patient days generated by new admissions of
5171 nonresidents during the extension period to serve Medicaid
5172 recipients for those beds authorized for extended use if there
5173 is a demonstrated need in the respective service area and if
5174 funds are available. A provider who obtains an extension is
5175 prohibited from applying for additional sheltered beds under the
5176 provision of subsection (2), unless additional residential units
5177 are built or the provider can demonstrate need by continuing
5178 care facility residents to the Agency for Health Care
5179 Administration. The 5-year limit does not apply to up to five
5180 sheltered beds designated for inpatient hospice care as part of
5181 a contractual arrangement with a hospice licensed under part IV
5182 ~~VI~~ of chapter 400. A continuing care facility that uses such
5183 beds after the 5-year period shall report such use to the Agency
5184 for Health Care Administration. For purposes of this subsection,
5185 "resident" means a person who, upon admission to the continuing
5186 care facility, initially resides in a part of the continuing
5187 care facility not licensed under part II of chapter 400.
5188 (8) A provider may petition the Agency for Health Care
5189 Administration to use a designated number of sheltered nursing

5190 home beds to provide extended congregate care as defined in s.
5191 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
5192 nursing home which can be adapted to meet the requirements for
5193 extended congregate care. The provider may subsequently use such
5194 beds as sheltered beds after notifying the agency of the
5195 intended change. Any sheltered beds used to provide extended
5196 congregate care pursuant to this subsection may not qualify for
5197 funding under the Medicaid waiver. Any sheltered beds used to
5198 provide extended congregate care pursuant to this subsection may
5199 share common areas, services, and staff with beds designated for
5200 nursing home care, provided that all of the beds are under
5201 common ownership. For the purposes of this subsection, fire and
5202 life safety codes applicable to nursing home facilities shall
5203 apply.
5204 Section 115. Subsection (2) of section 765.1103, Florida
5205 Statutes, is amended to read:
5206 765.1103 Pain management and palliative care.--
5207 (2) Health care providers and practitioners regulated
5208 under chapter 458, chapter 459, or chapter 464 must, as
5209 appropriate, comply with a request for pain management or
5210 palliative care from a patient under their care or, for an
5211 incapacitated patient under their care, from a surrogate, proxy,
5212 guardian, or other representative permitted to make health care
5213 decisions for the incapacitated patient. Facilities regulated
5214 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
5215 with the pain management or palliative care measures ordered by
5216 the patient's physician.
5217 Section 116. Subsection (2) of section 765.205, Florida
5218 Statutes, is amended to read:
5219 765.205 Responsibility of the surrogate.--

5220 (2) The surrogate may authorize the release of information
5221 and medical records to appropriate persons to ensure the
5222 continuity of the principal's health care and may authorize the
5223 admission, discharge, or transfer of the principal to or from a
5224 health care facility or other facility or program licensed under
5225 chapter 400 or chapter 429.
5226 Section 117. Subsection (1) of section 768.735, Florida
5227 Statutes, is amended to read:
5228 768.735 Punitive damages; exceptions; limitation.--
5229 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
5230 apply to any civil action based upon child abuse, abuse of the
5231 elderly under chapter 415, or abuse of the developmentally
5232 disabled. Such actions are governed by applicable statutes and
5233 controlling judicial precedent. This section does not apply to
5234 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.
5235 Section 118. Paragraph (h) of subsection (1) of section
5236 893.13, Florida Statutes, is amended to read:
5237 893.13 Prohibited acts; penalties.--
5238 (1)
5239 (h) Except as authorized by this chapter, it is unlawful
5240 for any person to sell, manufacture, or deliver, or possess with
5241 intent to sell, manufacture, or deliver, a controlled substance
5242 in, on, or within 1,000 feet of the real property comprising an
5243 assisted living facility, as that term is used in chapter 429
5244 ~~400~~. Any person who violates this paragraph with respect to:
5245 1. A controlled substance named or described in s.
5246 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
5247 commits a felony of the first degree, punishable as provided in
5248 s. 775.082, s. 775.083, or s. 775.084.
5249 2. A controlled substance named or described in s.
5250 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,

5251 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
5252 the second degree, punishable as provided in s. 775.082, s.
5253 775.083, or s. 775.084.
5254 Section 119. Paragraph (a) of subsection (4) of section
5255 943.0585, Florida Statutes, is amended to read:
5256 943.0585 Court-ordered expunction of criminal history
5257 records.--The courts of this state have jurisdiction over their
5258 own procedures, including the maintenance, expunction, and
5259 correction of judicial records containing criminal history
5260 information to the extent such procedures are not inconsistent
5261 with the conditions, responsibilities, and duties established by
5262 this section. Any court of competent jurisdiction may order a
5263 criminal justice agency to expunge the criminal history record
5264 of a minor or an adult who complies with the requirements of
5265 this section. The court shall not order a criminal justice
5266 agency to expunge a criminal history record until the person
5267 seeking to expunge a criminal history record has applied for and
5268 received a certificate of eligibility for expunction pursuant to
5269 subsection (2). A criminal history record that relates to a
5270 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5271 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5272 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5273 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5274 expunged, without regard to whether adjudication was withheld,
5275 if the defendant was found guilty of or pled guilty or nolo
5276 contendere to the offense, or if the defendant, as a minor, was
5277 found to have committed, or pled guilty or nolo contendere to
5278 committing, the offense as a delinquent act. The court may only
5279 order expunction of a criminal history record pertaining to one
5280 arrest or one incident of alleged criminal activity, except as
5281 provided in this section. The court may, at its sole discretion,

5282 order the expunction of a criminal history record pertaining to
5283 more than one arrest if the additional arrests directly relate
5284 to the original arrest. If the court intends to order the
5285 expunction of records pertaining to such additional arrests,
5286 such intent must be specified in the order. A criminal justice
5287 agency may not expunge any record pertaining to such additional
5288 arrests if the order to expunge does not articulate the
5289 intention of the court to expunge a record pertaining to more
5290 than one arrest. This section does not prevent the court from
5291 ordering the expunction of only a portion of a criminal history
5292 record pertaining to one arrest or one incident of alleged
5293 criminal activity. Notwithstanding any law to the contrary, a
5294 criminal justice agency may comply with laws, court orders, and
5295 official requests of other jurisdictions relating to expunction,
5296 correction, or confidential handling of criminal history records
5297 or information derived therefrom. This section does not confer
5298 any right to the expunction of any criminal history record, and
5299 any request for expunction of a criminal history record may be
5300 denied at the sole discretion of the court.
5301 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5302 criminal history record of a minor or an adult which is ordered
5303 expunged by a court of competent jurisdiction pursuant to this
5304 section must be physically destroyed or obliterated by any
5305 criminal justice agency having custody of such record; except
5306 that any criminal history record in the custody of the
5307 department must be retained in all cases. A criminal history
5308 record ordered expunged that is retained by the department is
5309 confidential and exempt from the provisions of s. 119.07(1) and
5310 s. 24(a), Art. I of the State Constitution and not available to
5311 any person or entity except upon order of a court of competent

5312 jurisdiction. A criminal justice agency may retain a notation
5313 indicating compliance with an order to expunge.
5314 (a) The person who is the subject of a criminal history
5315 record that is expunged under this section or under other
5316 provisions of law, including former s. 893.14, former s. 901.33,
5317 and former s. 943.058, may lawfully deny or fail to acknowledge
5318 the arrests covered by the expunged record, except when the
5319 subject of the record:
5320 1. Is a candidate for employment with a criminal justice
5321 agency;
5322 2. Is a defendant in a criminal prosecution;
5323 3. Concurrently or subsequently petitions for relief under
5324 this section or s. 943.059;
5325 4. Is a candidate for admission to The Florida Bar;
5326 5. Is seeking to be employed or licensed by or to contract
5327 with the Department of Children and Family Services or the
5328 Department of Juvenile Justice or to be employed or used by such
5329 contractor or licensee in a sensitive position having direct
5330 contact with children, the developmentally disabled, the aged,
5331 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5332 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5333 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5334 985.407, ~~or~~ chapter 400, or chapter 429; or
5335 6. Is seeking to be employed or licensed by the Department
5336 of Education, any district school board, any university
5337 laboratory school, any charter school, any private or parochial
5338 school, or any local governmental entity that licenses child
5339 care facilities.
5340 Section 120. Paragraph (a) of subsection (4) of section
5341 943.059, Florida Statutes, is amended to read:

5342 943.059 Court-ordered sealing of criminal history
5343 records.--The courts of this state shall continue to have
5344 jurisdiction over their own procedures, including the
5345 maintenance, sealing, and correction of judicial records
5346 containing criminal history information to the extent such
5347 procedures are not inconsistent with the conditions,
5348 responsibilities, and duties established by this section. Any
5349 court of competent jurisdiction may order a criminal justice
5350 agency to seal the criminal history record of a minor or an
5351 adult who complies with the requirements of this section. The
5352 court shall not order a criminal justice agency to seal a
5353 criminal history record until the person seeking to seal a
5354 criminal history record has applied for and received a
5355 certificate of eligibility for sealing pursuant to subsection
5356 (2). A criminal history record that relates to a violation of s.
5357 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5358 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5359 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5360 a violation enumerated in s. 907.041 may not be sealed, without
5361 regard to whether adjudication was withheld, if the defendant
5362 was found guilty of or pled guilty or nolo contendere to the
5363 offense, or if the defendant, as a minor, was found to have
5364 committed or pled guilty or nolo contendere to committing the
5365 offense as a delinquent act. The court may only order sealing of
5366 a criminal history record pertaining to one arrest or one
5367 incident of alleged criminal activity, except as provided in
5368 this section. The court may, at its sole discretion, order the
5369 sealing of a criminal history record pertaining to more than one
5370 arrest if the additional arrests directly relate to the original
5371 arrest. If the court intends to order the sealing of records
5372 pertaining to such additional arrests, such intent must be

5373 specified in the order. A criminal justice agency may not seal
5374 any record pertaining to such additional arrests if the order to
5375 seal does not articulate the intention of the court to seal
5376 records pertaining to more than one arrest. This section does
5377 not prevent the court from ordering the sealing of only a
5378 portion of a criminal history record pertaining to one arrest or
5379 one incident of alleged criminal activity. Notwithstanding any
5380 law to the contrary, a criminal justice agency may comply with
5381 laws, court orders, and official requests of other jurisdictions
5382 relating to sealing, correction, or confidential handling of
5383 criminal history records or information derived therefrom. This
5384 section does not confer any right to the sealing of any criminal
5385 history record, and any request for sealing a criminal history
5386 record may be denied at the sole discretion of the court.
5387 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5388 history record of a minor or an adult which is ordered sealed by
5389 a court of competent jurisdiction pursuant to this section is
5390 confidential and exempt from the provisions of s. 119.07(1) and
5391 s. 24(a), Art. I of the State Constitution and is available only
5392 to the person who is the subject of the record, to the subject's
5393 attorney, to criminal justice agencies for their respective
5394 criminal justice purposes, or to those entities set forth in
5395 subparagraphs (a)1., 4., 5., and 6. for their respective
5396 licensing and employment purposes.
5397 (a) The subject of a criminal history record sealed under
5398 this section or under other provisions of law, including former
5399 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
5400 deny or fail to acknowledge the arrests covered by the sealed
5401 record, except when the subject of the record:
5402 1. Is a candidate for employment with a criminal justice
5403 agency;

5404 2. Is a defendant in a criminal prosecution;
5405 3. Concurrently or subsequently petitions for relief under
5406 this section or s. 943.0585;
5407 4. Is a candidate for admission to The Florida Bar;
5408 5. Is seeking to be employed or licensed by or to contract
5409 with the Department of Children and Family Services or the
5410 Department of Juvenile Justice or to be employed or used by such
5411 contractor or licensee in a sensitive position having direct
5412 contact with children, the developmentally disabled, the aged,
5413 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5414 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5415 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5416 (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or
5417 6. Is seeking to be employed or licensed by the Department
5418 of Education, any district school board, any university
5419 laboratory school, any charter school, any private or parochial
5420 school, or any local governmental entity that licenses child
5421 care facilities.
5422 Section 121. The Division of Statutory Revision of the
5423 Office of Legislative Services is requested to prepare a
5424 reviser's bill for introduction at a subsequent session of the
5425 Legislature to conform the Florida Statutes to changes made by
5426 this act.
5427 Section 122. This act shall take effect July 1, 2006.
5428
5429 ========== T I T L E A M E N D M E N T ==========
5430 Remove the entire title and insert:
5431 A bill to be entitled
5432 An act relating to assisted care communities; creating ch.
5433 429, F.S.; transferring pt. III of ch. 400, F.S., relating
5434 to assisted living facilities, to pt. I of ch. 429, F.S.;

5435 transferring pt. VII of ch. 400, F.S., relating to adult
5436 family-care homes, to pt. II of ch. 429, F.S.;
5437 transferring pt. V of ch. 400, F.S., relating to adult day
5438 care centers, to pt. III of ch. 429, F.S.; amending ss.
5439 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
5440 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
5441 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
5442 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
5443 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
5444 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
5445 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
5446 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428,
5447 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444,
5448 400.447, 400.452, 400.462, 400.464, 400.497, 400.552,
5449 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,
5450 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,
5451 400.9905, 401.23, 402.164, 408.032, 408.033, 408.034,
5452 408.07, 408.831, 409.212, 409.221, 409.905, 409.906,
5453 409.907, 409.912, 410.031, 410.034, 415.1111, 419.001,
5454 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235,
5455 468.1685, 468.505, 477.025, 483.285, 509.032, 509.241,
5456 627.6617, 627.732, 651.011, 651.022, 651.023, 651.055,
5457 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13,
5458 943.0585, and 943.059, F.S., to conform references to
5459 changes made by the act; requesting the Division of
5460 Statutory Revision to make necessary conforming changes to
5461 the Florida Statutes; providing an effective date.

1 A bill to be entitled
2 An act relating to assisted care communities; creating ch.
3 429, F.S.; transferring pt. III of ch. 400, F.S., relating
4 to assisted living facilities, to pt. I of ch. 429, F.S.;
5 transferring pt. VII of ch. 400, F.S., relating to adult
6 family-care homes, to pt. II of ch. 429, F.S.;
7 transferring pt. V of ch. 400, F.S., relating to adult day
8 care centers, to pt. III of ch. 429, F.S.; amending ss.
9 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031,
10 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506,
11 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073,
12 400.0077, 400.0239, 400.119, 400.141, 400.142, 400.191,
13 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408,
14 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174,
15 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422,
16 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428,
17 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444,
18 400.447, 400.452, 400.462, 400.464, 400.497, 400.552,
19 400.555, 400.556, 400.557, 400.5572, 400.601, 400.618,
20 400.6194, 400.621, 400.628, 400.93, 400.962, 400.980,
21 400.9905, 400.9935, 401.23, 402.164, 408.032, 408.033,
22 408.034, 408.07, 408.831, 409.212, 409.221, 409.905,
23 409.906, 409.907, 409.912, 410.031, 410.034, 413.20,
24 415.1111, 419.001, 430.601, 430.703, 435.03, 435.04,
25 440.13, 468.1685, 468.505, 477.025, 483.285, 509.032,
26 509.241, 627.6617, 627.732, 651.011, 651.022, 651.023,
27 651.055, 651.095, 651.118, 765.1103, 765.205, 768.735,
28 893.13, 943.0585, and 943.059, F.S., to conform references

29 to changes made by the act; requesting the Division of
30 Statutory Revision to make necessary conforming changes to
31 the Florida Statutes; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Chapter 429, Florida Statutes, is created, to
36 be entitled "Assisted Care Communities."
37 Section 2. Sections 400.401, 400.402, 400.404, 400.407,
38 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415,
39 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418,
40 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424,
41 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428,
42 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297,
43 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444,
44 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and
45 400.454, Florida Statutes, are renumbered as sections 429.01,
46 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11,
47 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177,
48 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22,
49 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275,
50 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297,
51 429.298, 429.31, 429.34, 429.35, 429.41, 429.42, 429.44,
52 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54,
53 Florida Statutes, respectively, designated as part I of chapter
54 429, Florida Statutes, and entitled "ASSISTED LIVING
55 FACILITIES."
56 Section 3. Sections 400.616, 400.617, 400.618, 400.619,

57 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625,
58 400.6255, 400.628, and 400.629, Florida Statutes, are renumbered
59 as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71,
60 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87,
61 Florida Statutes, respectively, designated as part II of chapter
62 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."
63 Section 4. Sections 400.55, 400.551, 400.552, 400.553,
64 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571,
65 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563,
66 and 400.564, Florida Statutes, are renumbered as sections
67 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911,
68 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925,
69 429.927, 429.929, 429.931, and 429.933, Florida Statutes,
70 designated as part III of chapter 429, Florida Statutes, and
71 entitled "ADULT DAY CARE CENTERS."
72 Section 5. Subsection (1) of section 101.655, Florida
73 Statutes, is amended to read:
74 101.655 Supervised voting by absent electors in certain
75 facilities.--
76 (1) The supervisor of elections of a county shall provide
77 supervised voting for absent electors residing in any assisted
78 living facility, as defined in s. 429.02 ~~s. 400.402~~, or nursing
79 home facility, as defined in s. 400.021, within that county at
80 the request of any administrator of such a facility. Such
81 request for supervised voting in the facility shall be made by
82 submitting a written request to the supervisor of elections no
83 later than 21 days prior to the election for which that request
84 is submitted. The request shall specify the name and address of

85 the facility and the name of the electors who wish to vote
86 absentee in that election. If the request contains the names of
87 fewer than five voters, the supervisor of elections is not
88 required to provide supervised voting.
89 Section 6. Subsection (9) of section 189.428, Florida
90 Statutes, is amended to read:
91 189.428 Special districts; oversight review process.--
92 (9) This section does not apply to a deepwater port listed
93 in s. 311.09(1) which is in compliance with a port master plan
94 adopted pursuant to s. 163.3178(2)(k), or to an airport
95 authority operating in compliance with an airport master plan
96 approved by the Federal Aviation Administration, or to any
97 special district organized to operate health systems and
98 facilities licensed under chapter 395, ~~or~~ chapter 400, or
99 chapter 429.
100 Section 7. Paragraph (b) of subsection (2) of section
101 196.1975, Florida Statutes, is amended to read:
102 196.1975 Exemption for property used by nonprofit homes
103 for the aged.--Nonprofit homes for the aged are exempt to the
104 extent that they meet the following criteria:
105 (2) A facility will not qualify as a "home for the aged"
106 unless at least 75 percent of the occupants are over the age of
107 62 years or totally and permanently disabled. For homes for the
108 aged which are exempt from paying income taxes to the United
109 States as specified in subsection (1), licensing by the Agency
110 for Health Care Administration is required for ad valorem tax
111 exemption hereunder only if the home:
112 (b) Qualifies as an assisted living facility under ~~part~~

113 ~~III of~~ chapter 429 ~~400~~.
114 Section 8. Paragraph (c) of subsection (4) of section
115 202.125, Florida Statutes, is amended to read:
116 202.125 Sales of communications services; specified
117 exemptions.--
118 (4) The sale of communications services to a home for the
119 aged, religious institution or educational institution that is
120 exempt from federal income tax under s. 501(c)(3) of the
121 Internal Revenue Code, or by a religious institution that is
122 exempt from federal income tax under s. 501(c)(3) of the
123 Internal Revenue Code having an established physical place for
124 worship at which nonprofit religious services and activities are
125 regularly conducted and carried on, is exempt from the taxes
126 imposed or administered pursuant to ss. 202.12 and 202.19. As
127 used in this subsection, the term:
128 (c) "Home for the aged" includes any nonprofit
129 corporation:
130 1. In which at least 75 percent of the occupants are 62
131 years of age or older or totally and permanently disabled; which
132 qualifies for an ad valorem property tax exemption under s.
133 196.196, s. 196.197, or s. 196.1975; and which is exempt from
134 the sales tax imposed under chapter 212.
135 2. Licensed as a nursing home under chapter 400 or an
136 assisted living facility under chapter 429 ~~400~~ and which is
137 exempt from the sales tax imposed under chapter 212.
138 Section 9. Section 205.1965, Florida Statutes, is amended
139 to read:
140 205.1965 Assisted living facilities.--A county or

141 municipality may not issue an occupational license for the
142 operation of an assisted living facility pursuant to ~~part III of~~
143 chapter 429 ~~400~~ without first ascertaining that the applicant
144 has been licensed by the Agency for Health Care Administration
145 to operate such facility at the specified location or locations.
146 The Agency for Health Care Administration shall furnish to
147 local agencies responsible for issuing occupational licenses
148 sufficient instructions for making the above required
149 determinations.
150 Section 10. Paragraph (b) of subsection (1) of section
151 212.031, Florida Statutes, is amended to read:
152 212.031 Tax on rental or license fee for use of real
153 property.--
154 (1)
155 (b) When a lease involves multiple use of real property
156 wherein a part of the real property is subject to the tax
157 herein, and a part of the property would be excluded from the
158 tax under subparagraph (a)1., subparagraph (a)2., subparagraph
159 (a)3., or subparagraph (a)5., the department shall determine,
160 from the lease or license and such other information as may be
161 available, that portion of the total rental charge which is
162 exempt from the tax imposed by this section. The portion of the
163 premises leased or rented by a for-profit entity providing a
164 residential facility for the aged will be exempt on the basis of
165 a pro rata portion calculated by combining the square footage of
166 the areas used for residential units by the aged and for the
167 care of such residents and dividing the resultant sum by the
168 total square footage of the rented premises. For purposes of

169 this section, the term "residential facility for the aged" means
170 a facility that is licensed or certified in whole or in part
171 under chapter 400, chapter 429, or chapter 651; or that provides
172 residences to the elderly and is financed by a mortgage or loan
173 made or insured by the United States Department of Housing and
174 Urban Development under s. 202, s. 202 with a s. 8 subsidy, s.
175 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act;
176 or other such similar facility that provides residences
177 primarily for the elderly.
178 Section 11. Paragraph (i) of subsection (7) of section
179 212.08, Florida Statutes, is amended to read:
180 212.08 Sales, rental, use, consumption, distribution, and
181 storage tax; specified exemptions.--The sale at retail, the
182 rental, the use, the consumption, the distribution, and the
183 storage to be used or consumed in this state of the following
184 are hereby specifically exempt from the tax imposed by this
185 chapter.
186 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
187 entity by this chapter do not inure to any transaction that is
188 otherwise taxable under this chapter when payment is made by a
189 representative or employee of the entity by any means,
190 including, but not limited to, cash, check, or credit card, even
191 when that representative or employee is subsequently reimbursed
192 by the entity. In addition, exemptions provided to any entity by
193 this subsection do not inure to any transaction that is
194 otherwise taxable under this chapter unless the entity has
195 obtained a sales tax exemption certificate from the department
196 or the entity obtains or provides other documentation as

197 required by the department. Eligible purchases or leases made
198 with such a certificate must be in strict compliance with this
199 subsection and departmental rules, and any person who makes an
200 exempt purchase with a certificate that is not in strict
201 compliance with this subsection and the rules is liable for and
202 shall pay the tax. The department may adopt rules to administer
203 this subsection.
204 (i) Hospital meals and rooms.--Also exempt from payment of
205 the tax imposed by this chapter on rentals and meals are
206 patients and inmates of any hospital or other physical plant or
207 facility designed and operated primarily for the care of persons
208 who are ill, aged, infirm, mentally or physically incapacitated,
209 or otherwise dependent on special care or attention. Residents
210 of a home for the aged are exempt from payment of taxes on meals
211 provided through the facility. A home for the aged is defined
212 as a facility that is licensed or certified in part or in whole
213 under chapter 400, chapter 429, or chapter 651, or that is
214 financed by a mortgage loan made or insured by the United States
215 Department of Housing and Urban Development under s. 202, s. 202
216 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of
217 the National Housing Act, or other such similar facility
218 designed and operated primarily for the care of the aged.
219 Section 12. Subsection (5) of section 296.02, Florida
220 Statutes, is amended to read:
221 296.02 Definitions.--For the purposes of this part, except
222 where the context clearly indicates otherwise:
223 (5) "Extended congregate care" has the meaning given to
224 that term under s. 429.02 ~~s. 400.402~~.

225 Section 13. Subsections (1) and (3) of section 381.0035,
226 Florida Statutes, are amended to read:
227 381.0035 Educational course on HIV and AIDS; employees and
228 clients of certain health care facilities.--
229 (1) The Department of Health shall require all employees
230 and clients of facilities licensed under chapters 393, 394, and
231 397 and employees of facilities licensed under chapter 395, ~~and~~
232 parts II, III, and IV~~, and VI~~ of chapter 400, and part I of
233 chapter 429 to complete, biennially, a continuing educational
234 course on the modes of transmission, infection control
235 procedures, clinical management, and prevention of human
236 immunodeficiency virus and acquired immune deficiency syndrome
237 with an emphasis on appropriate behavior and attitude change.
238 Such instruction shall include information on current Florida
239 law and its impact on testing, confidentiality of test results,
240 and treatment of patients and any protocols and procedures
241 applicable to human immunodeficiency counseling and testing,
242 reporting, the offering of HIV testing to pregnant women, and
243 partner notification issues pursuant to ss. 381.004 and 384.25.
244 (3) Facilities licensed under chapters 393, 394, 395, and
245 397, ~~and~~ parts II, III, and IV~~, and VI~~ of chapter 400, and part
246 I of chapter 429 shall maintain a record of employees and dates
247 of attendance at human immunodeficiency virus and acquired
248 immune deficiency syndrome educational courses.
249 Section 14. Subsection (9) of section 381.745, Florida
250 Statutes, is amended to read:
251 381.745 Definitions; ss. 381.739-381.79.--As used in ss.
252 381.739-381.79, the term:

253 (9) "Transitional living facility" means a state-approved
254 facility, as defined and licensed under chapter 400 or chapter
255 429, or a facility approved by the brain and spinal cord injury
256 program in accordance with this chapter.
257 Section 15. Subsection (24) of section 393.063, Florida
258 Statutes, is amended to read:
259 393.063 Definitions.--For the purposes of this chapter:
260 (24) "Intermediate care facility for the developmentally
261 disabled" or "ICF/DD" means a residential facility licensed and
262 certified pursuant to part VIII ~~XI~~ of chapter 400.
263 Section 16. Paragraph (b) of subsection (1) of section
264 393.506, Florida Statutes, is amended to read:
265 393.506 Administration of medication.--
266 (1) Notwithstanding the provisions of part I of chapter
267 464, the Nurse Practice Act, unlicensed direct care services
268 staff providing services to persons with developmental
269 disabilities may administer oral, transdermal, inhaled, or
270 topical prescription medications as provided in this section.
271 (b) For intermediate care facilities for the
272 developmentally disabled licensed pursuant to part VIII ~~XI~~ of
273 chapter 400, unlicensed staff designated by the director may
274 provide medication assistance under the general supervision of a
275 registered nurse licensed pursuant to chapter 464.
276 Section 17. Subsection (10) of section 394.455, Florida
277 Statutes, is amended to read:
278 394.455 Definitions.--As used in this part, unless the
279 context clearly requires otherwise, the term:
280 (10) "Facility" means any hospital, community facility,

281 public or private facility, or receiving or treatment facility
282 providing for the evaluation, diagnosis, care, treatment,
283 training, or hospitalization of persons who appear to have a
284 mental illness or have been diagnosed as having a mental
285 illness. "Facility" does not include any program or entity
286 licensed pursuant to chapter 400 or chapter 429.
287 Section 18. Paragraphs (b), (c), and (e) of subsection (2)
288 of section 394.4574, Florida Statutes, are amended to read:
289 394.4574 Department responsibilities for a mental health
290 resident who resides in an assisted living facility that holds a
291 limited mental health license.--
292 (2) The department must ensure that:
293 (b) A cooperative agreement, as required in s. 429.075 ~~s.~~
294 ~~400.4075~~, is developed between the mental health care services
295 provider that serves a mental health resident and the
296 administrator of the assisted living facility with a limited
297 mental health license in which the mental health resident is
298 living. Any entity that provides Medicaid prepaid health plan
299 services shall ensure the appropriate coordination of health
300 care services with an assisted living facility in cases where a
301 Medicaid recipient is both a member of the entity's prepaid
302 health plan and a resident of the assisted living facility. If
303 the entity is at risk for Medicaid targeted case management and
304 behavioral health services, the entity shall inform the assisted
305 living facility of the procedures to follow should an emergent
306 condition arise.
307 (c) The community living support plan, as defined in s.
308 429.02 ~~s. 400.402~~, has been prepared by a mental health resident

309 and a mental health case manager of that resident in
310 consultation with the administrator of the facility or the
311 administrator's designee. The plan must be provided to the
312 administrator of the assisted living facility with a limited
313 mental health license in which the mental health resident lives.
314 The support plan and the agreement may be in one document.
315 (e) The mental health services provider assigns a case
316 manager to each mental health resident who lives in an assisted
317 living facility with a limited mental health license. The case
318 manager is responsible for coordinating the development of and
319 implementation of the community living support plan defined in
320 s. 429.02 ~~s. 400.402~~. The plan must be updated at least
321 annually.
322 Section 19. Paragraph (b) of subsection (2) of section
323 394.463, Florida Statutes, is amended to read:
324 394.463 Involuntary examination.--
325 (2) INVOLUNTARY EXAMINATION.--
326 (b) A person shall not be removed from any program or
327 residential placement licensed under chapter 400 or chapter 429
328 and transported to a receiving facility for involuntary
329 examination unless an ex parte order, a professional
330 certificate, or a law enforcement officer's report is first
331 prepared. If the condition of the person is such that
332 preparation of a law enforcement officer's report is not
333 practicable before removal, the report shall be completed as
334 soon as possible after removal, but in any case before the
335 person is transported to a receiving facility. A receiving
336 facility admitting a person for involuntary examination who is

337 not accompanied by the required ex parte order, professional
338 certificate, or law enforcement officer's report shall notify
339 the Agency for Health Care Administration of such admission by
340 certified mail no later than the next working day. The
341 provisions of this paragraph do not apply when transportation is
342 provided by the patient's family or guardian.
343 Section 20. Paragraph (b) of subsection (3) of section
344 400.0063, Florida Statutes, is amended to read:
345 400.0063 Establishment of Office of State Long-Term Care
346 Ombudsman; designation of ombudsman and legal advocate.--
347 (3)
348 (b) The duties of the legal advocate shall include, but
349 not be limited to:
350 1. Assisting the ombudsman in carrying out the duties of
351 the office with respect to the abuse, neglect, or violation of
352 rights of residents of long-term care facilities.
353 2. Assisting the state and local ombudsman councils in
354 carrying out their responsibilities under this part.
355 3. Initiating and prosecuting legal and equitable actions
356 to enforce the rights of long-term care facility residents as
357 defined in this chapter <u>or chapter 429</u>.
358 4. Serving as legal counsel to the state and local
359 ombudsman councils, or individual members thereof, against whom
360 any suit or other legal action is initiated in connection with
361 the performance of the official duties of the councils or an
362 individual member.
363 Section 21. Subsection (3) of section 400.0069, Florida
364 Statutes, is amended to read:

365 400.0069 Local long-term care ombudsman councils; duties;
366 membership.--
367 (3) In order to carry out the duties specified in
368 subsection (2), the local ombudsman council is authorized,
369 pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any long-
370 term care facility without notice or first obtaining a warrant,
371 subject to the provisions of s. 400.0073(5).
372 Section 22. Paragraphs (c) and (f) of subsection (5) and
373 subsection (6) of section 400.0073, Florida Statutes, are
374 amended to read:
375 400.0073 State and local ombudsman council
376 investigations.--
377 (5) Any onsite administrative inspection conducted by an
378 ombudsman council shall be subject to the following:
379 (c) Inspections shall be conducted in a manner which will
380 impose no unreasonable burden on nursing homes or long-term care
381 facilities, consistent with the underlying purposes of this part
382 and chapter 429. Unnecessary duplication of efforts among
383 council members or the councils shall be reduced to the extent
384 possible.
385 (f) All inspections shall be limited to compliance with
386 part ~~parts~~ II~~, III, and VII~~ of this chapter, chapter 429, and 42
387 U.S.C. ss. 1396(a) et seq., and any rules or regulations
388 promulgated pursuant to such laws.
389 (6) An inspection may not be accomplished by forcible
390 entry. Refusal of a long-term care facility to allow entry of
391 any ombudsman council member constitutes a violation of part II~~,~~
392 ~~part III, or part VII~~ of this chapter or chapter 429.

393 Section 23. Subsection (4) of section 400.0077, Florida
394 Statutes, is amended to read:
395 400.0077 Confidentiality.--
396 (4) Members of any state or local ombudsman council shall
397 not be required to testify in any court with respect to matters
398 held to be confidential under s. 429.14 ~~s. 400.414~~ except as may
399 be necessary to enforce the provisions of this act.
400 Section 24. Subsection (1) of section 400.0239, Florida
401 Statutes, is amended to read:
402 400.0239 Quality of Long-Term Care Facility Improvement
403 Trust Fund.--
404 (1) There is created within the Agency for Health Care
405 Administration a Quality of Long-Term Care Facility Improvement
406 Trust Fund to support activities and programs directly related
407 to improvement of the care of nursing home and assisted living
408 facility residents. The trust fund shall be funded through
409 proceeds generated pursuant to ss. 400.0238 and 429.298
410 ~~400.4298~~, through funds specifically appropriated by the
411 Legislature, through gifts, endowments, and other charitable
412 contributions allowed under federal and state law, and through
413 federal nursing home civil monetary penalties collected by the
414 Centers for Medicare and Medicaid Services and returned to the
415 state. These funds must be utilized in accordance with federal
416 requirements.
417 Section 25. Subsections (1) and (4) of section 400.119,
418 Florida Statutes, are amended to read:
419 400.119 Confidentiality of records and meetings of risk
420 management and quality assurance committees.--

421 (1) Records of meetings of the risk management and quality
422 assurance committee of a long-term care facility licensed under
423 this part or part I ~~III~~ of ~~this~~ chapter 429, as well as incident
424 reports filed with the facility's risk manager and
425 administrator, notifications of the occurrence of an adverse
426 incident, and adverse incident reports from the facility are
427 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
428 of the State Constitution. However, if the Agency for Health
429 Care Administration has a reasonable belief that conduct by a
430 staff member or employee of a facility is criminal activity or
431 grounds for disciplinary action by a regulatory board, the
432 agency may disclose such records to the appropriate law
433 enforcement agency or regulatory board.
434 (4) The meetings of an internal risk management and
435 quality assurance committee of a long-term care facility
436 licensed under this part or part I ~~III~~ of ~~this~~ chapter 429 are
437 exempt from s. 286.011 and s. 24(b), Art. I of the State
438 Constitution and are not open to the public.
439 Section 26. Subsections (4) and (7) of section 400.141,
440 Florida Statutes, are amended to read:
441 400.141 Administration and management of nursing home
442 facilities.--Every licensed facility shall comply with all
443 applicable standards and rules of the agency and shall:
444 (4) Provide for resident use of a community pharmacy as
445 specified in s. 400.022(1)(q). Any other law to the contrary
446 notwithstanding, a registered pharmacist licensed in Florida,
447 that is under contract with a facility licensed under this
448 chapter or chapter 429, shall repackage a nursing facility

449 resident's bulk prescription medication which has been packaged
450 by another pharmacist licensed in any state in the United States
451 into a unit dose system compatible with the system used by the
452 nursing facility, if the pharmacist is requested to offer such
453 service. In order to be eligible for the repackaging, a resident
454 or the resident's spouse must receive prescription medication
455 benefits provided through a former employer as part of his or
456 her retirement benefits, a qualified pension plan as specified
457 in s. 4972 of the Internal Revenue Code, a federal retirement
458 program as specified under 5 C.F.R. s. 831, or a long-term care
459 policy as defined in s. 627.9404(1). A pharmacist who correctly
460 repackages and relabels the medication and the nursing facility
461 which correctly administers such repackaged medication under the
462 provisions of this subsection shall not be held liable in any
463 civil or administrative action arising from the repackaging. In
464 order to be eligible for the repackaging, a nursing facility
465 resident for whom the medication is to be repackaged shall sign
466 an informed consent form provided by the facility which includes
467 an explanation of the repackaging process and which notifies the
468 resident of the immunities from liability provided herein. A
469 pharmacist who repackages and relabels prescription medications,
470 as authorized under this subsection, may charge a reasonable fee
471 for costs resulting from the implementation of this provision.
472 (7) If the facility has a standard license or is a Gold
473 Seal facility, exceeds the minimum required hours of licensed
474 nursing and certified nursing assistant direct care per resident
475 per day, and is part of a continuing care facility licensed
476 under chapter 651 or a retirement community that offers other

477 services pursuant to part III of this chapter or chapter 429~~,~~
478 ~~part IV, or part V~~ on a single campus, be allowed to share
479 programming and staff. At the time of inspection and in the
480 semiannual report required pursuant to subsection (15), a
481 continuing care facility or retirement community that uses this
482 option must demonstrate through staffing records that minimum
483 staffing requirements for the facility were met. Licensed nurses
484 and certified nursing assistants who work in the nursing home
485 facility may be used to provide services elsewhere on campus if
486 the facility exceeds the minimum number of direct care hours
487 required per resident per day and the total number of residents
488 receiving direct care services from a licensed nurse or a
489 certified nursing assistant does not cause the facility to
490 violate the staffing ratios required under s. 400.23(3)(a).
491 Compliance with the minimum staffing ratios shall be based on
492 total number of residents receiving direct care services,
493 regardless of where they reside on campus. If the facility
494 receives a conditional license, it may not share staff until the
495 conditional license status ends. This subsection does not
496 restrict the agency's authority under federal or state law to
497 require additional staff if a facility is cited for deficiencies
498 in care which are caused by an insufficient number of certified
499 nursing assistants or licensed nurses. The agency may adopt
500 rules for the documentation necessary to determine compliance
501 with this provision.
502
503 Facilities that have been awarded a Gold Seal under the program
504 established in s. 400.235 may develop a plan to provide

505 certified nursing assistant training as prescribed by federal
506 regulations and state rules and may apply to the agency for
507 approval of their program.
508 Section 27. Subsection (1) of section 400.142, Florida
509 Statutes, is amended to read:
510 400.142 Emergency medication kits; orders not to
511 resuscitate.--
512 (1) Other provisions of this chapter or of chapter 429,
513 chapter 465, chapter 499, or chapter 893 to the contrary
514 notwithstanding, each nursing home operating pursuant to a
515 license issued by the agency may maintain an emergency
516 medication kit for the purpose of storing medicinal drugs to be
517 administered under emergency conditions to residents residing in
518 such facility.
519 Section 28. Paragraph (a) of subsection (2) of section
520 400.191, Florida Statutes, is amended to read:
521 400.191 Availability, distribution, and posting of reports
522 and records.--
523 (2) The agency shall provide additional information in
524 consumer-friendly printed and electronic formats to assist
525 consumers and their families in comparing and evaluating nursing
526 home facilities.
527 (a) The agency shall provide an Internet site which shall
528 include at least the following information either directly or
529 indirectly through a link to another established site or sites
530 of the agency's choosing:
531 1. A list by name and address of all nursing home
532 facilities in this state.

533 2. Whether such nursing home facilities are proprietary or
534 nonproprietary.
535 3. The current owner of the facility's license and the
536 year that that entity became the owner of the license.
537 4. The name of the owner or owners of each facility and
538 whether the facility is affiliated with a company or other
539 organization owning or managing more than one nursing facility
540 in this state.
541 5. The total number of beds in each facility.
542 6. The number of private and semiprivate rooms in each
543 facility.
544 7. The religious affiliation, if any, of each facility.
545 8. The languages spoken by the administrator and staff of
546 each facility.
547 9. Whether or not each facility accepts Medicare or
548 Medicaid recipients or insurance, health maintenance
549 organization, Veterans Administration, CHAMPUS program, or
550 workers' compensation coverage.
551 10. Recreational and other programs available at each
552 facility.
553 11. Special care units or programs offered at each
554 facility.
555 12. Whether the facility is a part of a retirement
556 community that offers other services pursuant to part III of
557 this chapter or part I or part III of chapter 429~~, part IV, or~~
558 ~~part V~~.
559 13. Survey and deficiency information contained on the
560 Online Survey Certification and Reporting (OSCAR) system of the

561 federal Health Care Financing Administration, including annual
562 survey, revisit, and complaint survey information, for each
563 facility for the past 45 months. For noncertified nursing
564 homes, state survey and deficiency information, including annual
565 survey, revisit, and complaint survey information for the past
566 45 months shall be provided.
567 14. A summary of the Online Survey Certification and
568 Reporting (OSCAR) data for each facility over the past 45
569 months. Such summary may include a score, rating, or comparison
570 ranking with respect to other facilities based on the number of
571 citations received by the facility of annual, revisit, and
572 complaint surveys; the severity and scope of the citations; and
573 the number of annual recertification surveys the facility has
574 had during the past 45 months. The score, rating, or comparison
575 ranking may be presented in either numeric or symbolic form for
576 the intended consumer audience.
577 Section 29. Paragraph (b) of subsection (2) of section
578 400.215, Florida Statutes, is amended to read:
579 400.215 Personnel screening requirement.--
580 (2) Employers and employees shall comply with the
581 requirements of s. 435.05.
582 (b) Employees qualified under the provisions of paragraph
583 (a) who have not maintained continuous residency within the
584 state for the 5 years immediately preceding the date of request
585 for background screening must complete level 2 screening, as
586 provided in chapter 435. Such employees may work in a
587 conditional status up to 180 days pending the receipt of written
588 findings evidencing the completion of level 2 screening. Level 2

589 screening shall not be required of employees or prospective
590 employees who attest in writing under penalty of perjury that
591 they meet the residency requirement. Completion of level 2
592 screening shall require the employee or prospective employee to
593 furnish to the nursing facility a full set of fingerprints to
594 enable a criminal background investigation to be conducted. The
595 nursing facility shall submit the completed fingerprint card to
596 the agency. The agency shall establish a record of the request
597 in the database provided for in paragraph (c) and forward the
598 request to the Department of Law Enforcement, which is
599 authorized to submit the fingerprints to the Federal Bureau of
600 Investigation for a national criminal history records check. The
601 results of the national criminal history records check shall be
602 returned to the agency, which shall maintain the results in the
603 database provided for in paragraph (c). The agency shall notify
604 the administrator of the requesting nursing facility or the
605 administrator of any other facility licensed under chapter 393,
606 chapter 394, chapter 395, chapter 397, chapter 429, or this
607 chapter, as requested by such facility, as to whether or not the
608 employee has qualified under level 1 or level 2 screening. An
609 employee or prospective employee who has qualified under level 2
610 screening and has maintained such continuous residency within
611 the state shall not be required to complete a subsequent level 2
612 screening as a condition of employment at another facility.
613 Section 30. Section 400.402, Florida Statutes, is
614 renumbered as section 429.02, Florida Statutes, and amended to
615 read:
616 429.02 ~~400.402~~ Definitions.--When used in this part, the

617 term:
618 (1) "Activities of daily living" means functions and tasks
619 for self-care, including ambulation, bathing, dressing, eating,
620 grooming, and toileting, and other similar tasks.
621 (2) "Administrator" means an individual at least 21 years
622 of age who is responsible for the operation and maintenance of
623 an assisted living facility.
624 (3) "Agency" means the Agency for Health Care
625 Administration.
626 (4) "Aging in place" or "age in place" means the process
627 of providing increased or adjusted services to a person to
628 compensate for the physical or mental decline that may occur
629 with the aging process, in order to maximize the person's
630 dignity and independence and permit them to remain in a
631 familiar, noninstitutional, residential environment for as long
632 as possible. Such services may be provided by facility staff,
633 volunteers, family, or friends, or through contractual
634 arrangements with a third party.
635 (5) "Applicant" means an individual owner, corporation,
636 partnership, firm, association, or governmental entity that
637 applies for a license.
638 (6) "Assisted living facility" means any building or
639 buildings, section or distinct part of a building, private home,
640 boarding home, home for the aged, or other residential facility,
641 whether operated for profit or not, which undertakes through its
642 ownership or management to provide housing, meals, and one or
643 more personal services for a period exceeding 24 hours to one or
644 more adults who are not relatives of the owner or administrator.

645 (7) "Chemical restraint" means a pharmacologic drug that
646 physically limits, restricts, or deprives an individual of
647 movement or mobility, and is used for discipline or convenience
648 and not required for the treatment of medical symptoms.
649 (8) "Community living support plan" means a written
650 document prepared by a mental health resident and the resident's
651 mental health case manager in consultation with the
652 administrator of an assisted living facility with a limited
653 mental health license or the administrator's designee. A copy
654 must be provided to the administrator. The plan must include
655 information about the supports, services, and special needs of
656 the resident which enable the resident to live in the assisted
657 living facility and a method by which facility staff can
658 recognize and respond to the signs and symptoms particular to
659 that resident which indicate the need for professional services.
660 (9) "Cooperative agreement" means a written statement of
661 understanding between a mental health care provider and the
662 administrator of the assisted living facility with a limited
663 mental health license in which a mental health resident is
664 living. The agreement must specify directions for accessing
665 emergency and after-hours care for the mental health resident. A
666 single cooperative agreement may service all mental health
667 residents who are clients of the same mental health care
668 provider.
669 (10) "Department" means the Department of Elderly Affairs.
670 (11) "Emergency" means a situation, physical condition, or
671 method of operation which presents imminent danger of death or
672 serious physical or mental harm to facility residents.

673 (12) "Extended congregate care" means acts beyond those
674 authorized in subsection (17) that may be performed pursuant to
675 part I of chapter 464 by persons licensed thereunder while
676 carrying out their professional duties, and other supportive
677 services which may be specified by rule. The purpose of such
678 services is to enable residents to age in place in a residential
679 environment despite mental or physical limitations that might
680 otherwise disqualify them from residency in a facility licensed
681 under this part.
682 (13) "Guardian" means a person to whom the law has
683 entrusted the custody and control of the person or property, or
684 both, of a person who has been legally adjudged incapacitated.
685 (14) "Limited nursing services" means acts that may be
686 performed pursuant to part I of chapter 464 by persons licensed
687 thereunder while carrying out their professional duties but
688 limited to those acts which the department specifies by rule.
689 Acts which may be specified by rule as allowable limited nursing
690 services shall be for persons who meet the admission criteria
691 established by the department for assisted living facilities and
692 shall not be complex enough to require 24-hour nursing
693 supervision and may include such services as the application and
694 care of routine dressings, and care of casts, braces, and
695 splints.
696 (15) "Managed risk" means the process by which the
697 facility staff discuss the service plan and the needs of the
698 resident with the resident and, if applicable, the resident's
699 representative or designee or the resident's surrogate,
700 guardian, or attorney in fact, in such a way that the

701 consequences of a decision, including any inherent risk, are
702 explained to all parties and reviewed periodically in
703 conjunction with the service plan, taking into account changes
704 in the resident's status and the ability of the facility to
705 respond accordingly.
706 (16) "Mental health resident" means an individual who
707 receives social security disability income due to a mental
708 disorder as determined by the Social Security Administration or
709 receives supplemental security income due to a mental disorder
710 as determined by the Social Security Administration and receives
711 optional state supplementation.
712 (17) "Personal services" means direct physical assistance
713 with or supervision of the activities of daily living and the
714 self-administration of medication and other similar services
715 which the department may define by rule. "Personal services"
716 shall not be construed to mean the provision of medical,
717 nursing, dental, or mental health services.
718 (18) "Physical restraint" means a device which physically
719 limits, restricts, or deprives an individual of movement or
720 mobility, including, but not limited to, a half-bed rail, a
721 full-bed rail, a geriatric chair, and a posey restraint. The
722 term "physical restraint" shall also include any device which
723 was not specifically manufactured as a restraint but which has
724 been altered, arranged, or otherwise used for this purpose. The
725 term shall not include bandage material used for the purpose of
726 binding a wound or injury.
727 (19) "Relative" means an individual who is the father,
728 mother, stepfather, stepmother, son, daughter, brother, sister,

729 grandmother, grandfather, great-grandmother, great-grandfather,
730 grandson, granddaughter, uncle, aunt, first cousin, nephew,
731 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
732 daughter-in-law, brother-in-law, sister-in-law, stepson,
733 stepdaughter, stepbrother, stepsister, half brother, or half
734 sister of an owner or administrator.
735 (20) "Resident" means a person 18 years of age or older,
736 residing in and receiving care from a facility.
737 (21) "Resident's representative or designee" means a
738 person other than the owner, or an agent or employee of the
739 facility, designated in writing by the resident, if legally
740 competent, to receive notice of changes in the contract executed
741 pursuant to s. 429.24 ~~s. 400.424~~; to receive notice of and to
742 participate in meetings between the resident and the facility
743 owner, administrator, or staff concerning the rights of the
744 resident; to assist the resident in contacting the ombudsman
745 council if the resident has a complaint against the facility; or
746 to bring legal action on behalf of the resident pursuant to s.
747 429.29 ~~s. 400.429~~.
748 (22) "Service plan" means a written plan, developed and
749 agreed upon by the resident and, if applicable, the resident's
750 representative or designee or the resident's surrogate,
751 guardian, or attorney in fact, if any, and the administrator or
752 designee representing the facility, which addresses the unique
753 physical and psychosocial needs, abilities, and personal
754 preferences of each resident receiving extended congregate care
755 services. The plan shall include a brief written description, in
756 easily understood language, of what services shall be provided,

757 who shall provide the services, when the services shall be
758 rendered, and the purposes and benefits of the services.
759 (23) "Shared responsibility" means exploring the options
760 available to a resident within a facility and the risks involved
761 with each option when making decisions pertaining to the
762 resident's abilities, preferences, and service needs, thereby
763 enabling the resident and, if applicable, the resident's
764 representative or designee, or the resident's surrogate,
765 guardian, or attorney in fact, and the facility to develop a
766 service plan which best meets the resident's needs and seeks to
767 improve the resident's quality of life.
768 (24) "Supervision" means reminding residents to engage in
769 activities of daily living and the self-administration of
770 medication, and, when necessary, observing or providing verbal
771 cuing to residents while they perform these activities.
772 (25) "Supplemental security income," Title XVI of the
773 Social Security Act, means a program through which the Federal
774 Government guarantees a minimum monthly income to every person
775 who is age 65 or older, or disabled, or blind and meets the
776 income and asset requirements.
777 (26) "Supportive services" means services designed to
778 encourage and assist aged persons or adults with disabilities to
779 remain in the least restrictive living environment and to
780 maintain their independence as long as possible.
781 (27) "Twenty-four-hour nursing supervision" means services
782 that are ordered by a physician for a resident whose condition
783 requires the supervision of a physician and continued monitoring
784 of vital signs and physical status. Such services shall be:

785 medically complex enough to require constant supervision,
786 assessment, planning, or intervention by a nurse; required to be
787 performed by or under the direct supervision of licensed nursing
788 personnel or other professional personnel for safe and effective
789 performance; required on a daily basis; and consistent with the
790 nature and severity of the resident's condition or the disease
791 state or stage.
792 Section 31. Section 400.404, Florida Statutes, is
793 renumbered as section 429.04, Florida Statutes, and amended to
794 read:
795 429.04 ~~400.404~~ Facilities to be licensed; exemptions.--
796 (1) For the administration of this part, facilities to be
797 licensed by the agency shall include all assisted living
798 facilities as defined in this part.
799 (2) The following are exempt from licensure under this
800 part:
801 (a) Any facility, institution, or other place operated by
802 the Federal Government or any agency of the Federal Government.
803 (b) Any facility or part of a facility licensed under
804 chapter 393 or chapter 394.
805 (c) Any facility licensed as an adult family-care home
806 under part II of chapter 429 ~~VII~~.
807 (d) Any person who provides housing, meals, and one or
808 more personal services on a 24-hour basis in the person's own
809 home to not more than two adults who do not receive optional
810 state supplementation. The person who provides the housing,
811 meals, and personal services must own or rent the home and
812 reside therein.

813 (e) Any home or facility approved by the United States
814 Department of Veterans Affairs as a residential care home
815 wherein care is provided exclusively to three or fewer veterans.
816 (f) Any facility that has been incorporated in this state
817 for 50 years or more on or before July 1, 1983, and the board of
818 directors of which is nominated or elected by the residents,
819 until the facility is sold or its ownership is transferred; or
820 any facility, with improvements or additions thereto, which has
821 existed and operated continuously in this state for 60 years or
822 more on or before July 1, 1989, is directly or indirectly owned
823 and operated by a nationally recognized fraternal organization,
824 is not open to the public, and accepts only its own members and
825 their spouses as residents.
826 (g) Any facility certified under chapter 651, or a
827 retirement community, may provide services authorized under this
828 part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who
829 live in single-family homes, duplexes, quadruplexes, or
830 apartments located on the campus without obtaining a license to
831 operate an assisted living facility if residential units within
832 such buildings are used by residents who do not require staff
833 supervision for that portion of the day when personal services
834 are not being delivered and the owner obtains a home health
835 license to provide such services. However, any building or
836 distinct part of a building on the campus that is designated for
837 persons who receive personal services and require supervision
838 beyond that which is available while such services are being
839 rendered must be licensed in accordance with this part. If a
840 facility provides personal services to residents who do not

841 otherwise require supervision and the owner is not licensed as a
842 home health agency, the buildings or distinct parts of buildings
843 where such services are rendered must be licensed under this
844 part. A resident of a facility that obtains a home health
845 license may contract with a home health agency of his or her
846 choice, provided that the home health agency provides liability
847 insurance and workers' compensation coverage for its employees.
848 Facilities covered by this exemption may establish policies that
849 give residents the option of contracting for services and care
850 beyond that which is provided by the facility to enable them to
851 age in place. For purposes of this section, a retirement
852 community consists of a facility licensed under this part or
853 under part II of chapter 400, and apartments designed for
854 independent living located on the same campus.
855 (h) Any residential unit for independent living which is
856 located within a facility certified under chapter 651, or any
857 residential unit which is colocated with a nursing home licensed
858 under part II of chapter 400 or colocated with a facility
859 licensed under this part in which services are provided through
860 an outpatient clinic or a nursing home on an outpatient basis.
861 Section 32. Section 400.407, Florida Statutes, is
862 renumbered as section 429.07, Florida Statutes, and amended to
863 read:
864 429.07 ~~400.407~~ License required; fee, display.--
865 (1) A license issued by the agency is required for an
866 assisted living facility operating in this state.
867 (2) Separate licenses shall be required for facilities
868 maintained in separate premises, even though operated under the

869 same management. A separate license shall not be required for
870 separate buildings on the same grounds.
871 (3) Any license granted by the agency must state the
872 maximum resident capacity of the facility, the type of care for
873 which the license is granted, the date the license is issued,
874 the expiration date of the license, and any other information
875 deemed necessary by the agency. Licenses shall be issued for one
876 or more of the following categories of care: standard, extended
877 congregate care, limited nursing services, or limited mental
878 health.
879 (a) A standard license shall be issued to facilities
880 providing one or more of the personal services identified in s.
881 429.02 ~~s. 400.402~~. Such facilities may also employ or contract
882 with a person licensed under part I of chapter 464 to administer
883 medications and perform other tasks as specified in s. 429.255
884 ~~s. 400.4255~~.
885 (b) An extended congregate care license shall be issued to
886 facilities providing, directly or through contract, services
887 beyond those authorized in paragraph (a), including acts
888 performed pursuant to part I of chapter 464 by persons licensed
889 thereunder, and supportive services defined by rule to persons
890 who otherwise would be disqualified from continued residence in
891 a facility licensed under this part.
892 1. In order for extended congregate care services to be
893 provided in a facility licensed under this part, the agency must
894 first determine that all requirements established in law and
895 rule are met and must specifically designate, on the facility's
896 license, that such services may be provided and whether the

897 designation applies to all or part of a facility. Such
898 designation may be made at the time of initial licensure or
899 relicensure, or upon request in writing by a licensee under this
900 part. Notification of approval or denial of such request shall
901 be made within 90 days after receipt of such request and all
902 necessary documentation. Existing facilities qualifying to
903 provide extended congregate care services must have maintained a
904 standard license and may not have been subject to administrative
905 sanctions during the previous 2 years, or since initial
906 licensure if the facility has been licensed for less than 2
907 years, for any of the following reasons:
908 a. A class I or class II violation;
909 b. Three or more repeat or recurring class III violations
910 of identical or similar resident care standards as specified in
911 rule from which a pattern of noncompliance is found by the
912 agency;
913 c. Three or more class III violations that were not
914 corrected in accordance with the corrective action plan approved
915 by the agency;
916 d. Violation of resident care standards resulting in a
917 requirement to employ the services of a consultant pharmacist or
918 consultant dietitian;
919 e. Denial, suspension, or revocation of a license for
920 another facility under this part in which the applicant for an
921 extended congregate care license has at least 25 percent
922 ownership interest; or
923 f. Imposition of a moratorium on admissions or initiation
924 of injunctive proceedings.

925 2. Facilities that are licensed to provide extended
926 congregate care services shall maintain a written progress
927 report on each person who receives such services, which report
928 describes the type, amount, duration, scope, and outcome of
929 services that are rendered and the general status of the
930 resident's health. A registered nurse, or appropriate designee,
931 representing the agency shall visit such facilities at least
932 quarterly to monitor residents who are receiving extended
933 congregate care services and to determine if the facility is in
934 compliance with this part and with rules that relate to extended
935 congregate care. One of these visits may be in conjunction with
936 the regular survey. The monitoring visits may be provided
937 through contractual arrangements with appropriate community
938 agencies. A registered nurse shall serve as part of the team
939 that inspects such facility. The agency may waive one of the
940 required yearly monitoring visits for a facility that has been
941 licensed for at least 24 months to provide extended congregate
942 care services, if, during the inspection, the registered nurse
943 determines that extended congregate care services are being
944 provided appropriately, and if the facility has no class I or
945 class II violations and no uncorrected class III violations.
946 Before such decision is made, the agency shall consult with the
947 long-term care ombudsman council for the area in which the
948 facility is located to determine if any complaints have been
949 made and substantiated about the quality of services or care.
950 The agency may not waive one of the required yearly monitoring
951 visits if complaints have been made and substantiated.
952 3. Facilities that are licensed to provide extended

953 congregate care services shall:
954 a. Demonstrate the capability to meet unanticipated
955 resident service needs.
956 b. Offer a physical environment that promotes a homelike
957 setting, provides for resident privacy, promotes resident
958 independence, and allows sufficient congregate space as defined
959 by rule.
960 c. Have sufficient staff available, taking into account
961 the physical plant and firesafety features of the building, to
962 assist with the evacuation of residents in an emergency, as
963 necessary.
964 d. Adopt and follow policies and procedures that maximize
965 resident independence, dignity, choice, and decisionmaking to
966 permit residents to age in place to the extent possible, so that
967 moves due to changes in functional status are minimized or
968 avoided.
969 e. Allow residents or, if applicable, a resident's
970 representative, designee, surrogate, guardian, or attorney in
971 fact to make a variety of personal choices, participate in
972 developing service plans, and share responsibility in
973 decisionmaking.
974 f. Implement the concept of managed risk.
975 g. Provide, either directly or through contract, the
976 services of a person licensed pursuant to part I of chapter 464.
977 h. In addition to the training mandated in s. 429.52 ~~s.~~
978 ~~400.452~~, provide specialized training as defined by rule for
979 facility staff.
980 4. Facilities licensed to provide extended congregate care

981 services are exempt from the criteria for continued residency as
982 set forth in rules adopted under s. 429.41 ~~s. 400.441~~.
983 Facilities so licensed shall adopt their own requirements within
984 guidelines for continued residency set forth by the department
985 in rule. However, such facilities may not serve residents who
986 require 24-hour nursing supervision. Facilities licensed to
987 provide extended congregate care services shall provide each
988 resident with a written copy of facility policies governing
989 admission and retention.
990 5. The primary purpose of extended congregate care
991 services is to allow residents, as they become more impaired,
992 the option of remaining in a familiar setting from which they
993 would otherwise be disqualified for continued residency. A
994 facility licensed to provide extended congregate care services
995 may also admit an individual who exceeds the admission criteria
996 for a facility with a standard license, if the individual is
997 determined appropriate for admission to the extended congregate
998 care facility.
999 6. Before admission of an individual to a facility
1000 licensed to provide extended congregate care services, the
1001 individual must undergo a medical examination as provided in s.
1002 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a
1003 preliminary service plan for the individual.
1004 7. When a facility can no longer provide or arrange for
1005 services in accordance with the resident's service plan and
1006 needs and the facility's policy, the facility shall make
1007 arrangements for relocating the person in accordance with s.
1008 429.28(1)(k) ~~s. 400.428(1)(k)~~.

1009 8. Failure to provide extended congregate care services
1010 may result in denial of extended congregate care license
1011 renewal.
1012 9. No later than January 1 of each year, the department,
1013 in consultation with the agency, shall prepare and submit to the
1014 Governor, the President of the Senate, the Speaker of the House
1015 of Representatives, and the chairs of appropriate legislative
1016 committees, a report on the status of, and recommendations
1017 related to, extended congregate care services. The status report
1018 must include, but need not be limited to, the following
1019 information:
1020 a. A description of the facilities licensed to provide
1021 such services, including total number of beds licensed under
1022 this part.
1023 b. The number and characteristics of residents receiving
1024 such services.
1025 c. The types of services rendered that could not be
1026 provided through a standard license.
1027 d. An analysis of deficiencies cited during licensure
1028 inspections.
1029 e. The number of residents who required extended
1030 congregate care services at admission and the source of
1031 admission.
1032 f. Recommendations for statutory or regulatory changes.
1033 g. The availability of extended congregate care to state
1034 clients residing in facilities licensed under this part and in
1035 need of additional services, and recommendations for
1036 appropriations to subsidize extended congregate care services

1037 for such persons.
1038 h. Such other information as the department considers
1039 appropriate.
1040 (c) A limited nursing services license shall be issued to
1041 a facility that provides services beyond those authorized in
1042 paragraph (a) and as specified in this paragraph.
1043 1. In order for limited nursing services to be provided in
1044 a facility licensed under this part, the agency must first
1045 determine that all requirements established in law and rule are
1046 met and must specifically designate, on the facility's license,
1047 that such services may be provided. Such designation may be made
1048 at the time of initial licensure or relicensure, or upon request
1049 in writing by a licensee under this part. Notification of
1050 approval or denial of such request shall be made within 90 days
1051 after receipt of such request and all necessary documentation.
1052 Existing facilities qualifying to provide limited nursing
1053 services shall have maintained a standard license and may not
1054 have been subject to administrative sanctions that affect the
1055 health, safety, and welfare of residents for the previous 2
1056 years or since initial licensure if the facility has been
1057 licensed for less than 2 years.
1058 2. Facilities that are licensed to provide limited nursing
1059 services shall maintain a written progress report on each person
1060 who receives such nursing services, which report describes the
1061 type, amount, duration, scope, and outcome of services that are
1062 rendered and the general status of the resident's health. A
1063 registered nurse representing the agency shall visit such
1064 facilities at least twice a year to monitor residents who are

1065 receiving limited nursing services and to determine if the
1066 facility is in compliance with applicable provisions of this
1067 part and with related rules. The monitoring visits may be
1068 provided through contractual arrangements with appropriate
1069 community agencies. A registered nurse shall also serve as part
1070 of the team that inspects such facility.
1071 3. A person who receives limited nursing services under
1072 this part must meet the admission criteria established by the
1073 agency for assisted living facilities. When a resident no
1074 longer meets the admission criteria for a facility licensed
1075 under this part, arrangements for relocating the person shall be
1076 made in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~, unless
1077 the facility is licensed to provide extended congregate care
1078 services.
1079 (4)(a) The biennial license fee required of a facility is
1080 $300 per license, with an additional fee of $50 per resident
1081 based on the total licensed resident capacity of the facility,
1082 except that no additional fee will be assessed for beds
1083 designated for recipients of optional state supplementation
1084 payments provided for in s. 409.212. The total fee may not
1085 exceed $10,000, no part of which shall be returned to the
1086 facility. The agency shall adjust the per bed license fee and
1087 the total licensure fee annually by not more than the change in
1088 the consumer price index based on the 12 months immediately
1089 preceding the increase.
1090 (b) In addition to the total fee assessed under paragraph
1091 (a), the agency shall require facilities that are licensed to
1092 provide extended congregate care services under this part to pay

1093 an additional fee per licensed facility. The amount of the
1094 biennial fee shall be $400 per license, with an additional fee
1095 of $10 per resident based on the total licensed resident
1096 capacity of the facility. No part of this fee shall be returned
1097 to the facility. The agency may adjust the per bed license fee
1098 and the annual license fee once each year by not more than the
1099 average rate of inflation for the 12 months immediately
1100 preceding the increase.
1101 (c) In addition to the total fee assessed under paragraph
1102 (a), the agency shall require facilities that are licensed to
1103 provide limited nursing services under this part to pay an
1104 additional fee per licensed facility. The amount of the
1105 biennial fee shall be $250 per license, with an additional fee
1106 of $10 per resident based on the total licensed resident
1107 capacity of the facility. No part of this fee shall be returned
1108 to the facility. The agency may adjust the per bed license fee
1109 and the biennial license fee once each year by not more than the
1110 average rate of inflation for the 12 months immediately
1111 preceding the increase.
1112 (5) Counties or municipalities applying for licenses under
1113 this part are exempt from the payment of license fees.
1114 (6) The license shall be displayed in a conspicuous place
1115 inside the facility.
1116 (7) A license shall be valid only in the possession of the
1117 individual, firm, partnership, association, or corporation to
1118 which it is issued and shall not be subject to sale, assignment,
1119 or other transfer, voluntary or involuntary; nor shall a license
1120 be valid for any premises other than that for which originally

1121 issued.
1122 (8) A fee may be charged to a facility requesting a
1123 duplicate license. The fee shall not exceed the actual cost of
1124 duplication and postage.
1125 Section 33. Section 400.4071, Florida Statutes, is
1126 renumbered as section 429.071, Florida Statutes, and amended to
1127 read:
1128 429.071 ~~400.4071~~ Intergenerational respite care assisted
1129 living facility pilot program.--
1130 (1) It is the intent of the Legislature to establish a
1131 pilot program to:
1132 (a) Facilitate the receipt of in-home, family-based care
1133 by minors and adults with disabilities and elderly persons with
1134 special needs through respite care for up to 14 days.
1135 (b) Prevent caregiver "burnout," in which the caregiver's
1136 health declines and he or she is unable to continue to provide
1137 care so that the only option for the person with disabilities or
1138 special needs is to receive institutional care.
1139 (c) Foster the development of intergenerational respite
1140 care assisted living facilities to temporarily care for minors
1141 and adults with disabilities and elderly persons with special
1142 needs in the same facility and to give caregivers the time they
1143 need for rejuvenation and healing.
1144 (2) The Agency for Health Care Administration shall
1145 establish a 5-year pilot program, which shall license an
1146 intergenerational respite care assisted living facility that
1147 will provide temporary personal, respite, and custodial care to
1148 minors and adults with disabilities and elderly persons with

1149 special needs who do not require 24-hour nursing services. The
1150 intergenerational respite care assisted living facility must:
1151 (a) Meet all applicable requirements and standards
1152 contained in this part ~~III of this chapter~~, except that, for
1153 purposes of this section, the term "resident" means a person of
1154 any age temporarily residing in and receiving care from the
1155 facility.
1156 (b) Provide respite care services for minors and adults
1157 with disabilities and elderly persons with special needs for a
1158 period of at least 24 hours but not for more than 14 consecutive
1159 days.
1160 (c) Provide a facility or facilities in which minors and
1161 adults reside in distinct and separate living units.
1162 (d) Provide a facility that has a maximum of 48 beds, is
1163 located in Miami-Dade County, and is operated by a not-for-
1164 profit entity.
1165 (3) The agency may establish policies necessary to achieve
1166 the objectives specific to the pilot program and may adopt rules
1167 necessary to implement the program.
1168 (4) After 4 years, the agency shall present its report on
1169 the effectiveness of the pilot program to the President of the
1170 Senate and the Speaker of the House of Representatives and its
1171 recommendation as to whether the Legislature should make the
1172 program permanent.
1173 Section 34. Section 400.408, Florida Statutes, is
1174 renumbered as section 429.08, Florida Statutes, and amended to
1175 read:
1176 429.08 ~~400.408~~ Unlicensed facilities; referral of person

1177 for residency to unlicensed facility; penalties; verification of
1178 licensure status.--
1179 (1)(a) It is unlawful to own, operate, or maintain an
1180 assisted living facility without obtaining a license under this
1181 part.
1182 (b) Except as provided under paragraph (d), any person who
1183 owns, operates, or maintains an unlicensed assisted living
1184 facility commits a felony of the third degree, punishable as
1185 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
1186 continued operation is a separate offense.
1187 (c) Any person found guilty of violating paragraph (a) a
1188 second or subsequent time commits a felony of the second degree,
1189 punishable as provided under s. 775.082, s. 775.083, or s.
1190 775.084. Each day of continued operation is a separate offense.
1191 (d) Any person who owns, operates, or maintains an
1192 unlicensed assisted living facility due to a change in this part
1193 or a modification in department rule within 6 months after the
1194 effective date of such change and who, within 10 working days
1195 after receiving notification from the agency, fails to cease
1196 operation or apply for a license under this part commits a
1197 felony of the third degree, punishable as provided in s.
1198 775.082, s. 775.083, or s. 775.084. Each day of continued
1199 operation is a separate offense.
1200 (e) Any facility that fails to cease operation after
1201 agency notification may be fined for each day of noncompliance
1202 pursuant to s. 429.19 ~~s. 400.419~~.
1203 (f) When a licensee has an interest in more than one
1204 assisted living facility, and fails to license any one of these

1205 facilities, the agency may revoke the license, impose a
1206 moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~,
1207 on any or all of the licensed facilities until such time as the
1208 unlicensed facility is licensed or ceases operation.
1209 (g) If the agency determines that an owner is operating or
1210 maintaining an assisted living facility without obtaining a
1211 license and determines that a condition exists in the facility
1212 that poses a threat to the health, safety, or welfare of a
1213 resident of the facility, the owner is subject to the same
1214 actions and fines imposed against a licensed facility as
1215 specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.
1216 (h) Any person aware of the operation of an unlicensed
1217 assisted living facility must report that facility to the
1218 agency. The agency shall provide to the department's elder
1219 information and referral providers a list, by county, of
1220 licensed assisted living facilities, to assist persons who are
1221 considering an assisted living facility placement in locating a
1222 licensed facility.
1223 (i) Each field office of the Agency for Health Care
1224 Administration shall establish a local coordinating workgroup
1225 which includes representatives of local law enforcement
1226 agencies, state attorneys, the Medicaid Fraud Control Unit of
1227 the Department of Legal Affairs, local fire authorities, the
1228 Department of Children and Family Services, the district long-
1229 term care ombudsman council, and the district human rights
1230 advocacy committee to assist in identifying the operation of
1231 unlicensed facilities and to develop and implement a plan to
1232 ensure effective enforcement of state laws relating to such

1233 facilities. The workgroup shall report its findings, actions,
1234 and recommendations semiannually to the Director of Health
1235 Facility Regulation of the agency.
1236 (2) It is unlawful to knowingly refer a person for
1237 residency to an unlicensed assisted living facility; to an
1238 assisted living facility the license of which is under denial or
1239 has been suspended or revoked; or to an assisted living facility
1240 that has a moratorium on admissions. Any person who violates
1241 this subsection commits a noncriminal violation, punishable by a
1242 fine not exceeding $500 as provided in s. 775.083.
1243 (a) Any health care practitioner, as defined in s.
1244 456.001, who is aware of the operation of an unlicensed facility
1245 shall report that facility to the agency. Failure to report a
1246 facility that the practitioner knows or has reasonable cause to
1247 suspect is unlicensed shall be reported to the practitioner's
1248 licensing board.
1249 (b) Any hospital or community mental health center
1250 licensed under chapter 395 or chapter 394 which knowingly
1251 discharges a patient or client to an unlicensed facility is
1252 subject to sanction by the agency.
1253 (c) Any employee of the agency or department, or the
1254 Department of Children and Family Services, who knowingly refers
1255 a person for residency to an unlicensed facility; to a facility
1256 the license of which is under denial or has been suspended or
1257 revoked; or to a facility that has a moratorium on admissions is
1258 subject to disciplinary action by the agency or department, or
1259 the Department of Children and Family Services.
1260 (d) The employer of any person who is under contract with

1261 the agency or department, or the Department of Children and
1262 Family Services, and who knowingly refers a person for residency
1263 to an unlicensed facility; to a facility the license of which is
1264 under denial or has been suspended or revoked; or to a facility
1265 that has a moratorium on admissions shall be fined and required
1266 to prepare a corrective action plan designed to prevent such
1267 referrals.
1268 (e) The agency shall provide the department and the
1269 Department of Children and Family Services with a list of
1270 licensed facilities within each county and shall update the list
1271 at least quarterly.
1272 (f) At least annually, the agency shall notify, in
1273 appropriate trade publications, physicians licensed under
1274 chapter 458 or chapter 459, hospitals licensed under chapter
1275 395, nursing home facilities licensed under part II of ~~this~~
1276 chapter 400, and employees of the agency or the department, or
1277 the Department of Children and Family Services, who are
1278 responsible for referring persons for residency, that it is
1279 unlawful to knowingly refer a person for residency to an
1280 unlicensed assisted living facility and shall notify them of the
1281 penalty for violating such prohibition. The department and the
1282 Department of Children and Family Services shall, in turn,
1283 notify service providers under contract to the respective
1284 departments who have responsibility for resident referrals to
1285 facilities. Further, the notice must direct each noticed
1286 facility and individual to contact the appropriate agency office
1287 in order to verify the licensure status of any facility prior to
1288 referring any person for residency. Each notice must include the

1289 name, telephone number, and mailing address of the appropriate
1290 office to contact.
1291 Section 35. Section 400.411, Florida Statutes, is
1292 renumbered as section 429.11, Florida Statutes, and amended to
1293 read:
1294 429.11 ~~400.411~~ Initial application for license;
1295 provisional license.--
1296 (1) Application for a license shall be made to the agency
1297 on forms furnished by it and shall be accompanied by the
1298 appropriate license fee.
1299 (2) The applicant may be an individual owner, a
1300 corporation, a partnership, a firm, an association, or a
1301 governmental entity.
1302 (3) The application must be signed by the applicant under
1303 oath and must contain the following:
1304 (a) The name, address, date of birth, and social security
1305 number of the applicant and the name by which the facility is to
1306 be known. If the applicant is a firm, partnership, or
1307 association, the application shall contain the name, address,
1308 date of birth, and social security number of every member
1309 thereof. If the applicant is a corporation, the application
1310 shall contain the corporation's name and address; the name,
1311 address, date of birth, and social security number of each of
1312 its directors and officers; and the name and address of each
1313 person having at least a 5-percent ownership interest in the
1314 corporation.
1315 (b) The name and address of any professional service,
1316 firm, association, partnership, or corporation that is to

1317 provide goods, leases, or services to the facility if a 5-
1318 percent or greater ownership interest in the service, firm,
1319 association, partnership, or corporation is owned by a person
1320 whose name must be listed on the application under paragraph
1321 (a).
1322 (c) The name and address of any long-term care facility
1323 with which the applicant, administrator, or financial officer
1324 has been affiliated through ownership or employment within 5
1325 years of the date of this license application; and a signed
1326 affidavit disclosing any financial or ownership interest that
1327 the applicant, or any person listed in paragraph (a), holds or
1328 has held within the last 5 years in any facility licensed under
1329 this part, or in any other entity licensed by this state or
1330 another state to provide health or residential care, which
1331 facility or entity closed or ceased to operate as a result of
1332 financial problems, or has had a receiver appointed or a license
1333 denied, suspended or revoked, or was subject to a moratorium on
1334 admissions, or has had an injunctive proceeding initiated
1335 against it.
1336 (d) A description and explanation of any exclusions,
1337 permanent suspensions, or terminations of the applicant from the
1338 Medicare or Medicaid programs. Proof of compliance with
1339 disclosure of ownership and control interest requirements of the
1340 Medicaid or Medicare programs shall be accepted in lieu of this
1341 submission.
1342 (e) The names and addresses of persons of whom the agency
1343 may inquire as to the character, reputation, and financial
1344 responsibility of the owner and, if different from the

1345 applicant, the administrator and financial officer.
1346 (f) Identification of all other homes or facilities,
1347 including the addresses and the license or licenses under which
1348 they operate, if applicable, which are currently operated by the
1349 applicant or administrator and which provide housing, meals, and
1350 personal services to residents.
1351 (g) The location of the facility for which a license is
1352 sought and documentation, signed by the appropriate local
1353 government official, which states that the applicant has met
1354 local zoning requirements.
1355 (h) The name, address, date of birth, social security
1356 number, education, and experience of the administrator, if
1357 different from the applicant.
1358 (4) The applicant shall furnish satisfactory proof of
1359 financial ability to operate and conduct the facility in
1360 accordance with the requirements of this part. A certificate of
1361 authority, pursuant to chapter 651, may be provided as proof of
1362 financial ability.
1363 (5) If the applicant is a continuing care facility
1364 certified under chapter 651, a copy of the facility's
1365 certificate of authority must be provided.
1366 (6) The applicant shall provide proof of liability
1367 insurance as defined in s. 624.605.
1368 (7) If the applicant is a community residential home, the
1369 applicant must provide proof that it has met the requirements
1370 specified in chapter 419.
1371 (8) The applicant must provide the agency with proof of
1372 legal right to occupy the property.

1373 (9) The applicant must furnish proof that the facility has
1374 received a satisfactory firesafety inspection. The local
1375 authority having jurisdiction or the State Fire Marshal must
1376 conduct the inspection within 30 days after written request by
1377 the applicant.
1378 (10) The applicant must furnish documentation of a
1379 satisfactory sanitation inspection of the facility by the county
1380 health department.
1381 (11) The applicant must furnish proof of compliance with
1382 level 2 background screening as required under s. 429.174 ~~s.~~
1383 ~~400.4174~~.
1384 (12) A provisional license may be issued to an applicant
1385 making initial application for licensure or making application
1386 for a change of ownership. A provisional license shall be
1387 limited in duration to a specific period of time not to exceed 6
1388 months, as determined by the agency.
1389 (13) A county or municipality may not issue an
1390 occupational license that is being obtained for the purpose of
1391 operating a facility regulated under this part without first
1392 ascertaining that the applicant has been licensed to operate
1393 such facility at the specified location or locations by the
1394 agency. The agency shall furnish to local agencies responsible
1395 for issuing occupational licenses sufficient instruction for
1396 making such determinations.
1397 Section 36. Section 400.412, Florida Statutes, is
1398 renumbered as section 429.12, Florida Statutes, and amended to
1399 read:
1400 429.12 ~~400.412~~ Sale or transfer of ownership of a

1401 facility.--It is the intent of the Legislature to protect the
1402 rights of the residents of an assisted living facility when the
1403 facility is sold or the ownership thereof is transferred.
1404 Therefore, whenever a facility is sold or the ownership thereof
1405 is transferred, including leasing:
1406 (1) The transferee shall make application to the agency
1407 for a new license at least 60 days before the date of transfer
1408 of ownership. The application must comply with the provisions
1409 of s. 429.11 ~~s. 400.411~~.
1410 (2)(a) The transferor shall notify the agency in writing
1411 at least 60 days before the date of transfer of ownership.
1412 (b) The new owner shall notify the residents, in writing,
1413 of the transfer of ownership within 7 days of his or her receipt
1414 of the license.
1415 (3) The transferor shall be responsible and liable for:
1416 (a) The lawful operation of the facility and the welfare
1417 of the residents domiciled in the facility until the date the
1418 transferee is licensed by the agency.
1419 (b) Any and all penalties imposed against the facility for
1420 violations occurring before the date of transfer of ownership
1421 unless the penalty imposed is a moratorium on admissions or
1422 denial of licensure. The moratorium on admissions or denial of
1423 licensure remains in effect after the transfer of ownership,
1424 unless the agency has approved the transferee's corrective
1425 action plan or the conditions which created the moratorium or
1426 denial have been corrected, and may be grounds for denial of
1427 license to the transferee in accordance with chapter 120.
1428 (c) Any outstanding liability to the state, unless the

1429 transferee has agreed, as a condition of sale or transfer, to
1430 accept the outstanding liabilities and to guarantee payment
1431 therefor; except that, if the transferee fails to meet these
1432 obligations, the transferor shall remain liable for the
1433 outstanding liability.
1434 (4) The transferor of a facility the license of which is
1435 denied pending an administrative hearing shall, as a part of the
1436 written transfer-of-ownership contract, advise the transferee
1437 that a plan of correction must be submitted by the transferee
1438 and approved by the agency at least 7 days before the transfer
1439 of ownership and that failure to correct the condition which
1440 resulted in the moratorium on admissions or denial of licensure
1441 is grounds for denial of the transferee's license.
1442 (5) The transferee must provide the agency with proof of
1443 legal right to occupy the property before a license may be
1444 issued. Proof may include, but is not limited to, copies of
1445 warranty deeds, or copies of lease or rental agreements,
1446 contracts for deeds, quitclaim deeds, or other such
1447 documentation.
1448 Section 37. Section 400.414, Florida Statutes, is
1449 renumbered as section 429.14, Florida Statutes, and amended to
1450 read:
1451 429.14 ~~400.414~~ Denial, revocation, or suspension of
1452 license; imposition of administrative fine; grounds.--
1453 (1) The agency may deny, revoke, or suspend any license
1454 issued under this part, or impose an administrative fine in the
1455 manner provided in chapter 120, for any of the following actions
1456 by an assisted living facility, for the actions of any person

1457 subject to level 2 background screening under s. 429.174 ~~s.~~
1458 ~~400.4174~~, or for the actions of any facility employee:
1459 (a) An intentional or negligent act seriously affecting
1460 the health, safety, or welfare of a resident of the facility.
1461 (b) The determination by the agency that the owner lacks
1462 the financial ability to provide continuing adequate care to
1463 residents.
1464 (c) Misappropriation or conversion of the property of a
1465 resident of the facility.
1466 (d) Failure to follow the criteria and procedures provided
1467 under part I of chapter 394 relating to the transportation,
1468 voluntary admission, and involuntary examination of a facility
1469 resident.
1470 (e) A citation of any of the following deficiencies as
1471 defined in s. 429.19 ~~s. 400.419~~:
1472 1. One or more cited class I deficiencies.
1473 2. Three or more cited class II deficiencies.
1474 3. Five or more cited class III deficiencies that have
1475 been cited on a single survey and have not been corrected within
1476 the times specified.
1477 (f) A determination that a person subject to level 2
1478 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not
1479 meet the screening standards of s. 435.04 or that the facility
1480 is retaining an employee subject to level 1 background screening
1481 standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet
1482 the screening standards of s. 435.03 and for whom exemptions
1483 from disqualification have not been provided by the agency.
1484 (g) A determination that an employee, volunteer,

1485 administrator, or owner, or person who otherwise has access to
1486 the residents of a facility does not meet the criteria specified
1487 in s. 435.03(2), and the owner or administrator has not taken
1488 action to remove the person. Exemptions from disqualification
1489 may be granted as set forth in s. 435.07. No administrative
1490 action may be taken against the facility if the person is
1491 granted an exemption.
1492 (h) Violation of a moratorium.
1493 (i) Failure of the license applicant, the licensee during
1494 relicensure, or a licensee that holds a provisional license to
1495 meet the minimum license requirements of this part, or related
1496 rules, at the time of license application or renewal.
1497 (j) A fraudulent statement or omission of any material
1498 fact on an application for a license or any other document
1499 required by the agency, including the submission of a license
1500 application that conceals the fact that any board member,
1501 officer, or person owning 5 percent or more of the facility may
1502 not meet the background screening requirements of s. 429.174 ~~s.~~
1503 ~~400.4174~~, or that the applicant has been excluded, permanently
1504 suspended, or terminated from the Medicaid or Medicare programs.
1505 (k) An intentional or negligent life-threatening act in
1506 violation of the uniform firesafety standards for assisted
1507 living facilities or other firesafety standards that threatens
1508 the health, safety, or welfare of a resident of a facility, as
1509 communicated to the agency by the local authority having
1510 jurisdiction or the State Fire Marshal.
1511 (l) Exclusion, permanent suspension, or termination from
1512 the Medicare or Medicaid programs.

1513 (m) Knowingly operating any unlicensed facility or
1514 providing without a license any service that must be licensed
1515 under this part or under chapter 400.
1516 (n) Any act constituting a ground upon which application
1517 for a license may be denied.
1518
1519 Administrative proceedings challenging agency action under this
1520 subsection shall be reviewed on the basis of the facts and
1521 conditions that resulted in the agency action.
1522 (2) Upon notification by the local authority having
1523 jurisdiction or by the State Fire Marshal, the agency may deny
1524 or revoke the license of an assisted living facility that fails
1525 to correct cited fire code violations that affect or threaten
1526 the health, safety, or welfare of a resident of a facility.
1527 (3) The agency may deny a license to any applicant or to
1528 any officer or board member of an applicant who is a firm,
1529 corporation, partnership, or association or who owns 5 percent
1530 or more of the facility, if the applicant, officer, or board
1531 member has or had a 25-percent or greater financial or ownership
1532 interest in any other facility licensed under this part, or in
1533 any entity licensed by this state or another state to provide
1534 health or residential care, which facility or entity during the
1535 5 years prior to the application for a license closed due to
1536 financial inability to operate; had a receiver appointed or a
1537 license denied, suspended, or revoked; was subject to a
1538 moratorium on admissions; had an injunctive proceeding initiated
1539 against it; or has an outstanding fine assessed under this part
1540 or under chapter 400.

1541 (4) The agency shall deny or revoke the license of an
1542 assisted living facility that has two or more class I violations
1543 that are similar or identical to violations identified by the
1544 agency during a survey, inspection, monitoring visit, or
1545 complaint investigation occurring within the previous 2 years.
1546 (5) An action taken by the agency to suspend, deny, or
1547 revoke a facility's license under this part, in which the agency
1548 claims that the facility owner or an employee of the facility
1549 has threatened the health, safety, or welfare of a resident of
1550 the facility be heard by the Division of Administrative Hearings
1551 of the Department of Management Services within 120 days after
1552 receipt of the facility's request for a hearing, unless that
1553 time limitation is waived by both parties. The administrative
1554 law judge must render a decision within 30 days after receipt of
1555 a proposed recommended order.
1556 (6) The agency shall provide to the Division of Hotels and
1557 Restaurants of the Department of Business and Professional
1558 Regulation, on a monthly basis, a list of those assisted living
1559 facilities that have had their licenses denied, suspended, or
1560 revoked or that are involved in an appellate proceeding pursuant
1561 to s. 120.60 related to the denial, suspension, or revocation of
1562 a license.
1563 (7) Agency notification of a license suspension or
1564 revocation, or denial of a license renewal, shall be posted and
1565 visible to the public at the facility.
1566 (8) The agency may issue a temporary license pending final
1567 disposition of a proceeding involving the suspension or
1568 revocation of an assisted living facility license.

1569 Section 38. Section 400.415, Florida Statutes, is
1570 renumbered as section 429.15, Florida Statutes, and amended to
1571 read:
1572 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
1573 agency may impose an immediate moratorium on admissions to any
1574 assisted living facility if the agency determines that any
1575 condition in the facility presents a threat to the health,
1576 safety, or welfare of the residents in the facility.
1577 (1) A facility the license of which is denied, revoked, or
1578 suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to
1579 immediate imposition of a moratorium on admissions to run
1580 concurrently with licensure denial, revocation, or suspension.
1581 (2) When a moratorium is placed on a facility, notice of
1582 the moratorium shall be posted and visible to the public at the
1583 facility until the moratorium is lifted.
1584 (3) The department may by rule establish conditions that
1585 constitute grounds for imposing a moratorium on a facility and
1586 procedures for imposing and lifting a moratorium, as necessary
1587 to administer this section.
1588 Section 39. Section 400.417, Florida Statutes, is
1589 renumbered as section 429.17, Florida Statutes, and amended to
1590 read:
1591 429.17 ~~400.417~~ Expiration of license; renewal; conditional
1592 license.--
1593 (1) Biennial licenses, unless sooner suspended or revoked,
1594 shall expire 2 years from the date of issuance. Limited nursing,
1595 extended congregate care, and limited mental health licenses
1596 shall expire at the same time as the facility's standard

1597 license, regardless of when issued. The agency shall notify the
1598 facility at least 120 days prior to expiration that a renewal
1599 license is necessary to continue operation. The notification
1600 must be provided electronically or by mail delivery. Ninety days
1601 prior to the expiration date, an application for renewal shall
1602 be submitted to the agency. Fees must be prorated. The failure
1603 to file a timely renewal application shall result in a late fee
1604 charged to the facility in an amount equal to 50 percent of the
1605 current fee.
1606 (2) A license shall be renewed within 90 days upon the
1607 timely filing of an application on forms furnished by the agency
1608 and the provision of satisfactory proof of ability to operate
1609 and conduct the facility in accordance with the requirements of
1610 this part and adopted rules, including proof that the facility
1611 has received a satisfactory firesafety inspection, conducted by
1612 the local authority having jurisdiction or the State Fire
1613 Marshal, within the preceding 12 months and an affidavit of
1614 compliance with the background screening requirements of s.
1615 429.174 ~~s. 400.4174~~.
1616 (3) An applicant for renewal of a license who has complied
1617 with the provisions of s. 429.11 ~~s. 400.411~~ with respect to
1618 proof of financial ability to operate shall not be required to
1619 provide further proof unless the facility or any other facility
1620 owned or operated in whole or in part by the same person has
1621 demonstrated financial instability as provided under s.
1622 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the
1623 facility is not financially stable as a result of the annual
1624 survey or complaints from the public or a report from the State

1625 Long-Term Care Ombudsman Council. Each facility must report to
1626 the agency any adverse court action concerning the facility's
1627 financial viability, within 7 days after its occurrence. The
1628 agency shall have access to books, records, and any other
1629 financial documents maintained by the facility to the extent
1630 necessary to determine the facility's financial stability. A
1631 license for the operation of a facility shall not be renewed if
1632 the licensee has any outstanding fines assessed pursuant to this
1633 part which are in final order status.
1634 (4) A licensee against whom a revocation or suspension
1635 proceeding is pending at the time of license renewal may be
1636 issued a conditional license effective until final disposition
1637 by the agency. If judicial relief is sought from the final
1638 disposition, the court having jurisdiction may issue a
1639 conditional license for the duration of the judicial proceeding.
1640 (5) A conditional license may be issued to an applicant
1641 for license renewal if the applicant fails to meet all standards
1642 and requirements for licensure. A conditional license issued
1643 under this subsection shall be limited in duration to a specific
1644 period of time not to exceed 6 months, as determined by the
1645 agency, and shall be accompanied by an agency-approved plan of
1646 correction.
1647 (6) When an extended care or limited nursing license is
1648 requested during a facility's biennial license period, the fee
1649 shall be prorated in order to permit the additional license to
1650 expire at the end of the biennial license period. The fee shall
1651 be calculated as of the date the additional license application
1652 is received by the agency.

1653 (7) The department may by rule establish renewal
1654 procedures, identify forms, and specify documentation necessary
1655 to administer this section.
1656 Section 40. Section 400.4174, Florida Statutes, is
1657 renumbered as section 429.174, Florida Statutes, and amended to
1658 read:
1659 429.174 ~~400.4174~~ Background screening; exemptions.--
1660 (1)(a) Level 2 background screening must be conducted on
1661 each of the following persons, who shall be considered employees
1662 for the purposes of conducting screening under chapter 435:
1663 1. The facility owner if an individual, the administrator,
1664 and the financial officer.
1665 2. An officer or board member if the facility owner is a
1666 firm, corporation, partnership, or association, or any person
1667 owning 5 percent or more of the facility if the agency has
1668 probable cause to believe that such person has been convicted of
1669 any offense prohibited by s. 435.04. For each officer, board
1670 member, or person owning 5 percent or more who has been
1671 convicted of any such offense, the facility shall submit to the
1672 agency a description and explanation of the conviction at the
1673 time of license application. This subparagraph does not apply to
1674 a board member of a not-for-profit corporation or organization
1675 if the board member serves solely in a voluntary capacity, does
1676 not regularly take part in the day-to-day operational decisions
1677 of the corporation or organization, receives no remuneration for
1678 his or her services, and has no financial interest and has no
1679 family members with a financial interest in the corporation or
1680 organization, provided that the board member and facility submit

1681 a statement affirming that the board member's relationship to
1682 the facility satisfies the requirements of this subparagraph.
1683 (b) Proof of compliance with level 2 screening standards
1684 which has been submitted within the previous 5 years to meet any
1685 facility or professional licensure requirements of the agency or
1686 the Department of Health satisfies the requirements of this
1687 subsection, provided that such proof is accompanied, under
1688 penalty of perjury, by an affidavit of compliance with the
1689 provisions of chapter 435. Proof of compliance with the
1690 background screening requirements of the Financial Services
1691 Commission and the Office of Insurance Regulation for applicants
1692 for a certificate of authority to operate a continuing care
1693 retirement community under chapter 651, submitted within the
1694 last 5 years, satisfies the Department of Law Enforcement and
1695 Federal Bureau of Investigation portions of a level 2 background
1696 check.
1697 (c) The agency may grant a provisional license to a
1698 facility applying for an initial license when each individual
1699 required by this subsection to undergo screening has completed
1700 the Department of Law Enforcement background checks, but has not
1701 yet received results from the Federal Bureau of Investigation,
1702 or when a request for an exemption from disqualification has
1703 been submitted to the agency pursuant to s. 435.07, but a
1704 response has not been issued.
1705 (2) The owner or administrator of an assisted living
1706 facility must conduct level 1 background screening, as set forth
1707 in chapter 435, on all employees hired on or after October 1,
1708 1998, who perform personal services as defined in s. 429.02(17)

1709 ~~s. 400.402(17)~~. The agency may exempt an individual from
1710 employment disqualification as set forth in chapter 435. Such
1711 persons shall be considered as having met this requirement if:
1712 (a) Proof of compliance with level 1 screening
1713 requirements obtained to meet any professional license
1714 requirements in this state is provided and accompanied, under
1715 penalty of perjury, by a copy of the person's current
1716 professional license and an affidavit of current compliance with
1717 the background screening requirements.
1718 (b) The person required to be screened has been
1719 continuously employed in the same type of occupation for which
1720 the person is seeking employment without a breach in service
1721 which exceeds 180 days, and proof of compliance with the level 1
1722 screening requirement which is no more than 2 years old is
1723 provided. Proof of compliance shall be provided directly from
1724 one employer or contractor to another, and not from the person
1725 screened. Upon request, a copy of screening results shall be
1726 provided by the employer retaining documentation of the
1727 screening to the person screened.
1728 (c) The person required to be screened is employed by a
1729 corporation or business entity or related corporation or
1730 business entity that owns, operates, or manages more than one
1731 facility or agency licensed under this chapter, and for whom a
1732 level 1 screening was conducted by the corporation or business
1733 entity as a condition of initial or continued employment.
1734 Section 41. Section 400.4176, Florida Statutes, is
1735 renumbered as section 429.176, Florida Statutes, and amended to
1736 read:

1737 429.176 ~~400.4176~~ Notice of change of administrator.--If,
1738 during the period for which a license is issued, the owner
1739 changes administrators, the owner must notify the agency of the
1740 change within 10 days and provide documentation within 90 days
1741 that the new administrator has completed the applicable core
1742 educational requirements under s. 429.52 ~~s. 400.452~~. Background
1743 screening shall be completed on any new administrator as
1744 specified in s. 429.174 ~~s. 400.4174~~.
1745 Section 42. Section 400.4178, Florida Statutes, is
1746 renumbered as section 429.178, Florida Statutes, and amended to
1747 read:
1748 429.178 ~~400.4178~~ Special care for persons with Alzheimer's
1749 disease or other related disorders.--
1750 (1) A facility which advertises that it provides special
1751 care for persons with Alzheimer's disease or other related
1752 disorders must meet the following standards of operation:
1753 (a)1. If the facility has 17 or more residents, have an
1754 awake staff member on duty at all hours of the day and night; or
1755 2. If the facility has fewer than 17 residents, have an
1756 awake staff member on duty at all hours of the day and night or
1757 have mechanisms in place to monitor and ensure the safety of the
1758 facility's residents.
1759 (b) Offer activities specifically designed for persons who
1760 are cognitively impaired.
1761 (c) Have a physical environment that provides for the
1762 safety and welfare of the facility's residents.
1763 (d) Employ staff who have completed the training and
1764 continuing education required in subsection (2).

1765 (2)(a) An individual who is employed by a facility that
1766 provides special care for residents with Alzheimer's disease or
1767 other related disorders, and who has regular contact with such
1768 residents, must complete up to 4 hours of initial dementia-
1769 specific training developed or approved by the department. The
1770 training shall be completed within 3 months after beginning
1771 employment and shall satisfy the core training requirements of
1772 s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1773 (b) A direct caregiver who is employed by a facility that
1774 provides special care for residents with Alzheimer's disease or
1775 other related disorders, and who provides direct care to such
1776 residents, must complete the required initial training and 4
1777 additional hours of training developed or approved by the
1778 department. The training shall be completed within 9 months
1779 after beginning employment and shall satisfy the core training
1780 requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.
1781 (c) An individual who is employed by a facility that
1782 provides special care for residents with Alzheimer's disease or
1783 other related disorders, but who only has incidental contact
1784 with such residents, must be given, at a minimum, general
1785 information on interacting with individuals with Alzheimer's
1786 disease or other related disorders, within 3 months after
1787 beginning employment.
1788 (3) In addition to the training required under subsection
1789 (2), a direct caregiver must participate in a minimum of 4
1790 contact hours of continuing education each calendar year. The
1791 continuing education must include one or more topics included in
1792 the dementia-specific training developed or approved by the

1793 department, in which the caregiver has not received previous
1794 training.
1795 (4) Upon completing any training listed in subsection (2),
1796 the employee or direct caregiver shall be issued a certificate
1797 that includes the name of the training provider, the topic
1798 covered, and the date and signature of the training provider.
1799 The certificate is evidence of completion of training in the
1800 identified topic, and the employee or direct caregiver is not
1801 required to repeat training in that topic if the employee or
1802 direct caregiver changes employment to a different facility.
1803 The employee or direct caregiver must comply with other
1804 applicable continuing education requirements.
1805 (5) The department, or its designee, shall approve the
1806 initial and continuing education courses and providers.
1807 (6) The department shall keep a current list of providers
1808 who are approved to provide initial and continuing education for
1809 staff of facilities that provide special care for persons with
1810 Alzheimer's disease or other related disorders.
1811 (7) Any facility more than 90 percent of whose residents
1812 receive monthly optional supplementation payments is not
1813 required to pay for the training and education programs required
1814 under this section. A facility that has one or more such
1815 residents shall pay a reduced fee that is proportional to the
1816 percentage of such residents in the facility. A facility that
1817 does not have any residents who receive monthly optional
1818 supplementation payments must pay a reasonable fee, as
1819 established by the department, for such training and education
1820 programs.

1821 (8) The department shall adopt rules to establish
1822 standards for trainers and training and to implement this
1823 section.
1824 Section 43. Section 400.418, Florida Statutes, is
1825 renumbered as section 429.18, Florida Statutes, and amended to
1826 read:
1827 429.18 ~~400.418~~ Disposition of fees and administrative
1828 fines.--
1829 (1) Income from license fees, inspection fees, late fees,
1830 and administrative fines generated pursuant to ss. 429.07,
1831 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408,~~
1832 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
1833 Care Trust Fund administered by the agency. Such funds shall be
1834 directed to and used by the agency for the following purposes:
1835 (a) Up to 50 percent of the trust funds accrued each
1836 fiscal year under this part may be used to offset the expenses
1837 of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court
1838 determines that the income and assets of the facility are
1839 insufficient to provide for adequate management and operation.
1840 (b) An amount of $5,000 of the trust funds accrued each
1841 year under this part shall be allocated to pay for inspection-
1842 related physical and mental health examinations requested by the
1843 agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are
1844 either recipients of supplemental security income or have
1845 monthly incomes not in excess of the maximum combined federal
1846 and state cash subsidies available to supplemental security
1847 income recipients, as provided for in s. 409.212. Such funds
1848 shall only be used where the resident is ineligible for

1849 Medicaid.
1850 (c) Any trust funds accrued each year under this part and
1851 not used for the purposes specified in paragraphs (a) and (b)
1852 shall be used to offset the costs of the licensure program,
1853 including the costs of conducting background investigations,
1854 verifying information submitted, defraying the costs of
1855 processing the names of applicants, and conducting inspections
1856 and monitoring visits pursuant to this part.
1857 (2) Income from fees generated pursuant to s. 429.41(5) ~~s.~~
1858 ~~400.441(5)~~ shall be deposited in the Health Care Trust Fund and
1859 used to offset the costs of printing and postage.
1860 Section 44. Section 400.419, Florida Statutes, is
1861 renumbered as section 429.19, Florida Statutes, and amended to
1862 read:
1863 429.19 ~~400.419~~ Violations; imposition of administrative
1864 fines; grounds.--
1865 (1) The agency shall impose an administrative fine in the
1866 manner provided in chapter 120 for any of the actions or
1867 violations as set forth within this section by an assisted
1868 living facility, for the actions of any person subject to level
1869 2 background screening under s. 429.174 ~~s. 400.4174~~, for the
1870 actions of any facility employee, or for an intentional or
1871 negligent act seriously affecting the health, safety, or welfare
1872 of a resident of the facility.
1873 (2) Each violation of this part and adopted rules shall be
1874 classified according to the nature of the violation and the
1875 gravity of its probable effect on facility residents. The agency
1876 shall indicate the classification on the written notice of the

1877 violation as follows:
1878 (a) Class "I" violations are those conditions or
1879 occurrences related to the operation and maintenance of a
1880 facility or to the personal care of residents which the agency
1881 determines present an imminent danger to the residents or guests
1882 of the facility or a substantial probability that death or
1883 serious physical or emotional harm would result therefrom. The
1884 condition or practice constituting a class I violation shall be
1885 abated or eliminated within 24 hours, unless a fixed period, as
1886 determined by the agency, is required for correction. The agency
1887 shall impose an administrative fine for a cited class I
1888 violation in an amount not less than $5,000 and not exceeding
1889 $10,000 for each violation. A fine may be levied notwithstanding
1890 the correction of the violation.
1891 (b) Class "II" violations are those conditions or
1892 occurrences related to the operation and maintenance of a
1893 facility or to the personal care of residents which the agency
1894 determines directly threaten the physical or emotional health,
1895 safety, or security of the facility residents, other than class
1896 I violations. The agency shall impose an administrative fine for
1897 a cited class II violation in an amount not less than $1,000 and
1898 not exceeding $5,000 for each violation. A fine shall be levied
1899 notwithstanding the correction of the violation.
1900 (c) Class "III" violations are those conditions or
1901 occurrences related to the operation and maintenance of a
1902 facility or to the personal care of residents which the agency
1903 determines indirectly or potentially threaten the physical or
1904 emotional health, safety, or security of facility residents,

1905 other than class I or class II violations. The agency shall
1906 impose an administrative fine for a cited class III violation in
1907 an amount not less than $500 and not exceeding $1,000 for each
1908 violation. A citation for a class III violation must specify the
1909 time within which the violation is required to be corrected. If
1910 a class III violation is corrected within the time specified, no
1911 fine may be imposed, unless it is a repeated offense.
1912 (d) Class "IV" violations are those conditions or
1913 occurrences related to the operation and maintenance of a
1914 building or to required reports, forms, or documents that do not
1915 have the potential of negatively affecting residents. These
1916 violations are of a type that the agency determines do not
1917 threaten the health, safety, or security of residents of the
1918 facility. The agency shall impose an administrative fine for a
1919 cited class IV violation in an amount not less than $100 and not
1920 exceeding $200 for each violation. A citation for a class IV
1921 violation must specify the time within which the violation is
1922 required to be corrected. If a class IV violation is corrected
1923 within the time specified, no fine shall be imposed. Any class
1924 IV violation that is corrected during the time an agency survey
1925 is being conducted will be identified as an agency finding and
1926 not as a violation.
1927 (3) In determining if a penalty is to be imposed and in
1928 fixing the amount of the fine, the agency shall consider the
1929 following factors:
1930 (a) The gravity of the violation, including the
1931 probability that death or serious physical or emotional harm to
1932 a resident will result or has resulted, the severity of the

1933 action or potential harm, and the extent to which the provisions
1934 of the applicable laws or rules were violated.
1935 (b) Actions taken by the owner or administrator to correct
1936 violations.
1937 (c) Any previous violations.
1938 (d) The financial benefit to the facility of committing or
1939 continuing the violation.
1940 (e) The licensed capacity of the facility.
1941 (4) Each day of continuing violation after the date fixed
1942 for termination of the violation, as ordered by the agency,
1943 constitutes an additional, separate, and distinct violation.
1944 (5) Any action taken to correct a violation shall be
1945 documented in writing by the owner or administrator of the
1946 facility and verified through followup visits by agency
1947 personnel. The agency may impose a fine and, in the case of an
1948 owner-operated facility, revoke or deny a facility's license
1949 when a facility administrator fraudulently misrepresents action
1950 taken to correct a violation.
1951 (6) For fines that are upheld following administrative or
1952 judicial review, the violator shall pay the fine, plus interest
1953 at the rate as specified in s. 55.03, for each day beyond the
1954 date set by the agency for payment of the fine.
1955 (7) Any unlicensed facility that continues to operate
1956 after agency notification is subject to a $1,000 fine per day.
1957 (8) Any licensed facility whose owner or administrator
1958 concurrently operates an unlicensed facility shall be subject to
1959 an administrative fine of $5,000 per day.
1960 (9) Any facility whose owner fails to apply for a change-

1961 of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and
1962 operates the facility under the new ownership is subject to a
1963 fine of $5,000.
1964 (10) In addition to any administrative fines imposed, the
1965 agency may assess a survey fee, equal to the lesser of one half
1966 of the facility's biennial license and bed fee or $500, to cover
1967 the cost of conducting initial complaint investigations that
1968 result in the finding of a violation that was the subject of the
1969 complaint or monitoring visits conducted under s. 429.28(3)(c)
1970 ~~s. 400.428(3)(c)~~ to verify the correction of the violations.
1971 (11) The agency, as an alternative to or in conjunction
1972 with an administrative action against a facility for violations
1973 of this part and adopted rules, shall make a reasonable attempt
1974 to discuss each violation and recommended corrective action with
1975 the owner or administrator of the facility, prior to written
1976 notification. The agency, instead of fixing a period within
1977 which the facility shall enter into compliance with standards,
1978 may request a plan of corrective action from the facility which
1979 demonstrates a good faith effort to remedy each violation by a
1980 specific date, subject to the approval of the agency.
1981 (12) Administrative fines paid by any facility under this
1982 section shall be deposited into the Health Care Trust Fund and
1983 expended as provided in s. 429.18 ~~s. 400.418~~.
1984 (13) The agency shall develop and disseminate an annual
1985 list of all facilities sanctioned or fined $5,000 or more for
1986 violations of state standards, the number and class of
1987 violations involved, the penalties imposed, and the current
1988 status of cases. The list shall be disseminated, at no charge,

1989 to the Department of Elderly Affairs, the Department of Health,
1990 the Department of Children and Family Services, the area
1991 agencies on aging, the Florida Statewide Advocacy Council, and
1992 the state and local ombudsman councils. The Department of
1993 Children and Family Services shall disseminate the list to
1994 service providers under contract to the department who are
1995 responsible for referring persons to a facility for residency.
1996 The agency may charge a fee commensurate with the cost of
1997 printing and postage to other interested parties requesting a
1998 copy of this list.
1999 Section 45. Section 400.42, Florida Statutes, is
2000 renumbered as section 429.20, Florida Statutes, and amended to
2001 read:
2002 429.20 ~~400.42~~ Certain solicitation prohibited; third-party
2003 supplementation.--
2004 (1) A person may not, in connection with the solicitation
2005 of contributions by or on behalf of an assisted living facility
2006 or facilities, misrepresent or mislead any person, by any
2007 manner, means, practice, or device whatsoever, to believe that
2008 the receipts of such solicitation will be used for charitable
2009 purposes, if that is not the fact.
2010 (2) Solicitation of contributions of any kind in a
2011 threatening, coercive, or unduly forceful manner by or on behalf
2012 of an assisted living facility or facilities by any agent,
2013 employee, owner, or representative of any assisted living
2014 facility or facilities is grounds for denial, suspension, or
2015 revocation of the license of the assisted living facility or
2016 facilities by or on behalf of which such contributions were

2017 solicited.
2018 (3) The admission or maintenance of assisted living
2019 facility residents whose care is supported, in whole or in part,
2020 by state funds may not be conditioned upon the receipt of any
2021 manner of contribution or donation from any person. The
2022 solicitation or receipt of contributions in violation of this
2023 subsection is grounds for denial, suspension, or revocation of
2024 license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted
2025 living facility by or on behalf of which such contributions were
2026 solicited.
2027 (4) An assisted living facility may accept additional
2028 supplementation from third parties on behalf of residents
2029 receiving optional state supplementation in accordance with s.
2030 409.212.
2031 Section 46. Section 400.422, Florida Statutes, is
2032 renumbered as section 429.22, Florida Statutes, and amended to
2033 read:
2034 429.22 ~~400.422~~ Receivership proceedings.--
2035 (1) As an alternative to or in conjunction with an
2036 injunctive proceeding, the agency may petition a court of
2037 competent jurisdiction for the appointment of a receiver, if
2038 suitable alternate placements are not available, when any of the
2039 following conditions exist:
2040 (a) The facility is operating without a license and
2041 refuses to make application for a license as required by ss.
2042 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.
2043 (b) The facility is closing or has informed the agency
2044 that it intends to close and adequate arrangements have not been

2045 made for relocation of the residents within 7 days, exclusive of
2046 weekends and holidays, of the closing of the facility.
2047 (c) The agency determines there exist in the facility
2048 conditions which present an imminent danger to the health,
2049 safety, or welfare of the residents of the facility or a
2050 substantial probability that death or serious physical harm
2051 would result therefrom.
2052 (d) The facility cannot meet its financial obligation for
2053 providing food, shelter, care, and utilities.
2054 (2) Petitions for receivership shall take precedence over
2055 other court business unless the court determines that some other
2056 pending proceeding, having similar statutory precedence, shall
2057 have priority. A hearing shall be conducted within 5 days of
2058 the filing of the petition, at which time all interested parties
2059 shall have the opportunity to present evidence pertaining to the
2060 petition. The agency shall notify, by certified mail, the owner
2061 or administrator of the facility named in the petition and the
2062 facility resident or, if applicable, the resident's
2063 representative or designee, or the resident's surrogate,
2064 guardian, or attorney in fact, of its filing, the substance of
2065 the violation, and the date and place set for the hearing. The
2066 court shall grant the petition only upon finding that the
2067 health, safety, or welfare of facility residents would be
2068 threatened if a condition existing at the time the petition was
2069 filed is permitted to continue. A receiver shall not be
2070 appointed ex parte unless the court determines that one or more
2071 of the conditions in subsection (1) exist; that the facility
2072 owner or administrator cannot be found; that all reasonable

2073 means of locating the owner or administrator and notifying him
2074 or her of the petition and hearing have been exhausted; or that
2075 the owner or administrator after notification of the hearing
2076 chooses not to attend. After such findings, the court may
2077 appoint any qualified person as a receiver, except it may not
2078 appoint any owner or affiliate of the facility which is in
2079 receivership. The receiver may be selected from a list of
2080 persons qualified to act as receivers developed by the agency
2081 and presented to the court with each petition for receivership.
2082 Under no circumstances may the agency or designated agency
2083 employee be appointed as a receiver for more than 60 days;
2084 however, the receiver may petition the court, one time only, for
2085 a 30-day extension. The court shall grant the extension upon a
2086 showing of good cause.
2087 (3) The receiver must make provisions for the continued
2088 health, safety, and welfare of all residents of the facility
2089 and:
2090 (a) Shall exercise those powers and perform those duties
2091 set out by the court.
2092 (b) Shall operate the facility in such a manner as to
2093 assure safety and adequate health care for the residents.
2094 (c) Shall take such action as is reasonably necessary to
2095 protect or conserve the assets or property of the facility for
2096 which the receiver is appointed, or the proceeds from any
2097 transfer thereof, and may use them only in the performance of
2098 the powers and duties set forth in this section and by order of
2099 the court.
2100 (d) May use the building, fixtures, furnishings, and any

2101 accompanying consumable goods in the provision of care and
2102 services to residents and to any other persons receiving
2103 services from the facility at the time the petition for
2104 receivership was filed. The receiver shall collect payments for
2105 all goods and services provided to residents or others during
2106 the period of the receivership at the same rate of payment
2107 charged by the owners at the time the petition for receivership
2108 was filed, or at a fair and reasonable rate otherwise approved
2109 by the court.
2110 (e) May correct or eliminate any deficiency in the
2111 structure or furnishings of the facility which endangers the
2112 safety or health of residents while they remain in the facility,
2113 if the total cost of correction does not exceed $10,000. The
2114 court may order expenditures for this purpose in excess of
2115 $10,000 on application from the receiver after notice to the
2116 owner and a hearing.
2117 (f) May let contracts and hire agents and employees to
2118 carry out the powers and duties of the receiver.
2119 (g) Shall honor all leases, mortgages, and secured
2120 transactions governing the building in which the facility is
2121 located and all goods and fixtures in the building of which the
2122 receiver has taken possession, but only to the extent of
2123 payments which, in the case of a rental agreement, are for the
2124 use of the property during the period of the receivership, or
2125 which, in the case of a purchase agreement, become due during
2126 the period of the receivership.
2127 (h) Shall have full power to direct and manage and to
2128 discharge employees of the facility, subject to any contract

2129 rights they may have. The receiver shall pay employees at the
2130 rate of compensation, including benefits, approved by the court.
2131 A receivership does not relieve the owner of any obligation to
2132 employees made prior to the appointment of a receiver and not
2133 carried out by the receiver.
2134 (i) Shall be entitled to and take possession of all
2135 property or assets of residents which are in the possession of a
2136 facility or its owner. The receiver shall preserve all property,
2137 assets, and records of residents of which the receiver takes
2138 possession and shall provide for the prompt transfer of the
2139 property, assets, and records to the new placement of any
2140 transferred resident. An inventory list certified by the owner
2141 and receiver shall be made immediately at the time the receiver
2142 takes possession of the facility.
2143 (4)(a) A person who is served with notice of an order of
2144 the court appointing a receiver and of the receiver's name and
2145 address shall be liable to pay the receiver for any goods or
2146 services provided by the receiver after the date of the order if
2147 the person would have been liable for the goods or services as
2148 supplied by the owner. The receiver shall give a receipt for
2149 each payment and shall keep a copy of each receipt on file. The
2150 receiver shall deposit accounts received in a separate account
2151 and shall use this account for all disbursements.
2152 (b) The receiver may bring an action to enforce the
2153 liability created by paragraph (a).
2154 (c) A payment to the receiver of any sum owing to the
2155 facility or its owner shall discharge any obligation to the
2156 facility to the extent of the payment.

2157 (5)(a) A receiver may petition the court that he or she
2158 not be required to honor any lease, mortgage, secured
2159 transaction, or other wholly or partially executory contract
2160 entered into by the owner of the facility if the rent, price, or
2161 rate of interest required to be paid under the agreement was
2162 substantially in excess of a reasonable rent, price, or rate of
2163 interest at the time the contract was entered into, or if any
2164 material provision of the agreement was unreasonable, when
2165 compared to contracts negotiated under similar conditions. Any
2166 relief in this form provided by the court shall be limited to
2167 the life of the receivership, unless otherwise determined by the
2168 court.
2169 (b) If the receiver is in possession of real estate or
2170 goods subject to a lease, mortgage, or security interest which
2171 the receiver has obtained a court order to avoid under paragraph
2172 (a), and if the real estate or goods are necessary for the
2173 continued operation of the facility under this section, the
2174 receiver may apply to the court to set a reasonable rental,
2175 price, or rate of interest to be paid by the receiver during the
2176 duration of the receivership. The court shall hold a hearing on
2177 the application within 15 days. The receiver shall send notice
2178 of the application to any known persons who own the property
2179 involved at least 10 days prior to the hearing. Payment by the
2180 receiver of the amount determined by the court to be reasonable
2181 is a defense to any action against the receiver for payment or
2182 for possession of the goods or real estate subject to the lease,
2183 security interest, or mortgage involved by any person who
2184 received such notice, but the payment does not relieve the owner

2185 of the facility of any liability for the difference between the
2186 amount paid by the receiver and the amount due under the
2187 original lease, security interest, or mortgage involved.
2188 (6) The court shall set the compensation of the receiver,
2189 which will be considered a necessary expense of a receivership.
2190 (7) A receiver may be held liable in a personal capacity
2191 only for the receiver's own gross negligence, intentional acts,
2192 or breach of fiduciary duty.
2193 (8) The court may require a receiver to post a bond.
2194 (9) The court may direct the agency to allocate funds from
2195 the Health Care Trust Fund to the receiver, subject to the
2196 provisions of s. 429.18(1) ~~s. 400.418(1)~~.
2197 (10) The court may terminate a receivership when:
2198 (a) The court determines that the receivership is no
2199 longer necessary because the conditions which gave rise to the
2200 receivership no longer exist or the agency grants the facility a
2201 new license; or
2202 (b) All of the residents in the facility have been
2203 transferred or discharged.
2204 (11) Within 30 days after termination, the receiver shall
2205 give the court a complete accounting of all property of which
2206 the receiver has taken possession, of all funds collected, and
2207 of the expenses of the receivership.
2208 (12) Nothing in this section shall be deemed to relieve
2209 any owner, administrator, or employee of a facility placed in
2210 receivership of any civil or criminal liability incurred, or any
2211 duty imposed by law, by reason of acts or omissions of the
2212 owner, administrator, or employee prior to the appointment of a

2213 receiver; nor shall anything contained in this section be
2214 construed to suspend during the receivership any obligation of
2215 the owner, administrator, or employee for payment of taxes or
2216 other operating and maintenance expenses of the facility or of
2217 the owner, administrator, employee, or any other person for the
2218 payment of mortgages or liens. The owner shall retain the right
2219 to sell or mortgage any facility under receivership, subject to
2220 approval of the court which ordered the receivership.
2221 Section 47. Section 400.424, Florida Statutes, is
2222 renumbered as section 429.24, Florida Statutes, and amended to
2223 read:
2224 429.24 ~~400.424~~ Contracts.--
2225 (1) The presence of each resident in a facility shall be
2226 covered by a contract, executed at the time of admission or
2227 prior thereto, between the licensee and the resident or his or
2228 her designee or legal representative. Each party to the contract
2229 shall be provided with a duplicate original thereof, and the
2230 licensee shall keep on file in the facility all such contracts.
2231 The licensee may not destroy or otherwise dispose of any such
2232 contract until 5 years after its expiration.
2233 (2) Each contract must contain express provisions
2234 specifically setting forth the services and accommodations to be
2235 provided by the facility; the rates or charges; provision for at
2236 least 30 days' written notice of a rate increase; the rights,
2237 duties, and obligations of the residents, other than those
2238 specified in s. 429.28 ~~s. 400.428~~; and other matters that the
2239 parties deem appropriate. Whenever money is deposited or
2240 advanced by a resident in a contract as security for performance

2241 of the contract agreement or as advance rent for other than the
2242 next immediate rental period:
2243 (a) Such funds shall be deposited in a banking institution
2244 in this state that is located, if possible, in the same
2245 community in which the facility is located; shall be kept
2246 separate from the funds and property of the facility; may not be
2247 represented as part of the assets of the facility on financial
2248 statements; and shall be used, or otherwise expended, only for
2249 the account of the resident.
2250 (b) The licensee shall, within 30 days of receipt of
2251 advance rent or a security deposit, notify the resident or
2252 residents in writing of the manner in which the licensee is
2253 holding the advance rent or security deposit and state the name
2254 and address of the depository where the moneys are being held.
2255 The licensee shall notify residents of the facility's policy on
2256 advance deposits.
2257 (3)(a) The contract shall include a refund policy to be
2258 implemented at the time of a resident's transfer, discharge, or
2259 death. The refund policy shall provide that the resident or
2260 responsible party is entitled to a prorated refund based on the
2261 daily rate for any unused portion of payment beyond the
2262 termination date after all charges, including the cost of
2263 damages to the residential unit resulting from circumstances
2264 other than normal use, have been paid to the licensee. For the
2265 purpose of this paragraph, the termination date shall be the
2266 date the unit is vacated by the resident and cleared of all
2267 personal belongings. If the amount of belongings does not
2268 preclude renting the unit, the facility may clear the unit and

2269 charge the resident or his or her estate for moving and storing
2270 the items at a rate equal to the actual cost to the facility,
2271 not to exceed 20 percent of the regular rate for the unit,
2272 provided that 14 days' advance written notification is given.
2273 If the resident's possessions are not claimed within 45 days
2274 after notification, the facility may dispose of them. The
2275 contract shall also specify any other conditions under which
2276 claims will be made against the refund due the resident. Except
2277 in the case of death or a discharge due to medical reasons, the
2278 refunds shall be computed in accordance with the notice of
2279 relocation requirements specified in the contract. However, a
2280 resident may not be required to provide the licensee with more
2281 than 30 days' notice of termination. If after a contract is
2282 terminated, the facility intends to make a claim against a
2283 refund due the resident, the facility shall notify the resident
2284 or responsible party in writing of the claim and shall provide
2285 said party with a reasonable time period of no less than 14
2286 calendar days to respond. The facility shall provide a refund
2287 to the resident or responsible party within 45 days after the
2288 transfer, discharge, or death of the resident. The agency shall
2289 impose a fine upon a facility that fails to comply with the
2290 refund provisions of the paragraph, which fine shall be equal to
2291 three times the amount due to the resident. One-half of the fine
2292 shall be remitted to the resident or his or her estate, and the
2293 other half to the Health Care Trust Fund to be used for the
2294 purpose specified in s. 429.18 ~~s. 400.418~~.
2295 (b) If a licensee agrees to reserve a bed for a resident
2296 who is admitted to a medical facility, including, but not

2297 limited to, a nursing home, health care facility, or psychiatric
2298 facility, the resident or his or her responsible party shall
2299 notify the licensee of any change in status that would prevent
2300 the resident from returning to the facility. Until such notice
2301 is received, the agreed-upon daily rate may be charged by the
2302 licensee.
2303 (c) The purpose of any advance payment and a refund policy
2304 for such payment, including any advance payment for housing,
2305 meals, or personal services, shall be covered in the contract.
2306 (4) The contract shall state whether or not the facility
2307 is affiliated with any religious organization and, if so, which
2308 organization and its general responsibility to the facility.
2309 (5) Neither the contract nor any provision thereof
2310 relieves any licensee of any requirement or obligation imposed
2311 upon it by this part or rules adopted under this part.
2312 (6) In lieu of the provisions of this section, facilities
2313 certified under chapter 651 shall comply with the requirements
2314 of s. 651.055.
2315 (7) Notwithstanding the provisions of this section,
2316 facilities which consist of 60 or more apartments may require
2317 refund policies and termination notices in accordance with the
2318 provisions of part II of chapter 83, provided that the lease is
2319 terminated automatically without financial penalty in the event
2320 of a resident's death or relocation due to psychiatric
2321 hospitalization or to medical reasons which necessitate services
2322 or care beyond which the facility is licensed to provide. The
2323 date of termination in such instances shall be the date the unit
2324 is fully vacated. A lease may be substituted for the contract

2325 if it meets the disclosure requirements of this section. For
2326 the purpose of this section, the term "apartment" means a room
2327 or set of rooms with a kitchen or kitchenette and lavatory
2328 located within one or more buildings containing other similar or
2329 like residential units.
2330 (8) The department may by rule clarify terms, establish
2331 procedures, clarify refund policies and contract provisions, and
2332 specify documentation as necessary to administer this section.
2333 Section 48. Section 400.4255, Florida Statutes, is
2334 renumbered as section 429.255, Florida Statutes, and amended to
2335 read:
2336 429.255 ~~400.4255~~ Use of personnel; emergency care.--
2337 (1)(a) Persons under contract to the facility, facility
2338 staff, or volunteers, who are licensed according to part I of
2339 chapter 464, or those persons exempt under s. 464.022(1), and
2340 others as defined by rule, may administer medications to
2341 residents, take residents' vital signs, manage individual weekly
2342 pill organizers for residents who self-administer medication,
2343 give prepackaged enemas ordered by a physician, observe
2344 residents, document observations on the appropriate resident's
2345 record, report observations to the resident's physician, and
2346 contract or allow residents or a resident's representative,
2347 designee, surrogate, guardian, or attorney in fact to contract
2348 with a third party, provided residents meet the criteria for
2349 appropriate placement as defined in s. 429.26 ~~s. 400.426~~.
2350 Nursing assistants certified pursuant to part II of chapter 464
2351 may take residents' vital signs as directed by a licensed nurse
2352 or physician.

2353 (b) All staff in facilities licensed under this part shall
2354 exercise their professional responsibility to observe residents,
2355 to document observations on the appropriate resident's record,
2356 and to report the observations to the resident's physician.
2357 However, the owner or administrator of the facility shall be
2358 responsible for determining that the resident receiving services
2359 is appropriate for residence in the facility.
2360 (c) In an emergency situation, licensed personnel may
2361 carry out their professional duties pursuant to part I of
2362 chapter 464 until emergency medical personnel assume
2363 responsibility for care.
2364 (2) In facilities licensed to provide extended congregate
2365 care, persons under contract to the facility, facility staff, or
2366 volunteers, who are licensed according to part I of chapter 464,
2367 or those persons exempt under s. 464.022(1), or those persons
2368 certified as nursing assistants pursuant to part II of chapter
2369 464, may also perform all duties within the scope of their
2370 license or certification, as approved by the facility
2371 administrator and pursuant to this part.
2372 (3) Facility staff may withhold or withdraw
2373 cardiopulmonary resuscitation if presented with an order not to
2374 resuscitate executed pursuant to s. 401.45. The department shall
2375 adopt rules providing for the implementation of such orders.
2376 Facility staff and facilities shall not be subject to criminal
2377 prosecution or civil liability, nor be considered to have
2378 engaged in negligent or unprofessional conduct, for withholding
2379 or withdrawing cardiopulmonary resuscitation pursuant to such an
2380 order and rules adopted by the department. The absence of an

2381 order to resuscitate executed pursuant to s. 401.45 does not
2382 preclude a physician from withholding or withdrawing
2383 cardiopulmonary resuscitation as otherwise permitted by law.
2384 Section 49. Section 400.4256, Florida Statutes, is
2385 renumbered as section 429.256, Florida Statutes, and amended to
2386 read:
2387 429.256 ~~400.4256~~ Assistance with self-administration of
2388 medication.--
2389 (1) For the purposes of this section, the term:
2390 (a) "Informed consent" means advising the resident, or the
2391 resident's surrogate, guardian, or attorney in fact, that an
2392 assisted living facility is not required to have a licensed
2393 nurse on staff, that the resident may be receiving assistance
2394 with self-administration of medication from an unlicensed
2395 person, and that such assistance, if provided by an unlicensed
2396 person, will or will not be overseen by a licensed nurse.
2397 (b) "Unlicensed person" means an individual not currently
2398 licensed to practice nursing or medicine who is employed by or
2399 under contract to an assisted living facility and who has
2400 received training with respect to assisting with the self-
2401 administration of medication in an assisted living facility as
2402 provided under s. 429.52 ~~s. 400.452~~ prior to providing such
2403 assistance as described in this section.
2404 (2) Residents who are capable of self-administering their
2405 own medications without assistance shall be encouraged and
2406 allowed to do so. However, an unlicensed person may, consistent
2407 with a dispensed prescription's label or the package directions
2408 of an over-the-counter medication, assist a resident whose

2409 condition is medically stable with the self-administration of
2410 routine, regularly scheduled medications that are intended to be
2411 self-administered. Assistance with self-medication by an
2412 unlicensed person may occur only upon a documented request by,
2413 and the written informed consent of, a resident or the
2414 resident's surrogate, guardian, or attorney in fact. For the
2415 purposes of this section, self-administered medications include
2416 both legend and over-the-counter oral dosage forms, topical
2417 dosage forms and topical ophthalmic, otic, and nasal dosage
2418 forms including solutions, suspensions, sprays, and inhalers.
2419 (3) Assistance with self-administration of medication
2420 includes:
2421 (a) Taking the medication, in its previously dispensed,
2422 properly labeled container, from where it is stored, and
2423 bringing it to the resident.
2424 (b) In the presence of the resident, reading the label,
2425 opening the container, removing a prescribed amount of
2426 medication from the container, and closing the container.
2427 (c) Placing an oral dosage in the resident's hand or
2428 placing the dosage in another container and helping the resident
2429 by lifting the container to his or her mouth.
2430 (d) Applying topical medications.
2431 (e) Returning the medication container to proper storage.
2432 (f) Keeping a record of when a resident receives
2433 assistance with self-administration under this section.
2434 (4) Assistance with self-administration does not include:
2435 (a) Mixing, compounding, converting, or calculating
2436 medication doses, except for measuring a prescribed amount of

2437 liquid medication or breaking a scored tablet or crushing a
2438 tablet as prescribed.
2439 (b) The preparation of syringes for injection or the
2440 administration of medications by any injectable route.
2441 (c) Administration of medications through intermittent
2442 positive pressure breathing machines or a nebulizer.
2443 (d) Administration of medications by way of a tube
2444 inserted in a cavity of the body.
2445 (e) Administration of parenteral preparations.
2446 (f) Irrigations or debriding agents used in the treatment
2447 of a skin condition.
2448 (g) Rectal, urethral, or vaginal preparations.
2449 (h) Medications ordered by the physician or health care
2450 professional with prescriptive authority to be given "as
2451 needed," unless the order is written with specific parameters
2452 that preclude independent judgment on the part of the unlicensed
2453 person, and at the request of a competent resident.
2454 (i) Medications for which the time of administration, the
2455 amount, the strength of dosage, the method of administration, or
2456 the reason for administration requires judgment or discretion on
2457 the part of the unlicensed person.
2458 (5) Assistance with the self-administration of medication
2459 by an unlicensed person as described in this section shall not
2460 be considered administration as defined in s. 465.003.
2461 (6) The department may by rule establish facility
2462 procedures and interpret terms as necessary to implement this
2463 section.
2464 Section 50. Section 400.426, Florida Statutes, is

2465 renumbered as section 429.26, Florida Statutes, and amended to
2466 read:
2467 429.26 ~~400.426~~ Appropriateness of placements; examinations
2468 of residents.--
2469 (1) The owner or administrator of a facility is
2470 responsible for determining the appropriateness of admission of
2471 an individual to the facility and for determining the continued
2472 appropriateness of residence of an individual in the facility.
2473 A determination shall be based upon an assessment of the
2474 strengths, needs, and preferences of the resident, the care and
2475 services offered or arranged for by the facility in accordance
2476 with facility policy, and any limitations in law or rule related
2477 to admission criteria or continued residency for the type of
2478 license held by the facility under this part. A resident may
2479 not be moved from one facility to another without consultation
2480 with and agreement from the resident or, if applicable, the
2481 resident's representative or designee or the resident's family,
2482 guardian, surrogate, or attorney in fact. In the case of a
2483 resident who has been placed by the department or the Department
2484 of Children and Family Services, the administrator must notify
2485 the appropriate contact person in the applicable department.
2486 (2) A physician or nurse practitioner who is employed by
2487 an assisted living facility to provide an initial examination
2488 for admission purposes may not have financial interest in the
2489 facility.
2490 (3) Persons licensed under part I of chapter 464 who are
2491 employed by or under contract with a facility shall, on a
2492 routine basis or at least monthly, perform a nursing assessment

2493 of the residents for whom they are providing nursing services
2494 ordered by a physician, except administration of medication, and
2495 shall document such assessment, including any substantial
2496 changes in a resident's status which may necessitate relocation
2497 to a nursing home, hospital, or specialized health care
2498 facility. Such records shall be maintained in the facility for
2499 inspection by the agency and shall be forwarded to the
2500 resident's case manager, if applicable.
2501 (4) If possible, each resident shall have been examined by
2502 a licensed physician or a licensed nurse practitioner within 60
2503 days before admission to the facility. The signed and completed
2504 medical examination report shall be submitted to the owner or
2505 administrator of the facility who shall use the information
2506 contained therein to assist in the determination of the
2507 appropriateness of the resident's admission and continued stay
2508 in the facility. The medical examination report shall become a
2509 permanent part of the record of the resident at the facility and
2510 shall be made available to the agency during inspection or upon
2511 request. An assessment that has been completed through the
2512 Comprehensive Assessment and Review for Long-Term Care Services
2513 (CARES) Program fulfills the requirements for a medical
2514 examination under this subsection and s. 429.07(3)(b)6. ~~s.~~
2515 ~~400.407(3)(b)6.~~
2516 (5) Except as provided in s. 429.07 ~~s. 400.407~~, if a
2517 medical examination has not been completed within 60 days before
2518 the admission of the resident to the facility, a licensed
2519 physician or licensed nurse practitioner shall examine the
2520 resident and complete a medical examination form provided by the

2521 agency within 30 days following the admission to the facility to
2522 enable the facility owner or administrator to determine the
2523 appropriateness of the admission. The medical examination form
2524 shall become a permanent part of the record of the resident at
2525 the facility and shall be made available to the agency during
2526 inspection by the agency or upon request.
2527 (6) Any resident accepted in a facility and placed by the
2528 department or the Department of Children and Family Services
2529 shall have been examined by medical personnel within 30 days
2530 before placement in the facility. The examination shall include
2531 an assessment of the appropriateness of placement in a facility.
2532 The findings of this examination shall be recorded on the
2533 examination form provided by the agency. The completed form
2534 shall accompany the resident and shall be submitted to the
2535 facility owner or administrator. Additionally, in the case of a
2536 mental health resident, the Department of Children and Family
2537 Services must provide documentation that the individual has been
2538 assessed by a psychiatrist, clinical psychologist, clinical
2539 social worker, or psychiatric nurse, or an individual who is
2540 supervised by one of these professionals, and determined to be
2541 appropriate to reside in an assisted living facility. The
2542 documentation must be in the facility within 30 days after the
2543 mental health resident has been admitted to the facility. An
2544 evaluation completed upon discharge from a state mental hospital
2545 meets the requirements of this subsection related to
2546 appropriateness for placement as a mental health resident
2547 providing it was completed within 90 days prior to admission to
2548 the facility. The applicable department shall provide to the

2549 facility administrator any information about the resident that
2550 would help the administrator meet his or her responsibilities
2551 under subsection (1). Further, department personnel shall
2552 explain to the facility operator any special needs of the
2553 resident and advise the operator whom to call should problems
2554 arise. The applicable department shall advise and assist the
2555 facility administrator where the special needs of residents who
2556 are recipients of optional state supplementation require such
2557 assistance.
2558 (7) The facility must notify a licensed physician when a
2559 resident exhibits signs of dementia or cognitive impairment or
2560 has a change of condition in order to rule out the presence of
2561 an underlying physiological condition that may be contributing
2562 to such dementia or impairment. The notification must occur
2563 within 30 days after the acknowledgment of such signs by
2564 facility staff. If an underlying condition is determined to
2565 exist, the facility shall arrange, with the appropriate health
2566 care provider, the necessary care and services to treat the
2567 condition.
2568 (8) The Department of Children and Family Services may
2569 require an examination for supplemental security income and
2570 optional state supplementation recipients residing in facilities
2571 at any time and shall provide the examination whenever a
2572 resident's condition requires it. Any facility administrator;
2573 personnel of the agency, the department, or the Department of
2574 Children and Family Services; or long-term care ombudsman
2575 council member who believes a resident needs to be evaluated
2576 shall notify the resident's case manager, who shall take

2577 appropriate action. A report of the examination findings shall
2578 be provided to the resident's case manager and the facility
2579 administrator to help the administrator meet his or her
2580 responsibilities under subsection (1).
2581 (9) If, at any time after admission to a facility, a
2582 resident appears to need care beyond that which the facility is
2583 licensed to provide, the agency shall require the resident to be
2584 physically examined by a licensed physician or licensed nurse
2585 practitioner. This examination shall, to the extent possible,
2586 be performed by the resident's preferred physician or nurse
2587 practitioner and shall be paid for by the resident with personal
2588 funds, except as provided in s. 429.18(1)(b) ~~s. 400.418(1)(b)~~.
2589 Following this examination, the examining physician or licensed
2590 nurse practitioner shall complete and sign a medical form
2591 provided by the agency. The completed medical form shall be
2592 submitted to the agency within 30 days after the date the
2593 facility owner or administrator is notified by the agency that
2594 the physical examination is required. After consultation with
2595 the physician or licensed nurse practitioner who performed the
2596 examination, a medical review team designated by the agency
2597 shall then determine whether the resident is appropriately
2598 residing in the facility. The medical review team shall base
2599 its decision on a comprehensive review of the resident's
2600 physical and functional status, including the resident's
2601 preferences, and not on an isolated health-related problem. In
2602 the case of a mental health resident, if the resident appears to
2603 have needs in addition to those identified in the community
2604 living support plan, the agency may require an evaluation by a

2605 mental health professional, as determined by the Department of
2606 Children and Family Services. A facility may not be required to
2607 retain a resident who requires more services or care than the
2608 facility is able to provide in accordance with its policies and
2609 criteria for admission and continued residency. Members of the
2610 medical review team making the final determination may not
2611 include the agency personnel who initially questioned the
2612 appropriateness of a resident's placement. Such determination is
2613 final and binding upon the facility and the resident. Any
2614 resident who is determined by the medical review team to be
2615 inappropriately residing in a facility shall be given 30 days'
2616 written notice to relocate by the owner or administrator, unless
2617 the resident's continued residence in the facility presents an
2618 imminent danger to the health, safety, or welfare of the
2619 resident or a substantial probability exists that death or
2620 serious physical harm would result to the resident if allowed to
2621 remain in the facility.
2622 (10) A terminally ill resident who no longer meets the
2623 criteria for continued residency may remain in the facility if
2624 the arrangement is mutually agreeable to the resident and the
2625 facility; additional care is rendered through a licensed
2626 hospice, and the resident is under the care of a physician who
2627 agrees that the physical needs of the resident are being met.
2628 (11) Facilities licensed to provide extended congregate
2629 care services shall promote aging in place by determining
2630 appropriateness of continued residency based on a comprehensive
2631 review of the resident's physical and functional status; the
2632 ability of the facility, family members, friends, or any other

2633 pertinent individuals or agencies to provide the care and
2634 services required; and documentation that a written service plan
2635 consistent with facility policy has been developed and
2636 implemented to ensure that the resident's needs and preferences
2637 are addressed.
2638 (12) No resident who requires 24-hour nursing supervision,
2639 except for a resident who is an enrolled hospice patient
2640 pursuant to part IV ~~VI~~ of ~~this~~ chapter 400, shall be retained in
2641 a facility licensed under this part.
2642 Section 51. Section 400.427, Florida Statutes, is
2643 renumbered as section 429.27, Florida Statutes, and amended to
2644 read:
2645 429.27 ~~400.427~~ Property and personal affairs of
2646 residents.--
2647 (1)(a) A resident shall be given the option of using his
2648 or her own belongings, as space permits; choosing his or her
2649 roommate; and, whenever possible, unless the resident is
2650 adjudicated incompetent or incapacitated under state law,
2651 managing his or her own affairs.
2652 (b) The admission of a resident to a facility and his or
2653 her presence therein shall not confer on the facility or its
2654 owner, administrator, employees, or representatives any
2655 authority to manage, use, or dispose of any property of the
2656 resident; nor shall such admission or presence confer on any of
2657 such persons any authority or responsibility for the personal
2658 affairs of the resident, except that which may be necessary for
2659 the safe management of the facility or for the safety of the
2660 resident.

2661 (2) A facility, or an owner, administrator, employee, or
2662 representative thereof, may not act as the guardian, trustee, or
2663 conservator for any resident of the assisted living facility or
2664 any of such resident's property. An owner, administrator, or
2665 staff member, or representative thereof, may not act as a
2666 competent resident's payee for social security, veteran's, or
2667 railroad benefits without the consent of the resident. Any
2668 facility whose owner, administrator, or staff, or representative
2669 thereof, serves as representative payee for any resident of the
2670 facility shall file a surety bond with the agency in an amount
2671 equal to twice the average monthly aggregate income or personal
2672 funds due to residents, or expendable for their account, which
2673 are received by a facility. Any facility whose owner,
2674 administrator, or staff, or a representative thereof, is granted
2675 power of attorney for any resident of the facility shall file a
2676 surety bond with the agency for each resident for whom such
2677 power of attorney is granted. The surety bond shall be in an
2678 amount equal to twice the average monthly income of the
2679 resident, plus the value of any resident's property under the
2680 control of the attorney in fact. The bond shall be executed by
2681 the facility as principal and a licensed surety company. The
2682 bond shall be conditioned upon the faithful compliance of the
2683 facility with this section and shall run to the agency for the
2684 benefit of any resident who suffers a financial loss as a result
2685 of the misuse or misappropriation by a facility of funds held
2686 pursuant to this subsection. Any surety company that cancels or
2687 does not renew the bond of any licensee shall notify the agency
2688 in writing not less than 30 days in advance of such action,

2689 giving the reason for the cancellation or nonrenewal. Any
2690 facility owner, administrator, or staff, or representative
2691 thereof, who is granted power of attorney for any resident of
2692 the facility shall, on a monthly basis, be required to provide
2693 the resident a written statement of any transaction made on
2694 behalf of the resident pursuant to this subsection, and a copy
2695 of such statement given to the resident shall be retained in
2696 each resident's file and available for agency inspection.
2697 (3) A facility, upon mutual consent with the resident,
2698 shall provide for the safekeeping in the facility of personal
2699 effects not in excess of $500 and funds of the resident not in
2700 excess of $200 cash, and shall keep complete and accurate
2701 records of all such funds and personal effects received. If a
2702 resident is absent from a facility for 24 hours or more, the
2703 facility may provide for the safekeeping of the resident's
2704 personal effects in excess of $500.
2705 (4) Any funds or other property belonging to or due to a
2706 resident, or expendable for his or her account, which is
2707 received by a facility shall be trust funds which shall be kept
2708 separate from the funds and property of the facility and other
2709 residents or shall be specifically credited to such resident.
2710 Such trust funds shall be used or otherwise expended only for
2711 the account of the resident. At least once every 3 months,
2712 unless upon order of a court of competent jurisdiction, the
2713 facility shall furnish the resident and his or her guardian,
2714 trustee, or conservator, if any, a complete and verified
2715 statement of all funds and other property to which this
2716 subsection applies, detailing the amount and items received,

2717 together with their sources and disposition. In any event, the
2718 facility shall furnish such statement annually and upon the
2719 discharge or transfer of a resident. Any governmental agency or
2720 private charitable agency contributing funds or other property
2721 to the account of a resident shall also be entitled to receive
2722 such statement annually and upon the discharge or transfer of
2723 the resident.
2724 (5) Any personal funds available to facility residents may
2725 be used by residents as they choose to obtain clothing, personal
2726 items, leisure activities, and other supplies and services for
2727 their personal use. A facility may not demand, require, or
2728 contract for payment of all or any part of the personal funds in
2729 satisfaction of the facility rate for supplies and services
2730 beyond that amount agreed to in writing and may not levy an
2731 additional charge to the individual or the account for any
2732 supplies or services that the facility has agreed by contract to
2733 provide as part of the standard monthly rate. Any service or
2734 supplies provided by the facility which are charged separately
2735 to the individual or the account may be provided only with the
2736 specific written consent of the individual, who shall be
2737 furnished in advance of the provision of the services or
2738 supplies with an itemized written statement to be attached to
2739 the contract setting forth the charges for the services or
2740 supplies.
2741 (6)(a) In addition to any damages or civil penalties to
2742 which a person is subject, any person who:
2743 1. Intentionally withholds a resident's personal funds,
2744 personal property, or personal needs allowance, or who demands,

2745 beneficially receives, or contracts for payment of all or any
2746 part of a resident's personal property or personal needs
2747 allowance in satisfaction of the facility rate for supplies and
2748 services; or
2749 2. Borrows from or pledges any personal funds of a
2750 resident, other than the amount agreed to by written contract
2751 under s. 429.24 ~~s. 400.424~~,
2752
2753 commits a misdemeanor of the first degree, punishable as
2754 provided in s. 775.082 or s. 775.083.
2755 (b) Any facility owner, administrator, or staff, or
2756 representative thereof, who is granted power of attorney for any
2757 resident of the facility and who misuses or misappropriates
2758 funds obtained through this power commits a felony of the third
2759 degree, punishable as provided in s. 775.082, s. 775.083, or s.
2760 775.084.
2761 (7) In the event of the death of a resident, a licensee
2762 shall return all refunds, funds, and property held in trust to
2763 the resident's personal representative, if one has been
2764 appointed at the time the facility disburses such funds, and, if
2765 not, to the resident's spouse or adult next of kin named in a
2766 beneficiary designation form provided by the facility to the
2767 resident. If the resident has no spouse or adult next of kin or
2768 such person cannot be located, funds due the resident shall be
2769 placed in an interest-bearing account, and all property held in
2770 trust by the facility shall be safeguarded until such time as
2771 the funds and property are disbursed pursuant to the Florida
2772 Probate Code. Such funds shall be kept separate from the funds

2773 and property of the facility and other residents of the
2774 facility. If the funds of the deceased resident are not
2775 disbursed pursuant to the Florida Probate Code within 2 years
2776 after the resident's death, the funds shall be deposited in the
2777 Health Care Trust Fund administered by the agency.
2778 (8) The department may by rule clarify terms and specify
2779 procedures and documentation necessary to administer the
2780 provisions of this section relating to the proper management of
2781 residents' funds and personal property and the execution of
2782 surety bonds.
2783 Section 52. Section 400.428, Florida Statutes, is
2784 renumbered as section 429.28, Florida Statutes, and amended to
2785 read:
2786 429.28 ~~400.428~~ Resident bill of rights.--
2787 (1) No resident of a facility shall be deprived of any
2788 civil or legal rights, benefits, or privileges guaranteed by
2789 law, the Constitution of the State of Florida, or the
2790 Constitution of the United States as a resident of a facility.
2791 Every resident of a facility shall have the right to:
2792 (a) Live in a safe and decent living environment, free
2793 from abuse and neglect.
2794 (b) Be treated with consideration and respect and with due
2795 recognition of personal dignity, individuality, and the need for
2796 privacy.
2797 (c) Retain and use his or her own clothes and other
2798 personal property in his or her immediate living quarters, so as
2799 to maintain individuality and personal dignity, except when the
2800 facility can demonstrate that such would be unsafe, impractical,

2801 or an infringement upon the rights of other residents.
2802 (d) Unrestricted private communication, including
2803 receiving and sending unopened correspondence, access to a
2804 telephone, and visiting with any person of his or her choice, at
2805 any time between the hours of 9 a.m. and 9 p.m. at a minimum.
2806 Upon request, the facility shall make provisions to extend
2807 visiting hours for caregivers and out-of-town guests, and in
2808 other similar situations.
2809 (e) Freedom to participate in and benefit from community
2810 services and activities and to achieve the highest possible
2811 level of independence, autonomy, and interaction within the
2812 community.
2813 (f) Manage his or her financial affairs unless the
2814 resident or, if applicable, the resident's representative,
2815 designee, surrogate, guardian, or attorney in fact authorizes
2816 the administrator of the facility to provide safekeeping for
2817 funds as provided in s. 429.27 ~~s. 400.427~~.
2818 (g) Share a room with his or her spouse if both are
2819 residents of the facility.
2820 (h) Reasonable opportunity for regular exercise several
2821 times a week and to be outdoors at regular and frequent
2822 intervals except when prevented by inclement weather.
2823 (i) Exercise civil and religious liberties, including the
2824 right to independent personal decisions. No religious beliefs
2825 or practices, nor any attendance at religious services, shall be
2826 imposed upon any resident.
2827 (j) Access to adequate and appropriate health care
2828 consistent with established and recognized standards within the

2829 community.
2830 (k) At least 45 days' notice of relocation or termination
2831 of residency from the facility unless, for medical reasons, the
2832 resident is certified by a physician to require an emergency
2833 relocation to a facility providing a more skilled level of care
2834 or the resident engages in a pattern of conduct that is harmful
2835 or offensive to other residents. In the case of a resident who
2836 has been adjudicated mentally incapacitated, the guardian shall
2837 be given at least 45 days' notice of a nonemergency relocation
2838 or residency termination. Reasons for relocation shall be set
2839 forth in writing. In order for a facility to terminate the
2840 residency of an individual without notice as provided herein,
2841 the facility shall show good cause in a court of competent
2842 jurisdiction.
2843 (l) Present grievances and recommend changes in policies,
2844 procedures, and services to the staff of the facility, governing
2845 officials, or any other person without restraint, interference,
2846 coercion, discrimination, or reprisal. Each facility shall
2847 establish a grievance procedure to facilitate the residents'
2848 exercise of this right. This right includes access to ombudsman
2849 volunteers and advocates and the right to be a member of, to be
2850 active in, and to associate with advocacy or special interest
2851 groups.
2852 (2) The administrator of a facility shall ensure that a
2853 written notice of the rights, obligations, and prohibitions set
2854 forth in this part is posted in a prominent place in each
2855 facility and read or explained to residents who cannot read.
2856 This notice shall include the name, address, and telephone

2857 numbers of the local ombudsman council and central abuse hotline
2858 and, when applicable, the Advocacy Center for Persons with
2859 Disabilities, Inc., and the Florida local advocacy council,
2860 where complaints may be lodged. The facility must ensure a
2861 resident's access to a telephone to call the local ombudsman
2862 council, central abuse hotline, Advocacy Center for Persons with
2863 Disabilities, Inc., and the Florida local advocacy council.
2864 (3)(a) The agency shall conduct a survey to determine
2865 general compliance with facility standards and compliance with
2866 residents' rights as a prerequisite to initial licensure or
2867 licensure renewal.
2868 (b) In order to determine whether the facility is
2869 adequately protecting residents' rights, the biennial survey
2870 shall include private informal conversations with a sample of
2871 residents and consultation with the ombudsman council in the
2872 planning and service area in which the facility is located to
2873 discuss residents' experiences within the facility.
2874 (c) During any calendar year in which no survey is
2875 conducted, the agency shall conduct at least one monitoring
2876 visit of each facility cited in the previous year for a class I
2877 or class II violation, or more than three uncorrected class III
2878 violations.
2879 (d) The agency may conduct periodic followup inspections
2880 as necessary to monitor the compliance of facilities with a
2881 history of any class I, class II, or class III violations that
2882 threaten the health, safety, or security of residents.
2883 (e) The agency may conduct complaint investigations as
2884 warranted to investigate any allegations of noncompliance with

2885 requirements required under this part or rules adopted under
2886 this part.
2887 (4) The facility shall not hamper or prevent residents
2888 from exercising their rights as specified in this section.
2889 (5) No facility or employee of a facility may serve notice
2890 upon a resident to leave the premises or take any other
2891 retaliatory action against any person who:
2892 (a) Exercises any right set forth in this section.
2893 (b) Appears as a witness in any hearing, inside or outside
2894 the facility.
2895 (c) Files a civil action alleging a violation of the
2896 provisions of this part or notifies a state attorney or the
2897 Attorney General of a possible violation of such provisions.
2898 (6) Any facility which terminates the residency of an
2899 individual who participated in activities specified in
2900 subsection (5) shall show good cause in a court of competent
2901 jurisdiction.
2902 (7) Any person who submits or reports a complaint
2903 concerning a suspected violation of the provisions of this part
2904 or concerning services and conditions in facilities, or who
2905 testifies in any administrative or judicial proceeding arising
2906 from such a complaint, shall have immunity from any civil or
2907 criminal liability therefor, unless such person has acted in bad
2908 faith or with malicious purpose or the court finds that there
2909 was a complete absence of a justiciable issue of either law or
2910 fact raised by the losing party.
2911 Section 53. Section 400.429, Florida Statutes, is
2912 renumbered as section 429.29, Florida Statutes, and amended to

2913 read:
2914 429.29 ~~400.429~~ Civil actions to enforce rights.--
2915 (1) Any person or resident whose rights as specified in
2916 this part are violated shall have a cause of action. The action
2917 may be brought by the resident or his or her guardian, or by a
2918 person or organization acting on behalf of a resident with the
2919 consent of the resident or his or her guardian, or by the
2920 personal representative of the estate of a deceased resident
2921 regardless of the cause of death. If the action alleges a claim
2922 for the resident's rights or for negligence that caused the
2923 death of the resident, the claimant shall be required to elect
2924 either survival damages pursuant to s. 46.021 or wrongful death
2925 damages pursuant to s. 768.21. If the action alleges a claim for
2926 the resident's rights or for negligence that did not cause the
2927 death of the resident, the personal representative of the estate
2928 may recover damages for the negligence that caused injury to the
2929 resident. The action may be brought in any court of competent
2930 jurisdiction to enforce such rights and to recover actual
2931 damages, and punitive damages for violation of the rights of a
2932 resident or negligence. Any resident who prevails in seeking
2933 injunctive relief or a claim for an administrative remedy is
2934 entitled to recover the costs of the action and a reasonable
2935 attorney's fee assessed against the defendant not to exceed
2936 $25,000. Fees shall be awarded solely for the injunctive or
2937 administrative relief and not for any claim or action for
2938 damages whether such claim or action is brought together with a
2939 request for an injunction or administrative relief or as a
2940 separate action, except as provided under s. 768.79 or the

2941 Florida Rules of Civil Procedure. Sections 429.29-429.298
2942 ~~400.429-400.4303~~ provide the exclusive remedy for a cause of
2943 action for recovery of damages for the personal injury or death
2944 of a resident arising out of negligence or a violation of rights
2945 specified in s. 429.28 ~~s. 400.428~~. This section does not
2946 preclude theories of recovery not arising out of negligence or
2947 s. 429.28 ~~s. 400.428~~ which are available to a resident or to the
2948 agency. The provisions of chapter 766 do not apply to any cause
2949 of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.
2950 (2) In any claim brought pursuant to this part alleging a
2951 violation of resident's rights or negligence causing injury to
2952 or the death of a resident, the claimant shall have the burden
2953 of proving, by a preponderance of the evidence, that:
2954 (a) The defendant owed a duty to the resident;
2955 (b) The defendant breached the duty to the resident;
2956 (c) The breach of the duty is a legal cause of loss,
2957 injury, death, or damage to the resident; and
2958 (d) The resident sustained loss, injury, death, or damage
2959 as a result of the breach.
2960
2961 Nothing in this part shall be interpreted to create strict
2962 liability. A violation of the rights set forth in s. 429.28 ~~s.~~
2963 ~~400.428~~ or in any other standard or guidelines specified in this
2964 part or in any applicable administrative standard or guidelines
2965 of this state or a federal regulatory agency shall be evidence
2966 of negligence but shall not be considered negligence per se.
2967 (3) In any claim brought pursuant to this section, a
2968 licensee, person, or entity shall have a duty to exercise

2969 reasonable care. Reasonable care is that degree of care which a
2970 reasonably careful licensee, person, or entity would use under
2971 like circumstances.
2972 (4) In any claim for resident's rights violation or
2973 negligence by a nurse licensed under part I of chapter 464, such
2974 nurse shall have the duty to exercise care consistent with the
2975 prevailing professional standard of care for a nurse. The
2976 prevailing professional standard of care for a nurse shall be
2977 that level of care, skill, and treatment which, in light of all
2978 relevant surrounding circumstances, is recognized as acceptable
2979 and appropriate by reasonably prudent similar nurses.
2980 (5) Discovery of financial information for the purpose of
2981 determining the value of punitive damages may not be had unless
2982 the plaintiff shows the court by proffer or evidence in the
2983 record that a reasonable basis exists to support a claim for
2984 punitive damages.
2985 (6) In addition to any other standards for punitive
2986 damages, any award of punitive damages must be reasonable in
2987 light of the actual harm suffered by the resident and the
2988 egregiousness of the conduct that caused the actual harm to the
2989 resident.
2990 (7) The resident or the resident's legal representative
2991 shall serve a copy of any complaint alleging in whole or in part
2992 a violation of any rights specified in this part to the Agency
2993 for Health Care Administration at the time of filing the initial
2994 complaint with the clerk of the court for the county in which
2995 the action is pursued. The requirement of providing a copy of
2996 the complaint to the agency does not impair the resident's legal

2997 rights or ability to seek relief for his or her claim.
2998 Section 54. Section 400.4293, Florida Statutes, is
2999 renumbered as section 429.293, Florida Statutes, and amended to
3000 read:
3001 429.293 ~~400.4293~~ Presuit notice; investigation;
3002 notification of violation of residents' rights or alleged
3003 negligence; claims evaluation procedure; informal discovery;
3004 review; settlement offer; mediation.--
3005 (1) As used in this section, the term:
3006 (a) "Claim for residents' rights violation or negligence"
3007 means a negligence claim alleging injury to or the death of a
3008 resident arising out of an asserted violation of the rights of a
3009 resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation
3010 from the applicable standard of care.
3011 (b) "Insurer" means any self-insurer authorized under s.
3012 627.357, liability insurance carrier, joint underwriting
3013 association, or uninsured prospective defendant.
3014 (2) Prior to filing a claim for a violation of a
3015 resident's rights or a claim for negligence, a claimant alleging
3016 injury to or the death of a resident shall notify each
3017 prospective defendant by certified mail, return receipt
3018 requested, of an asserted violation of a resident's rights
3019 provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard
3020 of care. Such notification shall include an identification of
3021 the rights the prospective defendant has violated and the
3022 negligence alleged to have caused the incident or incidents and
3023 a brief description of the injuries sustained by the resident
3024 which are reasonably identifiable at the time of notice. The

3025 notice shall contain a certificate of counsel that counsel's
3026 reasonable investigation gave rise to a good faith belief that
3027 grounds exist for an action against each prospective defendant.
3028 (3)(a) No suit may be filed for a period of 75 days after
3029 notice is mailed to any prospective defendant. During the 75-day
3030 period, the prospective defendants or their insurers shall
3031 conduct an evaluation of the claim to determine the liability of
3032 each defendant and to evaluate the damages of the claimants.
3033 Each defendant or insurer of the defendant shall have a
3034 procedure for the prompt evaluation of claims during the 75-day
3035 period. The procedure shall include one or more of the
3036 following:
3037 1. Internal review by a duly qualified facility risk
3038 manager or claims adjuster;
3039 2. Internal review by counsel for each prospective
3040 defendant;
3041 3. A quality assurance committee authorized under any
3042 applicable state or federal statutes or regulations; or
3043 4. Any other similar procedure that fairly and promptly
3044 evaluates the claims.
3045
3046 Each defendant or insurer of the defendant shall evaluate the
3047 claim in good faith.
3048 (b) At or before the end of the 75 days, the defendant or
3049 insurer of the defendant shall provide the claimant with a
3050 written response:
3051 1. Rejecting the claim; or
3052 2. Making a settlement offer.

3053 (c) The response shall be delivered to the claimant if not
3054 represented by counsel or to the claimant's attorney, by
3055 certified mail, return receipt requested. Failure of the
3056 prospective defendant or insurer of the defendant to reply to
3057 the notice within 75 days after receipt shall be deemed a
3058 rejection of the claim for purposes of this section.
3059 (4) The notification of a violation of a resident's rights
3060 or alleged negligence shall be served within the applicable
3061 statute of limitations period; however, during the 75-day
3062 period, the statute of limitations is tolled as to all
3063 prospective defendants. Upon stipulation by the parties, the 75-
3064 day period may be extended and the statute of limitations is
3065 tolled during any such extension. Upon receiving written notice
3066 by certified mail, return receipt requested, of termination of
3067 negotiations in an extended period, the claimant shall have 60
3068 days or the remainder of the period of the statute of
3069 limitations, whichever is greater, within which to file suit.
3070 (5) No statement, discussion, written document, report, or
3071 other work product generated by presuit claims evaluation
3072 procedures under this section is discoverable or admissible in
3073 any civil action for any purpose by the opposing party. All
3074 participants, including, but not limited to, physicians,
3075 investigators, witnesses, and employees or associates of the
3076 defendant, are immune from civil liability arising from
3077 participation in the presuit claims evaluation procedure. Any
3078 licensed physician or registered nurse may be retained by either
3079 party to provide an opinion regarding the reasonable basis of
3080 the claim. The presuit opinions of the expert are not

3081 discoverable or admissible in any civil action for any purpose
3082 by the opposing party.
3083 (6) Upon receipt by a prospective defendant of a notice of
3084 claim, the parties shall make discoverable information available
3085 without formal discovery as provided in subsection (7).
3086 (7) Informal discovery may be used by a party to obtain
3087 unsworn statements and the production of documents or things, as
3088 follows:
3089 (a) Unsworn statements.--Any party may require other
3090 parties to appear for the taking of an unsworn statement. Such
3091 statements may be used only for the purpose of claims evaluation
3092 and are not discoverable or admissible in any civil action for
3093 any purpose by any party. A party seeking to take the unsworn
3094 statement of any party must give reasonable notice in writing to
3095 all parties. The notice must state the time and place for taking
3096 the statement and the name and address of the party to be
3097 examined. Unless otherwise impractical, the examination of any
3098 party must be done at the same time by all other parties. Any
3099 party may be represented by counsel at the taking of an unsworn
3100 statement. An unsworn statement may be recorded electronically,
3101 stenographically, or on videotape. The taking of unsworn
3102 statements is subject to the provisions of the Florida Rules of
3103 Civil Procedure and may be terminated for abuses.
3104 (b) Documents or things.--Any party may request discovery
3105 of relevant documents or things. The documents or things must be
3106 produced, at the expense of the requesting party, within 20 days
3107 after the date of receipt of the request. A party is required to
3108 produce relevant and discoverable documents or things within

3109 that party's possession or control, if in good faith it can
3110 reasonably be done within the timeframe of the claims evaluation
3111 process.
3112 (8) Each request for and notice concerning informal
3113 discovery pursuant to this section must be in writing, and a
3114 copy thereof must be sent to all parties. Such a request or
3115 notice must bear a certificate of service identifying the name
3116 and address of the person to whom the request or notice is
3117 served, the date of the request or notice, and the manner of
3118 service thereof.
3119 (9) If a prospective defendant makes a written settlement
3120 offer, the claimant shall have 15 days from the date of receipt
3121 to accept the offer. An offer shall be deemed rejected unless
3122 accepted by delivery of a written notice of acceptance.
3123 (10) To the extent not inconsistent with this part, the
3124 provisions of the Florida Mediation Code, Florida Rules of Civil
3125 Procedure, shall be applicable to such proceedings.
3126 (11) Within 30 days after the claimant's receipt of
3127 defendant's response to the claim, the parties or their
3128 designated representatives shall meet in mediation to discuss
3129 the issues of liability and damages in accordance with the
3130 mediation rules of practice and procedures adopted by the
3131 Supreme Court. Upon stipulation of the parties, this 30-day
3132 period may be extended and the statute of limitations is tolled
3133 during the mediation and any such extension. At the conclusion
3134 of mediation, the claimant shall have 60 days or the remainder
3135 of the period of the statute of limitations, whichever is
3136 greater, within which to file suit.

3137 Section 55. Section 400.431, Florida Statutes, is
3138 renumbered as section 429.31, Florida Statutes, and amended to
3139 read:
3140 429.31 ~~400.431~~ Closing of facility; notice; penalty.--
3141 (1) Whenever a facility voluntarily discontinues
3142 operation, it shall inform the agency in writing at least 90
3143 days prior to the discontinuance of operation. The facility
3144 shall also inform each resident or the next of kin, legal
3145 representative, or agency acting on each resident's behalf, of
3146 the fact and the proposed time of such discontinuance, following
3147 the notification requirements provided in s. 429.28(1)(k) ~~s.~~
3148 ~~400.428(1)(k)~~. In the event a resident has no person to
3149 represent him or her, the facility shall be responsible for
3150 referral to an appropriate social service agency for placement.
3151 (2) Immediately upon the notice by the agency of the
3152 voluntary or involuntary termination of such operation, the
3153 agency shall monitor the transfer of residents to other
3154 facilities and ensure that residents' rights are being
3155 protected. The department, in consultation with the Department
3156 of Children and Family Services, shall specify procedures for
3157 ensuring that all residents who receive services are
3158 appropriately relocated.
3159 (3) All charges shall be prorated as of the date on which
3160 the facility discontinues operation, and if any payments have
3161 been made in advance, the payments for services not received
3162 shall be refunded to the resident or the resident's guardian
3163 within 10 working days of voluntary or involuntary closure of
3164 the facility, whether or not such refund is requested by the

3165 resident or guardian.
3166 (4) Immediately upon discontinuance of the operation of a
3167 facility, the owner shall surrender the license therefor to the
3168 agency, and the license shall be canceled.
3169 (5) The agency may levy a fine in an amount no greater
3170 than $5,000 upon each person or business entity that owns any
3171 interest in a facility that terminates operation without
3172 providing notice to the agency and the residents of the facility
3173 at least 30 days before operation ceases. This fine shall not
3174 be levied against any facility involuntarily closed at the
3175 initiation of the agency. The agency shall use the proceeds of
3176 the fines to operate the facility until all residents of the
3177 facility are relocated and shall deposit any balance of the
3178 proceeds into the Health Care Trust Fund established pursuant to
3179 s. 429.18 ~~s. 400.418~~.
3180 Section 56. Section 400.441, Florida Statutes, is
3181 renumbered as section 429.41, Florida Statutes, and amended to
3182 read:
3183 429.41 ~~400.441~~ Rules establishing standards.--
3184 (1) It is the intent of the Legislature that rules
3185 published and enforced pursuant to this section shall include
3186 criteria by which a reasonable and consistent quality of
3187 resident care and quality of life may be ensured and the results
3188 of such resident care may be demonstrated. Such rules shall
3189 also ensure a safe and sanitary environment that is residential
3190 and noninstitutional in design or nature. It is further
3191 intended that reasonable efforts be made to accommodate the
3192 needs and preferences of residents to enhance the quality of

3193 life in a facility. In order to provide safe and sanitary
3194 facilities and the highest quality of resident care
3195 accommodating the needs and preferences of residents, the
3196 department, in consultation with the agency, the Department of
3197 Children and Family Services, and the Department of Health,
3198 shall adopt rules, policies, and procedures to administer this
3199 part, which must include reasonable and fair minimum standards
3200 in relation to:
3201 (a) The requirements for and maintenance of facilities,
3202 not in conflict with the provisions of chapter 553, relating to
3203 plumbing, heating, cooling, lighting, ventilation, living space,
3204 and other housing conditions, which will ensure the health,
3205 safety, and comfort of residents and protection from fire
3206 hazard, including adequate provisions for fire alarm and other
3207 fire protection suitable to the size of the structure. Uniform
3208 firesafety standards shall be established and enforced by the
3209 State Fire Marshal in cooperation with the agency, the
3210 department, and the Department of Health.
3211 1. Evacuation capability determination.--
3212 a. The provisions of the National Fire Protection
3213 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
3214 for determining the ability of the residents, with or without
3215 staff assistance, to relocate from or within a licensed facility
3216 to a point of safety as provided in the fire codes adopted
3217 herein. An evacuation capability evaluation for initial
3218 licensure shall be conducted within 6 months after the date of
3219 licensure. For existing licensed facilities that are not
3220 equipped with an automatic fire sprinkler system, the

3221 administrator shall evaluate the evacuation capability of
3222 residents at least annually. The evacuation capability
3223 evaluation for each facility not equipped with an automatic fire
3224 sprinkler system shall be validated, without liability, by the
3225 State Fire Marshal, by the local fire marshal, or by the local
3226 authority having jurisdiction over firesafety, before the
3227 license renewal date. If the State Fire Marshal, local fire
3228 marshal, or local authority having jurisdiction over firesafety
3229 has reason to believe that the evacuation capability of a
3230 facility as reported by the administrator may have changed, it
3231 may, with assistance from the facility administrator, reevaluate
3232 the evacuation capability through timed exiting drills.
3233 Translation of timed fire exiting drills to evacuation
3234 capability may be determined:
3235 (I) Three minutes or less: prompt.
3236 (II) More than 3 minutes, but not more than 13 minutes:
3237 slow.
3238 (III) More than 13 minutes: impractical.
3239 b. The Office of the State Fire Marshal shall provide or
3240 cause the provision of training and education on the proper
3241 application of Chapter 5, NFPA 101A, 1995 edition, to its
3242 employees, to staff of the Agency for Health Care Administration
3243 who are responsible for regulating facilities under this part,
3244 and to local governmental inspectors. The Office of the State
3245 Fire Marshal shall provide or cause the provision of this
3246 training within its existing budget, but may charge a fee for
3247 this training to offset its costs. The initial training must be
3248 delivered within 6 months after July 1, 1995, and as needed

3249 thereafter.
3250 c. The Office of the State Fire Marshal, in cooperation
3251 with provider associations, shall provide or cause the provision
3252 of a training program designed to inform facility operators on
3253 how to properly review bid documents relating to the
3254 installation of automatic fire sprinklers. The Office of the
3255 State Fire Marshal shall provide or cause the provision of this
3256 training within its existing budget, but may charge a fee for
3257 this training to offset its costs. The initial training must be
3258 delivered within 6 months after July 1, 1995, and as needed
3259 thereafter.
3260 d. The administrator of a licensed facility shall sign an
3261 affidavit verifying the number of residents occupying the
3262 facility at the time of the evacuation capability evaluation.
3263 2. Firesafety requirements.--
3264 a. Except for the special applications provided herein,
3265 effective January 1, 1996, the provisions of the National Fire
3266 Protection Association, Life Safety Code, NFPA 101, 1994
3267 edition, Chapter 22 for new facilities and Chapter 23 for
3268 existing facilities shall be the uniform fire code applied by
3269 the State Fire Marshal for assisted living facilities, pursuant
3270 to s. 633.022.
3271 b. Any new facility, regardless of size, that applies for
3272 a license on or after January 1, 1996, must be equipped with an
3273 automatic fire sprinkler system. The exceptions as provided in
3274 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
3275 apply to any new facility housing eight or fewer residents. On
3276 July 1, 1995, local governmental entities responsible for the

3277 issuance of permits for construction shall inform, without
3278 liability, any facility whose permit for construction is
3279 obtained prior to January 1, 1996, of this automatic fire
3280 sprinkler requirement. As used in this part, the term "a new
3281 facility" does not mean an existing facility that has undergone
3282 change of ownership.
3283 c. Notwithstanding any provision of s. 633.022 or of the
3284 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
3285 edition, to the contrary, any existing facility housing eight or
3286 fewer residents is not required to install an automatic fire
3287 sprinkler system, nor to comply with any other requirement in
3288 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
3289 requirements of NFPA 101, 1988 edition, that applies to this
3290 size facility, unless the facility has been classified as
3291 impractical to evacuate. Any existing facility housing eight or
3292 fewer residents that is classified as impractical to evacuate
3293 must install an automatic fire sprinkler system within the
3294 timeframes granted in this section.
3295 d. Any existing facility that is required to install an
3296 automatic fire sprinkler system under this paragraph need not
3297 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
3298 edition, which exceed the provisions of NFPA 101, 1988 edition.
3299 The mandate contained in this paragraph which requires certain
3300 facilities to install an automatic fire sprinkler system
3301 supersedes any other requirement.
3302 e. This paragraph does not supersede the exceptions
3303 granted in NFPA 101, 1988 edition or 1994 edition.
3304 f. This paragraph does not exempt facilities from other

3305 firesafety provisions adopted under s. 633.022 and local
3306 building code requirements in effect before July 1, 1995.
3307 g. A local government may charge fees only in an amount
3308 not to exceed the actual expenses incurred by local government
3309 relating to the installation and maintenance of an automatic
3310 fire sprinkler system in an existing and properly licensed
3311 assisted living facility structure as of January 1, 1996.
3312 h. If a licensed facility undergoes major reconstruction
3313 or addition to an existing building on or after January 1, 1996,
3314 the entire building must be equipped with an automatic fire
3315 sprinkler system. Major reconstruction of a building means
3316 repair or restoration that costs in excess of 50 percent of the
3317 value of the building as reported on the tax rolls, excluding
3318 land, before reconstruction. Multiple reconstruction projects
3319 within a 5-year period the total costs of which exceed 50
3320 percent of the initial value of the building at the time the
3321 first reconstruction project was permitted are to be considered
3322 as major reconstruction. Application for a permit for an
3323 automatic fire sprinkler system is required upon application for
3324 a permit for a reconstruction project that creates costs that go
3325 over the 50-percent threshold.
3326 i. Any facility licensed before January 1, 1996, that is
3327 required to install an automatic fire sprinkler system shall
3328 ensure that the installation is completed within the following
3329 timeframes based upon evacuation capability of the facility as
3330 determined under subparagraph 1.:
3331 (I) Impractical evacuation capability, 24 months.
3332 (II) Slow evacuation capability, 48 months.

3333 (III) Prompt evacuation capability, 60 months.
3334
3335 The beginning date from which the deadline for the automatic
3336 fire sprinkler installation requirement must be calculated is
3337 upon receipt of written notice from the local fire official that
3338 an automatic fire sprinkler system must be installed. The local
3339 fire official shall send a copy of the document indicating the
3340 requirement of a fire sprinkler system to the Agency for Health
3341 Care Administration.
3342 j. It is recognized that the installation of an automatic
3343 fire sprinkler system may create financial hardship for some
3344 facilities. The appropriate local fire official shall, without
3345 liability, grant two 1-year extensions to the timeframes for
3346 installation established herein, if an automatic fire sprinkler
3347 installation cost estimate and proof of denial from two
3348 financial institutions for a construction loan to install the
3349 automatic fire sprinkler system are submitted. However, for any
3350 facility with a class I or class II, or a history of uncorrected
3351 class III, firesafety deficiencies, an extension must not be
3352 granted. The local fire official shall send a copy of the
3353 document granting the time extension to the Agency for Health
3354 Care Administration.
3355 k. A facility owner whose facility is required to be
3356 equipped with an automatic fire sprinkler system under Chapter
3357 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
3358 any potential buyer of the facility that an installation of an
3359 automatic fire sprinkler requirement exists. The sale of the
3360 facility does not alter the timeframe for the installation of

3361 the automatic fire sprinkler system.
3362 l. Existing facilities required to install an automatic
3363 fire sprinkler system as a result of construction-type
3364 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
3365 herein, or evacuation capability requirements shall be notified
3366 by the local fire official in writing of the automatic fire
3367 sprinkler requirement, as well as the appropriate date for final
3368 compliance as provided in this subparagraph. The local fire
3369 official shall send a copy of the document to the Agency for
3370 Health Care Administration.
3371 m. Except in cases of life-threatening fire hazards, if an
3372 existing facility experiences a change in the evacuation
3373 capability, or if the local authority having jurisdiction
3374 identifies a construction-type restriction, such that an
3375 automatic fire sprinkler system is required, it shall be
3376 afforded time for installation as provided in this subparagraph.
3377
3378 Facilities that are fully sprinkled and in compliance with other
3379 firesafety standards are not required to conduct more than one
3380 of the required fire drills between the hours of 11 p.m. and 7
3381 a.m., per year. In lieu of the remaining drills, staff
3382 responsible for residents during such hours may be required to
3383 participate in a mock drill that includes a review of evacuation
3384 procedures. Such standards must be included or referenced in the
3385 rules adopted by the State Fire Marshal. Pursuant to s.
3386 633.022(1)(b), the State Fire Marshal is the final
3387 administrative authority for firesafety standards established
3388 and enforced pursuant to this section. All licensed facilities

3389 must have an annual fire inspection conducted by the local fire
3390 marshal or authority having jurisdiction.
3391 3. Resident elopement requirements.--Facilities are
3392 required to conduct a minimum of two resident elopement
3393 prevention and response drills per year. All administrators and
3394 direct care staff must participate in the drills which shall
3395 include a review of procedures to address resident elopement.
3396 Facilities must document the implementation of the drills and
3397 ensure that the drills are conducted in a manner consistent with
3398 the facility's resident elopement policies and procedures.
3399 (b) The preparation and annual update of a comprehensive
3400 emergency management plan. Such standards must be included in
3401 the rules adopted by the department after consultation with the
3402 Department of Community Affairs. At a minimum, the rules must
3403 provide for plan components that address emergency evacuation
3404 transportation; adequate sheltering arrangements; postdisaster
3405 activities, including provision of emergency power, food, and
3406 water; postdisaster transportation; supplies; staffing;
3407 emergency equipment; individual identification of residents and
3408 transfer of records; communication with families; and responses
3409 to family inquiries. The comprehensive emergency management
3410 plan is subject to review and approval by the local emergency
3411 management agency. During its review, the local emergency
3412 management agency shall ensure that the following agencies, at a
3413 minimum, are given the opportunity to review the plan: the
3414 Department of Elderly Affairs, the Department of Health, the
3415 Agency for Health Care Administration, and the Department of
3416 Community Affairs. Also, appropriate volunteer organizations

3417 must be given the opportunity to review the plan. The local
3418 emergency management agency shall complete its review within 60
3419 days and either approve the plan or advise the facility of
3420 necessary revisions.
3421 (c) The number, training, and qualifications of all
3422 personnel having responsibility for the care of residents. The
3423 rules must require adequate staff to provide for the safety of
3424 all residents. Facilities licensed for 17 or more residents are
3425 required to maintain an alert staff for 24 hours per day.
3426 (d) All sanitary conditions within the facility and its
3427 surroundings which will ensure the health and comfort of
3428 residents. The rules must clearly delineate the
3429 responsibilities of the agency's licensure and survey staff, the
3430 county health departments, and the local authority having
3431 jurisdiction over fire safety and ensure that inspections are
3432 not duplicative. The agency may collect fees for food service
3433 inspections conducted by the county health departments and
3434 transfer such fees to the Department of Health.
3435 (e) License application and license renewal, transfer of
3436 ownership, proper management of resident funds and personal
3437 property, surety bonds, resident contracts, refund policies,
3438 financial ability to operate, and facility and staff records.
3439 (f) Inspections, complaint investigations, moratoriums,
3440 classification of deficiencies, levying and enforcement of
3441 penalties, and use of income from fees and fines.
3442 (g) The enforcement of the resident bill of rights
3443 specified in s. 429.28 ~~s. 400.428~~.
3444 (h) The care and maintenance of residents, which must

3445 include, but is not limited to:
3446 1. The supervision of residents;
3447 2. The provision of personal services;
3448 3. The provision of, or arrangement for, social and
3449 leisure activities;
3450 4. The arrangement for appointments and transportation to
3451 appropriate medical, dental, nursing, or mental health services,
3452 as needed by residents;
3453 5. The management of medication;
3454 6. The nutritional needs of residents;
3455 7. Resident records; and
3456 8. Internal risk management and quality assurance.
3457 (i) Facilities holding a limited nursing, extended
3458 congregate care, or limited mental health license.
3459 (j) The establishment of specific criteria to define
3460 appropriateness of resident admission and continued residency in
3461 a facility holding a standard, limited nursing, extended
3462 congregate care, and limited mental health license.
3463 (k) The use of physical or chemical restraints. The use
3464 of physical restraints is limited to half-bed rails as
3465 prescribed and documented by the resident's physician with the
3466 consent of the resident or, if applicable, the resident's
3467 representative or designee or the resident's surrogate,
3468 guardian, or attorney in fact. The use of chemical restraints
3469 is limited to prescribed dosages of medications authorized by
3470 the resident's physician and must be consistent with the
3471 resident's diagnosis. Residents who are receiving medications
3472 that can serve as chemical restraints must be evaluated by their

3473 physician at least annually to assess:
3474 1. The continued need for the medication.
3475 2. The level of the medication in the resident's blood.
3476 3. The need for adjustments in the prescription.
3477 (l) The establishment of specific policies and procedures
3478 on resident elopement. Facilities shall conduct a minimum of two
3479 resident elopement drills each year. All administrators and
3480 direct care staff shall participate in the drills. Facilities
3481 shall document the drills.
3482 (2) In adopting any rules pursuant to this part, the
3483 department, in conjunction with the agency, shall make distinct
3484 standards for facilities based upon facility size; the types of
3485 care provided; the physical and mental capabilities and needs of
3486 residents; the type, frequency, and amount of services and care
3487 offered; and the staffing characteristics of the facility. Rules
3488 developed pursuant to this section shall not restrict the use of
3489 shared staffing and shared programming in facilities that are
3490 part of retirement communities that provide multiple levels of
3491 care and otherwise meet the requirements of law and rule.
3492 Except for uniform firesafety standards, the department shall
3493 adopt by rule separate and distinct standards for facilities
3494 with 16 or fewer beds and for facilities with 17 or more beds.
3495 The standards for facilities with 16 or fewer beds shall be
3496 appropriate for a noninstitutional residential environment,
3497 provided that the structure is no more than two stories in
3498 height and all persons who cannot exit the facility unassisted
3499 in an emergency reside on the first floor. The department, in
3500 conjunction with the agency, may make other distinctions among

3501 types of facilities as necessary to enforce the provisions of
3502 this part. Where appropriate, the agency shall offer alternate
3503 solutions for complying with established standards, based on
3504 distinctions made by the department and the agency relative to
3505 the physical characteristics of facilities and the types of care
3506 offered therein.
3507 (3) The department shall submit a copy of proposed rules
3508 to the Speaker of the House of Representatives, the President of
3509 the Senate, and appropriate committees of substance for review
3510 and comment prior to the promulgation thereof.
3511 (a) Rules promulgated by the department shall encourage
3512 the development of homelike facilities which promote the
3513 dignity, individuality, personal strengths, and decisionmaking
3514 ability of residents.
3515 (b) The agency, in consultation with the department, may
3516 waive rules promulgated pursuant to this part in order to
3517 demonstrate and evaluate innovative or cost-effective congregate
3518 care alternatives which enable individuals to age in place.
3519 Such waivers may be granted only in instances where there is
3520 reasonable assurance that the health, safety, or welfare of
3521 residents will not be endangered. To apply for a waiver, the
3522 licensee shall submit to the agency a written description of the
3523 concept to be demonstrated, including goals, objectives, and
3524 anticipated benefits; the number and types of residents who will
3525 be affected, if applicable; a brief description of how the
3526 demonstration will be evaluated; and any other information
3527 deemed appropriate by the agency. Any facility granted a waiver
3528 shall submit a report of findings to the agency and the

3529 department within 12 months. At such time, the agency may renew
3530 or revoke the waiver or pursue any regulatory or statutory
3531 changes necessary to allow other facilities to adopt the same
3532 practices. The department may by rule clarify terms and
3533 establish waiver application procedures, criteria for reviewing
3534 waiver proposals, and procedures for reporting findings, as
3535 necessary to implement this subsection.
3536 (4) The agency may use an abbreviated biennial standard
3537 licensure inspection that consists of a review of key quality-
3538 of-care standards in lieu of a full inspection in facilities
3539 which have a good record of past performance. However, a full
3540 inspection shall be conducted in facilities which have had a
3541 history of class I or class II violations, uncorrected class III
3542 violations, confirmed ombudsman council complaints, or confirmed
3543 licensure complaints, within the previous licensure period
3544 immediately preceding the inspection or when a potentially
3545 serious problem is identified during the abbreviated inspection.
3546 The agency, in consultation with the department, shall develop
3547 the key quality-of-care standards with input from the State
3548 Long-Term Care Ombudsman Council and representatives of provider
3549 groups for incorporation into its rules. The department, in
3550 consultation with the agency, shall report annually to the
3551 Legislature concerning its implementation of this subsection.
3552 The report shall include, at a minimum, the key quality-of-care
3553 standards which have been developed; the number of facilities
3554 identified as being eligible for the abbreviated inspection; the
3555 number of facilities which have received the abbreviated
3556 inspection and, of those, the number that were converted to full

3557 inspection; the number and type of subsequent complaints
3558 received by the agency or department on facilities which have
3559 had abbreviated inspections; any recommendations for
3560 modification to this subsection; any plans by the agency to
3561 modify its implementation of this subsection; and any other
3562 information which the department believes should be reported.
3563 (5) A fee shall be charged by the department to any person
3564 requesting a copy of this part or rules promulgated under this
3565 part. Such fees shall not exceed the actual cost of duplication
3566 and postage.
3567 Section 57. Section 400.442, Florida Statutes, is
3568 renumbered as section 429.42, Florida Statutes, and amended to
3569 read:
3570 429.42 ~~400.442~~ Pharmacy and dietary services.--
3571 (1) Any assisted living facility in which the agency has
3572 documented a class I or class II deficiency or uncorrected class
3573 III deficiencies regarding medicinal drugs or over-the-counter
3574 preparations, including their storage, use, delivery, or
3575 administration, or dietary services, or both, during a biennial
3576 survey or a monitoring visit or an investigation in response to
3577 a complaint, shall, in addition to or as an alternative to any
3578 penalties imposed under s. 429.19 ~~s. 400.419~~, be required to
3579 employ the consultant services of a licensed pharmacist, a
3580 licensed registered nurse, or a registered or licensed
3581 dietitian, as applicable. The consultant shall, at a minimum,
3582 provide onsite quarterly consultation until the inspection team
3583 from the agency determines that such consultation services are
3584 no longer required.

3585 (2) A corrective action plan for deficiencies related to
3586 assistance with the self-administration of medication or the
3587 administration of medication must be developed and implemented
3588 by the facility within 48 hours after notification of such
3589 deficiency, or sooner if the deficiency is determined by the
3590 agency to be life-threatening.
3591 (3) The agency shall employ at least two pharmacists
3592 licensed pursuant to chapter 465 among its personnel who
3593 biennially inspect assisted living facilities licensed under
3594 this part, to participate in biennial inspections or consult
3595 with the agency regarding deficiencies relating to medicinal
3596 drugs or over-the-counter preparations.
3597 (4) The department may by rule establish procedures and
3598 specify documentation as necessary to implement this section.
3599 Section 58. Section 400.444, Florida Statutes, is
3600 renumbered as section 429.44, Florida Statutes, and amended to
3601 read:
3602 429.44 ~~400.444~~ Construction and renovation;
3603 requirements.--
3604 (1) The requirements for the construction and renovation
3605 of a facility shall comply with the provisions of chapter 553
3606 which pertain to building construction standards, including
3607 plumbing, electrical code, glass, manufactured buildings,
3608 accessibility for persons with disabilities, and the state
3609 minimum building code and with the provisions of s. 633.022,
3610 which pertain to uniform firesafety standards.
3611 (2) Upon notification by the local authority having
3612 jurisdiction over life-threatening violations which seriously

3613 threaten the health, safety, or welfare of a resident of a
3614 facility, the agency shall take action as specified in s. 429.14
3615 ~~s. 400.414~~.
3616 (3) The department may adopt rules to establish procedures
3617 and specify the documentation necessary to implement this
3618 section.
3619 Section 59. Section 400.447, Florida Statutes, is
3620 renumbered as section 429.47, Florida Statutes, and amended to
3621 read:
3622 429.47 ~~400.447~~ Prohibited acts; penalties for violation.--
3623 (1) It is unlawful for any person or public body to offer
3624 or advertise to the public, in any way by any medium whatever,
3625 personal services as defined in this act, without obtaining a
3626 valid current license. It is unlawful for any holder of a
3627 license issued pursuant to the provisions of this act to
3628 advertise or hold out to the public that it holds a license for
3629 a facility other than that for which it actually holds a
3630 license.
3631 (2) It is unlawful for any holder of a license issued
3632 pursuant to the provisions of this act to withhold from the
3633 agency any evidence of financial instability, including, but not
3634 limited to, bad checks, delinquent accounts, nonpayment of
3635 withholding taxes, unpaid utility expenses, nonpayment for
3636 essential services, or adverse court action concerning the
3637 financial viability of the facility or any other facility
3638 licensed under this part or under part II of chapter 400 ~~or part~~
3639 ~~III of this chapter~~ which is owned by the licensee.
3640 (3) Any person found guilty of violating subsection (1) or

3641 subsection (2) commits a misdemeanor of the second degree,
3642 punishable as provided in s. 775.083. Each day of continuing
3643 violation shall be considered a separate offense.
3644 (4) While a facility is under construction, the owner may
3645 advertise to the public prior to obtaining a license. Facilities
3646 that are certified under chapter 651 shall comply with the
3647 advertising provisions of s. 651.095 rather than those provided
3648 for in this subsection.
3649 (5) A freestanding facility shall not advertise or imply
3650 that any part of it is a nursing home. For the purpose of this
3651 subsection, "freestanding facility" means a facility that is not
3652 operated in conjunction with a nursing home to which residents
3653 of the facility are given priority when nursing care is
3654 required. A person who violates this subsection is subject to
3655 fine as specified in s. 429.19 ~~s. 400.419~~.
3656 (6) Any facility which is affiliated with any religious
3657 organization or which has a name implying religious affiliation
3658 shall include in its advertising whether or not it is affiliated
3659 with any religious organization and, if so, which organization.
3660 (7) A facility licensed under this part which is not part
3661 of a facility authorized under chapter 651 shall include the
3662 facility's license number as given by the agency in all
3663 advertising. A company or person owning more than one facility
3664 shall include at least one license number per advertisement.
3665 All advertising shall include the term "assisted living
3666 facility" before the license number.
3667 Section 60. Section 400.452, Florida Statutes, is
3668 renumbered as section 429.52, Florida Statutes, and amended to

3669 read:
3670 429.52 ~~400.452~~ Staff training and educational programs;
3671 core educational requirement.--
3672 (1) Administrators and other assisted living facility
3673 staff must meet minimum training and education requirements
3674 established by the Department of Elderly Affairs by rule. This
3675 training and education is intended to assist facilities to
3676 appropriately respond to the needs of residents, to maintain
3677 resident care and facility standards, and to meet licensure
3678 requirements.
3679 (2) The department shall establish a competency test and a
3680 minimum required score to indicate successful completion of the
3681 training and educational requirements. The competency test must
3682 be developed by the department in conjunction with the agency
3683 and providers. The required training and education must cover at
3684 least the following topics:
3685 (a) State law and rules relating to assisted living
3686 facilities.
3687 (b) Resident rights and identifying and reporting abuse,
3688 neglect, and exploitation.
3689 (c) Special needs of elderly persons, persons with mental
3690 illness, and persons with developmental disabilities and how to
3691 meet those needs.
3692 (d) Nutrition and food service, including acceptable
3693 sanitation practices for preparing, storing, and serving food.
3694 (e) Medication management, recordkeeping, and proper
3695 techniques for assisting residents with self-administered
3696 medication.

3697 (f) Firesafety requirements, including fire evacuation
3698 drill procedures and other emergency procedures.
3699 (g) Care of persons with Alzheimer's disease and related
3700 disorders.
3701 (3) Effective January 1, 2004, a new facility
3702 administrator must complete the required training and education,
3703 including the competency test, within a reasonable time after
3704 being employed as an administrator, as determined by the
3705 department. Failure to do so is a violation of this part and
3706 subjects the violator to an administrative fine as prescribed in
3707 s. 429.19 ~~s. 400.419~~. Administrators licensed in accordance with
3708 chapter 468, part II, are exempt from this requirement. Other
3709 licensed professionals may be exempted, as determined by the
3710 department by rule.
3711 (4) Administrators are required to participate in
3712 continuing education for a minimum of 12 contact hours every 2
3713 years.
3714 (5) Staff involved with the management of medications and
3715 assisting with the self-administration of medications under s.
3716 429.256 ~~s. 400.4256~~ must complete a minimum of 4 additional
3717 hours of training provided by a registered nurse, licensed
3718 pharmacist, or department staff. The department shall establish
3719 by rule the minimum requirements of this additional training.
3720 (6) Other facility staff shall participate in training
3721 relevant to their job duties as specified by rule of the
3722 department.
3723 (7) If the department or the agency determines that there
3724 are problems in a facility that could be reduced through

3725 specific staff training or education beyond that already
3726 required under this section, the department or the agency may
3727 require, and provide, or cause to be provided, the training or
3728 education of any personal care staff in the facility.
3729 (8) The department shall adopt rules related to these
3730 training requirements, the competency test, necessary
3731 procedures, and competency test fees.
3732 Section 61. Subsections (1), (10), and (18) of section
3733 400.462, Florida Statutes, are amended to read:
3734 400.462 Definitions.--As used in this part, the term:
3735 (1) "Administrator" means a direct employee, as defined in
3736 subsection (9). The administrator must be a licensed physician,
3737 physician assistant, or registered nurse licensed to practice in
3738 this state or an individual having at least 1 year of
3739 supervisory or administrative experience in home health care or
3740 in a facility licensed under chapter 395, ~~or~~ under part II ~~or~~
3741 ~~part III~~ of this chapter, or under part I of chapter 429. An
3742 administrator may manage a maximum of five licensed home health
3743 agencies located within one agency service district or within an
3744 immediately contiguous county. If the home health agency is
3745 licensed under this chapter and is part of a retirement
3746 community that provides multiple levels of care, an employee of
3747 the retirement community may administer the home health agency
3748 and up to a maximum of four entities licensed under this chapter
3749 or under part I of chapter 429 that are owned, operated, or
3750 managed by the same corporate entity. An administrator shall
3751 designate, in writing, for each licensed entity, a qualified
3752 alternate administrator to serve during absences.

3753 (10) "Director of nursing" means a registered nurse who is
3754 a direct employee, as defined in subsection (9), of the agency
3755 and who is a graduate of an approved school of nursing and is
3756 licensed in this state; who has at least 1 year of supervisory
3757 experience as a registered nurse; and who is responsible for
3758 overseeing the professional nursing and home health aid delivery
3759 of services of the agency. A director of nursing may be the
3760 director of a maximum of five licensed home health agencies
3761 operated by a related business entity and located within one
3762 agency service district or within an immediately contiguous
3763 county. If the home health agency is licensed under this chapter
3764 and is part of a retirement community that provides multiple
3765 levels of care, an employee of the retirement community may
3766 serve as the director of nursing of the home health agency and
3767 of up to four entities licensed under this chapter <u>or under part</u>
3768 <u>I of chapter 429</u> which are owned, operated, or managed by the
3769 same corporate entity.
3770 (18) "Nurse registry" means any person that procures,
3771 offers, promises, or attempts to secure health-care-related
3772 contracts for registered nurses, licensed practical nurses,
3773 certified nursing assistants, home health aides, companions, or
3774 homemakers, who are compensated by fees as independent
3775 contractors, including, but not limited to, contracts for the
3776 provision of services to patients and contracts to provide
3777 private duty or staffing services to health care facilities
3778 licensed under chapter 395<u>, under</u> ~~or~~ this chapter<u>, or under part</u>
3779 <u>I of chapter 429</u> or other business entities.
3780 Section 62. Paragraphs (h), (i), and (n) of subsection (5)

3781 of section 400.464, Florida Statutes, are amended to read:
3782 400.464 Home health agencies to be licensed; expiration of
3783 license; exemptions; unlawful acts; penalties.--
3784 (5) The following are exempt from the licensure
3785 requirements of this part:
3786 (h) The delivery of assisted living facility services for
3787 which the assisted living facility is licensed under part I ~~III~~
3788 of ~~this~~ chapter 429, to serve its residents in its facility.
3789 (i) The delivery of hospice services for which the hospice
3790 is licensed under part IV ~~VI~~ of this chapter, to serve hospice
3791 patients admitted to its service.
3792 (n) The delivery of adult family care home services for
3793 which the adult family care home is licensed under part II ~~VII~~
3794 of ~~this~~ chapter 429, to serve the residents in its facility.
3795 Section 63. Subsection (2) of section 400.497, Florida
3796 Statutes, is amended to read:
3797 400.497 Rules establishing minimum standards.--The agency
3798 shall adopt, publish, and enforce rules to implement this part,
3799 including, as applicable, ss. 400.506 and 400.509, which must
3800 provide reasonable and fair minimum standards relating to:
3801 (2) Shared staffing. The agency shall allow shared
3802 staffing if the home health agency is part of a retirement
3803 community that provides multiple levels of care, is located on
3804 one campus, is licensed under this chapter or chapter 429, and
3805 otherwise meets the requirements of law and rule.
3806 Section 64. Section 400.552, Florida Statutes, is
3807 renumbered as section 429.903, Florida Statutes, and amended to
3808 read:

3809 429.903 ~~400.552~~ Applicability.--Any facility that comes
3810 within the definition of an adult day care center which is not
3811 exempt under s. 429.905 ~~s. 400.553~~ must be licensed by the
3812 agency as an adult day care center.
3813 Section 65. Section 400.555, Florida Statutes, is
3814 renumbered as section 429.909, Florida Statutes, and amended to
3815 read:
3816 429.909 ~~400.555~~ Application for license.--
3817 (1) An application for a license to operate an adult day
3818 care center must be made to the agency on forms furnished by the
3819 agency and must be accompanied by the appropriate license fee
3820 unless the applicant is exempt from payment of the fee as
3821 provided in s. 429.907(4) ~~s. 400.554(4)~~.
3822 (2) The applicant for licensure must furnish:
3823 (a) A description of the physical and mental capabilities
3824 and needs of the participants to be served and the availability,
3825 frequency, and intensity of basic services and of supportive and
3826 optional services to be provided;
3827 (b) Satisfactory proof of financial ability to operate and
3828 conduct the center in accordance with the requirements of this
3829 part, which must include, in the case of an initial application,
3830 a 1-year operating plan and proof of a 3-month operating reserve
3831 fund; and
3832 (c) Proof of adequate liability insurance coverage.
3833 (d) Proof of compliance with level 2 background screening
3834 as required under s. 429.919 ~~s. 400.5572~~.
3835 (e) A description and explanation of any exclusions,
3836 permanent suspensions, or terminations of the application from

3837 the Medicare or Medicaid programs. Proof of compliance with
3838 disclosure of ownership and control interest requirements of the
3839 Medicare or Medicaid programs shall be accepted in lieu of this
3840 submission.
3841 Section 66. Section 400.556, Florida Statutes, is
3842 renumbered as section 429.911, Florida Statutes, and amended to
3843 read:
3844 429.911 ~~400.556~~ Denial, suspension, revocation of license;
3845 administrative fines; investigations and inspections.--
3846 (1) The agency may deny, revoke, or suspend a license
3847 under this part or may impose an administrative fine against the
3848 owner of an adult day care center or its operator or employee in
3849 the manner provided in chapter 120.
3850 (2) Each of the following actions by the owner of an adult
3851 day care center or by its operator or employee is a ground for
3852 action by the agency against the owner of the center or its
3853 operator or employee:
3854 (a) An intentional or negligent act materially affecting
3855 the health or safety of center participants.
3856 (b) A violation of this part or of any standard or rule
3857 under this part.
3858 (c) A failure of persons subject to level 2 background
3859 screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the
3860 screening standards of s. 435.04, or the retention by the center
3861 of an employee subject to level 1 background screening standards
3862 under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the
3863 screening standards of s. 435.03 and for whom exemptions from
3864 disqualification have not been provided by the agency.

3865 (d) Failure to follow the criteria and procedures provided
3866 under part I of chapter 394 relating to the transportation,
3867 voluntary admission, and involuntary examination of center
3868 participants.
3869 (e) Multiple or repeated violations of this part or of any
3870 standard or rule adopted under this part.
3871 (f) Exclusion, permanent suspension, or termination of the
3872 owner, if an individual, officer, or board member of the adult
3873 day care center, if the owner is a firm, corporation,
3874 partnership, or association, or any person owning 5 percent or
3875 more of the center, from the Medicare or Medicaid program.
3876 (3) The agency is responsible for all investigations and
3877 inspections conducted pursuant to this part.
3878 Section 67. Section 400.557, Florida Statutes, is
3879 renumbered as section 429.915, Florida Statutes, and amended to
3880 read:
3881 429.915 ~~400.557~~ Expiration of license; renewal;
3882 conditional license or permit.--
3883 (1) A license issued for the operation of an adult day
3884 care center, unless sooner suspended or revoked, expires 2 years
3885 after the date of issuance. The agency shall notify a licensee
3886 at least 120 days before the expiration date that license
3887 renewal is required to continue operation. The notification must
3888 be provided electronically or by mail delivery. At least 90 days
3889 prior to the expiration date, an application for renewal must be
3890 submitted to the agency. A license shall be renewed, upon the
3891 filing of an application on forms furnished by the agency, if
3892 the applicant has first met the requirements of this part and of

3893 the rules adopted under this part. The applicant must file with
3894 the application satisfactory proof of financial ability to
3895 operate the center in accordance with the requirements of this
3896 part and in accordance with the needs of the participants to be
3897 served and an affidavit of compliance with the background
3898 screening requirements of s. 429.919 ~~s. 400.5572~~.
3899 (2) A licensee against whom a revocation or suspension
3900 proceeding is pending at the time for license renewal may be
3901 issued a conditional license effective until final disposition
3902 by the agency of the proceeding. If judicial relief is sought
3903 from the final disposition, the court having jurisdiction may
3904 issue a conditional permit effective for the duration of the
3905 judicial proceeding.
3906 (3) The agency may issue a conditional license to an
3907 applicant for license renewal or change of ownership if the
3908 applicant fails to meet all standards and requirements for
3909 licensure. A conditional license issued under this subsection
3910 must be limited to a specific period not exceeding 6 months, as
3911 determined by the agency, and must be accompanied by an approved
3912 plan of correction.
3913 Section 68. Section 400.5572, Florida Statutes, is
3914 renumbered as section 429.919, Florida Statutes, and amended to
3915 read:
3916 429.919 ~~400.5572~~ Background screening.--
3917 (1)(a) Level 2 background screening must be conducted on
3918 each of the following persons, who shall be considered employees
3919 for the purposes of conducting screening under chapter 435:
3920 1. The adult day care center owner if an individual, the

3921 operator, and the financial officer.
3922 2. An officer or board member if the owner of the adult
3923 day care center is a firm, corporation, partnership, or
3924 association, or any person owning 5 percent or more of the
3925 facility, if the agency has probable cause to believe that such
3926 person has been convicted of any offense prohibited by s.
3927 435.04. For each officer, board member, or person owning 5
3928 percent or more who has been convicted of any such offense, the
3929 facility shall submit to the agency a description and
3930 explanation of the conviction at the time of license
3931 application. This subparagraph does not apply to a board member
3932 of a not-for-profit corporation or organization if the board
3933 member serves solely in a voluntary capacity, does not regularly
3934 take part in the day-to-day operational decisions of the
3935 corporation or organization, receives no remuneration for his or
3936 her services, and has no financial interest and has no family
3937 members with a financial interest in the corporation or
3938 organization, provided that the board member and facility submit
3939 a statement affirming that the board member's relationship to
3940 the facility satisfies the requirements of this subparagraph.
3941 (b) Proof of compliance with level 2 screening standards
3942 which has been submitted within the previous 5 years to meet any
3943 facility or professional licensure requirements of the agency or
3944 the Department of Health satisfies the requirements of this
3945 subsection.
3946 (c) The agency may grant a provisional license to an adult
3947 day care center applying for an initial license when each
3948 individual required by this subsection to undergo screening has

3949 completed the Department of Law Enforcement background check,
3950 but has not yet received results from the Federal Bureau of
3951 Investigation, or when a request for an exemption from
3952 disqualification has been submitted to the agency pursuant to s.
3953 435.07, but a response has not been issued.
3954 (2) The owner or administrator of an adult day care center
3955 must conduct level 1 background screening as set forth in
3956 chapter 435 on all employees hired on or after October 1, 1998,
3957 who provide basic services or supportive and optional services
3958 to the participants. Such persons satisfy this requirement if:
3959 (a) Proof of compliance with level 1 screening
3960 requirements obtained to meet any professional license
3961 requirements in this state is provided and accompanied, under
3962 penalty of perjury, by a copy of the person's current
3963 professional license and an affidavit of current compliance with
3964 the background screening requirements.
3965 (b) The person required to be screened has been
3966 continuously employed, without a breach in service that exceeds
3967 180 days, in the same type of occupation for which the person is
3968 seeking employment and provides proof of compliance with the
3969 level 1 screening requirement which is no more than 2 years old.
3970 Proof of compliance must be provided directly from one employer
3971 or contractor to another, and not from the person screened. Upon
3972 request, a copy of screening results shall be provided to the
3973 person screened by the employer retaining documentation of the
3974 screening.
3975 (c) The person required to be screened is employed by a
3976 corporation or business entity or related corporation or

3977 business entity that owns, operates, or manages more than one
3978 facility or agency licensed under this chapter or under chapter
3979 400, and for whom a level 1 screening was conducted by the
3980 corporation or business entity as a condition of initial or
3981 continued employment.
3982 Section 69. Subsection (5) of section 400.601, Florida
3983 Statutes, is amended to read:
3984 400.601 Definitions.--As used in this part, the term:
3985 (5) "Hospice residential unit" means a homelike living
3986 facility, other than a facility licensed under other parts of
3987 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
3988 is operated by a hospice for the benefit of its patients and is
3989 considered by a patient who lives there to be his or her primary
3990 residence.
3991 Section 70. Section 400.618, Florida Statutes, is
3992 renumbered as section 429.65, Florida Statutes, and amended to
3993 read:
3994 429.65 ~~400.618~~ Definitions.--As used in this part, the
3995 term:
3996 (1) "Activities of daily living" means functions and tasks
3997 for self-care, including eating, bathing, grooming, dressing,
3998 ambulating, and other similar tasks.
3999 (2) "Adult family-care home" means a full-time, family-
4000 type living arrangement, in a private home, under which a person
4001 who owns or rents the home provides room, board, and personal
4002 care, on a 24-hour basis, for no more than five disabled adults
4003 or frail elders who are not relatives. The following family-type
4004 living arrangements are not required to be licensed as an adult

4005 family-care home:
4006 (a) An arrangement whereby the person who owns or rents
4007 the home provides room, board, and personal services for not
4008 more than two adults who do not receive optional state
4009 supplementation under s. 409.212. The person who provides the
4010 housing, meals, and personal care must own or rent the home and
4011 reside therein.
4012 (b) An arrangement whereby the person who owns or rents
4013 the home provides room, board, and personal services only to his
4014 or her relatives.
4015 (c) An establishment that is licensed as an assisted
4016 living facility under this chapter ~~part III~~.
4017 (3) "Agency" means the Agency for Health Care
4018 Administration.
4019 (4) "Aging in place" means remaining in a noninstitutional
4020 living environment despite the physical or mental changes that
4021 may occur in a person who is aging. For aging in place to occur,
4022 needed services are added, increased, or adjusted to compensate
4023 for a person's physical or mental changes.
4024 (5) "Appropriate placement" means that the resident's
4025 needs can be met by the adult family-care home or can be met by
4026 services arranged by the adult family-care home or the resident.
4027 (6) "Chemical restraint" means a pharmacologic drug that
4028 physically limits, restricts, or deprives an individual of
4029 movement or mobility, and is used for discipline or convenience
4030 and not required for the treatment of medical symptoms.
4031 (7) "Department" means the Department of Elderly Affairs.
4032 (8) "Disabled adult" means any person between 18 and 59

4033 years of age, inclusive, who is a resident of the state and who
4034 has one or more permanent physical or mental limitations that
4035 restrict the person's ability to perform the normal activities
4036 of daily living.
4037 (9) "Frail elder" means a functionally impaired elderly
4038 person who is 60 years of age or older and who has physical or
4039 mental limitations that restrict the person's ability to perform
4040 the normal activities of daily living and that impede the
4041 person's capacity to live independently.
4042 (10) "Personal services" or "personal care" includes
4043 individual assistance with or supervision of the activities of
4044 daily living and the self-administration of medication, and
4045 other similar services.
4046 (11) "Provider" means a person who is licensed to operate
4047 an adult family-care home.
4048 (12) "Relative" means an individual who is the father,
4049 mother, son, daughter, brother, sister, grandfather,
4050 grandmother, great-grandfather, great-grandmother, uncle, aunt,
4051 first cousin, nephew, niece, husband, wife, father-in-law,
4052 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
4053 sister-in-law, stepfather, stepmother, stepson, stepdaughter,
4054 stepbrother, stepsister, half brother, or half sister of a
4055 provider.
4056 (13) "Relief person" means an adult designated by the
4057 provider to supervise the residents during the provider's
4058 absence.
4059 (14) "Resident" means a person receiving room, board, and
4060 personal care in an adult family-care home.

4061 Section 71. Section 400.6194, Florida Statutes, is
4062 renumbered as section 429.69, Florida Statutes, and amended to
4063 read:
4064 429.69 ~~400.6194~~ Denial, revocation, or suspension of a
4065 license.--The agency may deny, suspend, or revoke a license for
4066 any of the following reasons:
4067 (1) Failure of any of the persons required to undergo
4068 background screening under s. 429.67 ~~s. 400.619~~ to meet the
4069 level 1 screening standards of s. 435.03, unless an exemption
4070 from disqualification has been provided by the agency.
4071 (2) An intentional or negligent act materially affecting
4072 the health, safety, or welfare of the adult family-care home
4073 residents.
4074 (3) Submission of fraudulent information or omission of
4075 any material fact on a license application or any other document
4076 required by the agency.
4077 (4) Failure to pay an administrative fine assessed under
4078 this part.
4079 (5) A violation of this part or adopted rules which
4080 results in conditions or practices that directly threaten the
4081 physical or emotional health, safety, or welfare of residents.
4082 (6) Failure to correct cited fire code violations that
4083 threaten the health, safety, or welfare of residents.
4084 (7) Failure to submit a completed initial license
4085 application or to complete an application for license renewal
4086 within the specified timeframes.
4087 (8) Exclusion, permanent suspension, or termination of the
4088 provider from the Medicare or Medicaid program.

4089 Section 72. Section 400.621, Florida Statutes, is
4090 renumbered as section 429.73, Florida Statutes, and amended to
4091 read:
4092 429.73 ~~400.621~~ Rules and standards relating to adult
4093 family-care homes.--
4094 (1) The department, in consultation with the Department of
4095 Health, the Department of Children and Family Services, and the
4096 agency shall, by rule, establish minimum standards to ensure the
4097 health, safety, and well-being of each resident in the adult
4098 family-care home. The rules must address:
4099 (a) Requirements for the physical site of the facility and
4100 facility maintenance.
4101 (b) Services that must be provided to all residents of an
4102 adult family-care home and standards for such services, which
4103 must include, but need not be limited to:
4104 1. Room and board.
4105 2. Assistance necessary to perform the activities of daily
4106 living.
4107 3. Assistance necessary to administer medication.
4108 4. Supervision of residents.
4109 5. Health monitoring.
4110 6. Social and leisure activities.
4111 (c) Standards and procedures for license application and
4112 annual license renewal, advertising, proper management of each
4113 resident's funds and personal property and personal affairs,
4114 financial ability to operate, medication management,
4115 inspections, complaint investigations, and facility, staff, and
4116 resident records.

4117 (d) Qualifications, training, standards, and
4118 responsibilities for providers and staff.
4119 (e) Compliance with chapter 419, relating to community
4120 residential homes.
4121 (f) Criteria and procedures for determining the
4122 appropriateness of a resident's placement and continued
4123 residency in an adult family-care home. A resident who requires
4124 24-hour nursing supervision may not be retained in an adult
4125 family-care home unless such resident is an enrolled hospice
4126 patient and the resident's continued residency is mutually
4127 agreeable to the resident and the provider.
4128 (g) Procedures for providing notice and assuring the least
4129 possible disruption of residents' lives when residents are
4130 relocated, an adult family-care home is closed, or the ownership
4131 of an adult family-care home is transferred.
4132 (h) Procedures to protect the residents' rights as
4133 provided in s. 429.85 ~~s. 400.628~~.
4134 (i) Procedures to promote the growth of adult family-care
4135 homes as a component of a long-term care system.
4136 (j) Procedures to promote the goal of aging in place for
4137 residents of adult family-care homes.
4138 (2) The department shall by rule provide minimum standards
4139 and procedures for emergencies. Pursuant to s. 633.022, the
4140 State Fire Marshal, in consultation with the department and the
4141 agency, shall adopt uniform firesafety standards for adult
4142 family-care homes.
4143 (3) The department shall adopt rules providing for the
4144 implementation of orders not to resuscitate. The provider may

4145 withhold or withdraw cardiopulmonary resuscitation if presented
4146 with an order not to resuscitate executed pursuant to s. 401.45.
4147 The provider shall not be subject to criminal prosecution or
4148 civil liability, nor be considered to have engaged in negligent
4149 or unprofessional conduct, for withholding or withdrawing
4150 cardiopulmonary resuscitation pursuant to such an order and
4151 rules adopted by the department.
4152 (4) The provider of any adult family-care home that is in
4153 operation at the time any rules are adopted or amended under
4154 this part may be given a reasonable time, not exceeding 6
4155 months, within which to comply with the new or revised rules and
4156 standards.
4157 Section 73. Section 400.628, Florida Statutes, is
4158 renumbered as section 429.85, Florida Statutes, and amended to
4159 read:
4160 429.85 ~~400.628~~ Residents' bill of rights.--
4161 (1) A resident of an adult family-care home may not be
4162 deprived of any civil or legal rights, benefits, or privileges
4163 guaranteed by law, the State Constitution, or the Constitution
4164 of the United States solely by reason of status as a resident of
4165 the home. Each resident has the right to:
4166 (a) Live in a safe and decent living environment, free
4167 from abuse and neglect.
4168 (b) Be treated with consideration and respect and with due
4169 recognition of personal dignity, individuality, and privacy.
4170 (c) Keep and use the resident's own clothes and other
4171 personal property in the resident's immediate living quarters,
4172 so as to maintain individuality and personal dignity, except

4173 when the provider can demonstrate that to do so would be unsafe
4174 or an infringement upon the rights of other residents.
4175 (d) Have unrestricted private communication, including
4176 receiving and sending unopened correspondence, having access to
4177 a telephone, and visiting with any person of his or her choice,
4178 at any time between the hours of 9 a.m. and 9 p.m. at a minimum.
4179 (e) Be free to participate in and benefit from community
4180 services and activities and to achieve the highest possible
4181 level of independence, autonomy, and interaction within the
4182 community.
4183 (f) Manage the resident's own financial affairs unless the
4184 resident or the resident's guardian authorizes the provider to
4185 provide safekeeping for funds in accordance with procedures
4186 equivalent to those provided in s. 429.27 ~~s. 400.427~~.
4187 (g) Share a room with the resident's spouse if both are
4188 residents of the home.
4189 (h) Have reasonable opportunity for regular exercise
4190 several times a week and to be outdoors at regular and frequent
4191 intervals.
4192 (i) Exercise civil and religious liberties, including the
4193 right to independent personal decisions. Religious beliefs or
4194 practices and attendance at religious services may not be
4195 imposed upon a resident.
4196 (j) Have access to adequate and appropriate health care.
4197 (k) Be free from chemical and physical restraints.
4198 (l) Have at least 30 days' notice of relocation or
4199 termination of residency from the home unless, for medical
4200 reasons, the resident is certified by a physician to require an

4201 emergency relocation to a facility providing a more skilled
4202 level of care or the resident engages in a pattern of conduct
4203 that is harmful or offensive to other residents. If a resident
4204 has been adjudicated mentally incompetent, the resident's
4205 guardian must be given at least 30 days' notice, except in an
4206 emergency, of the relocation of a resident or of the termination
4207 of a residency. The reasons for relocating a resident must be
4208 set forth in writing.
4209 (m) Present grievances and recommend changes to the
4210 provider, to staff, or to any other person without restraint,
4211 interference, coercion, discrimination, or reprisal. This right
4212 includes the right to have access to ombudsman volunteers and
4213 advocates and the right to be a member of, to be active in, and
4214 to associate with advocacy or special interest groups.
4215 (2) The provider shall ensure that residents and their
4216 legal representatives are made aware of the rights, obligations,
4217 and prohibitions set forth in this part. Residents must also be
4218 given the names, addresses, and telephone numbers of the local
4219 ombudsman council and the central abuse hotline where they may
4220 lodge complaints.
4221 (3) The adult family-care home may not hamper or prevent
4222 residents from exercising the rights specified in this section.
4223 (4) A provider or staff of an adult family-care home may
4224 not serve notice upon a resident to leave the premises or take
4225 any other retaliatory action against any person who:
4226 (a) Exercises any right set forth in this section.
4227 (b) Appears as a witness in any hearing, in or out of the
4228 adult family-care home.

4229 (c) Files a civil action alleging a violation of this part
4230 or notifies a state attorney or the Attorney General of a
4231 possible violation of this part.
4232 (5) Any adult family-care home that terminates the
4233 residency of an individual who has participated in activities
4234 specified in subsection (4) must show good cause for the
4235 termination in a court of competent jurisdiction.
4236 (6) Any person who reports a complaint concerning a
4237 suspected violation of this part or the services and conditions
4238 in an adult family-care home, or who testifies in any
4239 administrative or judicial proceeding arising from such a
4240 complaint, is immune from any civil or criminal liability
4241 therefor, unless the person acted in bad faith or with malicious
4242 purpose or the court finds that there was a complete absence of
4243 a justiciable issue of either law or fact raised by the losing
4244 party.
4245 Section 74. Paragraphs (c), (d), (e), and (f) of
4246 subsection (5) of section 400.93, Florida Statutes, are amended
4247 to read:
4248 400.93 Licensure required; exemptions; unlawful acts;
4249 penalties.--
4250 (5) The following are exempt from home medical equipment
4251 provider licensure, unless they have a separate company,
4252 corporation, or division that is in the business of providing
4253 home medical equipment and services for sale or rent to
4254 consumers at their regular or temporary place of residence
4255 pursuant to the provisions of this part:
4256 (c) Assisted living facilities licensed under chapter 429

4257 ~~part III~~, when serving their residents.
4258 (d) Home health agencies licensed under part III ~~IV~~.
4259 (e) Hospices licensed under part IV ~~VI~~.
4260 (f) Intermediate care facilities, homes for special
4261 services, and transitional living facilities licensed under part
4262 V ~~VIII~~.
4263 Section 75. Subsection (3) and paragraph (c) of subsection
4264 (10) of section 400.962, Florida Statutes, are amended to read:
4265 400.962 License required; license application.--
4266 (3) The basic license fee collected shall be deposited in
4267 the Health Care Trust Fund, established for carrying out the
4268 purposes of this chapter or chapter 429.
4269 (10)
4270 (c) Proof of compliance with the level 2 background
4271 screening requirements of chapter 435 which has been submitted
4272 within the previous 5 years in compliance with any other
4273 licensure requirements under this chapter or chapter 429
4274 satisfies the requirements of paragraph (a). Proof of compliance
4275 with background screening which has been submitted within the
4276 previous 5 years to fulfill the requirements of the Financial
4277 Services Commission and the Office of Insurance Regulation under
4278 chapter 651 as part of an application for a certificate of
4279 authority to operate a continuing care retirement community
4280 satisfies the requirements for the Department of Law Enforcement
4281 and Federal Bureau of Investigation background checks.
4282 Section 76. Paragraph (b) of subsection (1) of section
4283 400.980, Florida Statutes, is amended to read:
4284 400.980 Health care services pools.--

4285 (1) As used in this section, the term:
4286 (b) "Health care services pool" means any person, firm,
4287 corporation, partnership, or association engaged for hire in the
4288 business of providing temporary employment in health care
4289 facilities, residential facilities, and agencies for licensed,
4290 certified, or trained health care personnel including, without
4291 limitation, nursing assistants, nurses' aides, and orderlies.
4292 However, the term does not include nursing registries, a
4293 facility licensed under this chapter or chapter 429 ~~400~~, a
4294 health care services pool established within a health care
4295 facility to provide services only within the confines of such
4296 facility, or any individual contractor directly providing
4297 temporary services to a health care facility without use or
4298 benefit of a contracting agent.
4299 Section 77. Paragraphs (a), (b), (c), and (d) of
4300 subsection (4) of section 400.9905, Florida Statutes, are
4301 amended to read:
4302 400.9905 Definitions.--
4303 (4) "Clinic" means an entity at which health care services
4304 are provided to individuals and which tenders charges for
4305 reimbursement for such services, including a mobile clinic and a
4306 portable equipment provider. For purposes of this part, the term
4307 does not include and the licensure requirements of this part do
4308 not apply to:
4309 (a) Entities licensed or registered by the state under
4310 chapter 395; or entities licensed or registered by the state and
4311 providing only health care services within the scope of services
4312 authorized under their respective licenses granted under ss.

4313 383.30-383.335, chapter 390, chapter 394, chapter 397, this
4314 chapter except part X ~~XIII~~, chapter 429, chapter 463, chapter
4315 465, chapter 466, chapter 478, part I of chapter 483, chapter
4316 484, or chapter 651; end-stage renal disease providers
4317 authorized under 42 C.F.R. part 405, subpart U; or providers
4318 certified under 42 C.F.R. part 485, subpart B or subpart H; or
4319 any entity that provides neonatal or pediatric hospital-based
4320 health care services by licensed practitioners solely within a
4321 hospital licensed under chapter 395.
4322 (b) Entities that own, directly or indirectly, entities
4323 licensed or registered by the state pursuant to chapter 395; or
4324 entities that own, directly or indirectly, entities licensed or
4325 registered by the state and providing only health care services
4326 within the scope of services authorized pursuant to their
4327 respective licenses granted under ss. 383.30-383.335, chapter
4328 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4329 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4330 part I of chapter 483, chapter 484, chapter 651; end-stage renal
4331 disease providers authorized under 42 C.F.R. part 405, subpart
4332 U; or providers certified under 42 C.F.R. part 485, subpart B or
4333 subpart H; or any entity that provides neonatal or pediatric
4334 hospital-based health care services by licensed practitioners
4335 solely within a hospital licensed under chapter 395.
4336 (c) Entities that are owned, directly or indirectly, by an
4337 entity licensed or registered by the state pursuant to chapter
4338 395; or entities that are owned, directly or indirectly, by an
4339 entity licensed or registered by the state and providing only
4340 health care services within the scope of services authorized

4341 pursuant to their respective licenses granted under ss. 383.30-
4342 383.335, chapter 390, chapter 394, chapter 397, this chapter
4343 except part X ~~XIII~~, chapter 429, chapter 463, chapter 465,
4344 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
4345 chapter 651; end-stage renal disease providers authorized under
4346 42 C.F.R. part 405, subpart U; or providers certified under 42
4347 C.F.R. part 485, subpart B or subpart H; or any entity that
4348 provides neonatal or pediatric hospital-based health care
4349 services by licensed practitioners solely within a hospital
4350 under chapter 395.
4351 (d) Entities that are under common ownership, directly or
4352 indirectly, with an entity licensed or registered by the state
4353 pursuant to chapter 395; or entities that are under common
4354 ownership, directly or indirectly, with an entity licensed or
4355 registered by the state and providing only health care services
4356 within the scope of services authorized pursuant to their
4357 respective licenses granted under ss. 383.30-383.335, chapter
4358 390, chapter 394, chapter 397, this chapter except part X ~~XIII~~,
4359 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
4360 part I of chapter 483, chapter 484, or chapter 651; end-stage
4361 renal disease providers authorized under 42 C.F.R. part 405,
4362 subpart U; or providers certified under 42 C.F.R. part 485,
4363 subpart B or subpart H; or any entity that provides neonatal or
4364 pediatric hospital-based health care services by licensed
4365 practitioners solely within a hospital licensed under chapter
4366 395.
4367 Section 78. Subsection (6) of section 400.9935, Florida
4368 Statutes, is amended to read:

4369 400.9935 Clinic responsibilities.--
4370 (6) Any licensed health care provider who violates this
4371 part is subject to discipline in accordance with this chapter or
4372 chapter 429 and his or her respective practice act.
4373 Section 79. Subsection (12) of section 401.23, Florida
4374 Statutes, is amended to read:
4375 401.23 Definitions.--As used in this part, the term:
4376 (12) "Interfacility transfer" means the transportation by
4377 ambulance of a patient between two facilities licensed under
4378 chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429,
4379 pursuant to this part.
4380 Section 80. Paragraph (b) of subsection (2) of section
4381 402.164, Florida Statutes, is amended to read:
4382 402.164 Legislative intent; definitions.--
4383 (2) As used in ss. 402.164-402.167, the term:
4384 (b) "Client" means a client as defined in s. 393.063, s.
4385 394.67, s. 397.311, or s. 400.960, a forensic client or client
4386 as defined in s. 916.106, a child or youth as defined in s.
4387 39.01, a child as defined in s. 827.01, a family as defined in
4388 s. 414.0252, a participant as defined in s. 429.901 ~~s. 400.551~~,
4389 a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid
4390 recipient or recipient as defined in s. 409.901, a child
4391 receiving child care as defined in s. 402.302, a disabled adult
4392 as defined in s. 410.032 or s. 410.603, or a victim as defined
4393 in s. 39.01 or s. 415.102 as each definition applies within its
4394 respective chapter.
4395 Section 81. Subsection (10) of section 408.032, Florida
4396 Statutes, is amended to read:

4397 408.032 Definitions relating to Health Facility and
4398 Services Development Act.--As used in ss. 408.031-408.045, the
4399 term:
4400 (10) "Hospice" or "hospice program" means a hospice as
4401 defined in part IV ~~VI~~ of chapter 400.
4402 Section 82. Paragraph (b) of subsection (2) of section
4403 408.033, Florida Statutes, is amended to read:
4404 408.033 Local and state health planning.--
4405 (2) FUNDING.--
4406 (b)1. A hospital licensed under chapter 395, a nursing
4407 home licensed under chapter 400, and an assisted living facility
4408 licensed under chapter 429 ~~400~~ shall be assessed an annual fee
4409 based on number of beds.
4410 2. All other facilities and organizations listed in
4411 paragraph (a) shall each be assessed an annual fee of $150.
4412 3. Facilities operated by the Department of Children and
4413 Family Services, the Department of Health, or the Department of
4414 Corrections and any hospital which meets the definition of rural
4415 hospital pursuant to s. 395.602 are exempt from the assessment
4416 required in this subsection.
4417 Section 83. Subsection (2) of section 408.034, Florida
4418 Statutes, is amended to read:
4419 408.034 Duties and responsibilities of agency; rules.--
4420 (2) In the exercise of its authority to issue licenses to
4421 health care facilities and health service providers, as provided
4422 under chapters 393 and~~,~~ 395~~,~~ and parts II and IV ~~VI~~ of chapter
4423 400, the agency may not issue a license to any health care
4424 facility or health service provider that fails to receive a

4425 certificate of need or an exemption for the licensed facility or
4426 service.
4427 Section 84. Subsections (28) and (29) of section 408.07,
4428 Florida Statutes, are amended to read:
4429 408.07 Definitions.--As used in this chapter, with the
4430 exception of ss. 408.031-408.045, the term:
4431 (28) "Home health agency" means an organization licensed
4432 under part III ~~IV~~ of chapter 400.
4433 (29) "Hospice" means an organization licensed under part
4434 IV ~~VI~~ of chapter 400.
4435 Section 85. Subsection (3) of section 408.831, Florida
4436 Statutes, is amended to read:
4437 408.831 Denial, suspension, or revocation of a license,
4438 registration, certificate, or application.--
4439 (3) This section provides standards of enforcement
4440 applicable to all entities licensed or regulated by the Agency
4441 for Health Care Administration. This section controls over any
4442 conflicting provisions of chapters 39, 381, 383, 390, 391, 393,
4443 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted
4444 pursuant to those chapters.
4445 Section 86. Subsection (2) of section 409.212, Florida
4446 Statutes, is amended to read:
4447 409.212 Optional supplementation.--
4448 (2) The base rate of payment for optional state
4449 supplementation shall be established by the department within
4450 funds appropriated. Additional amounts may be provided for
4451 mental health residents in facilities designed to provide
4452 limited mental health services as provided for in s. 429.075 ~~s.~~

4453 ~~400.4075~~. The base rate of payment does not include the personal
4454 needs allowance.
4455 Section 87. Paragraph (e) of subsection (4) of section
4456 409.221, Florida Statutes, is amended to read:
4457 409.221 Consumer-directed care program.--
4458 (4) CONSUMER-DIRECTED CARE.--
4459 (e) Services.--Consumers shall use the budget allowance
4460 only to pay for home and community-based services that meet the
4461 consumer's long-term care needs and are a cost-efficient use of
4462 funds. Such services may include, but are not limited to, the
4463 following:
4464 1. Personal care.
4465 2. Homemaking and chores, including housework, meals,
4466 shopping, and transportation.
4467 3. Home modifications and assistive devices which may
4468 increase the consumer's independence or make it possible to
4469 avoid institutional placement.
4470 4. Assistance in taking self-administered medication.
4471 5. Day care and respite care services, including those
4472 provided by nursing home facilities pursuant to s. 400.141(6) or
4473 by adult day care facilities licensed pursuant to s. 429.907 ~~s.~~
4474 ~~400.554~~.
4475 6. Personal care and support services provided in an
4476 assisted living facility.
4477 Section 88. Subsection (4) of section 409.905, Florida
4478 Statutes, is amended to read:
4479 409.905 Mandatory Medicaid services.--The agency may make
4480 payments for the following services, which are required of the

4481 state by Title XIX of the Social Security Act, furnished by
4482 Medicaid providers to recipients who are determined to be
4483 eligible on the dates on which the services were provided. Any
4484 service under this section shall be provided only when medically
4485 necessary and in accordance with state and federal law.
4486 Mandatory services rendered by providers in mobile units to
4487 Medicaid recipients may be restricted by the agency. Nothing in
4488 this section shall be construed to prevent or limit the agency
4489 from adjusting fees, reimbursement rates, lengths of stay,
4490 number of visits, number of services, or any other adjustments
4491 necessary to comply with the availability of moneys and any
4492 limitations or directions provided for in the General
4493 Appropriations Act or chapter 216.
4494 (4) HOME HEALTH CARE SERVICES.--The agency shall pay for
4495 nursing and home health aide services, supplies, appliances, and
4496 durable medical equipment, necessary to assist a recipient
4497 living at home. An entity that provides services pursuant to
4498 this subsection shall be licensed under part III ~~IV~~ of chapter
4499 400. These services, equipment, and supplies, or reimbursement
4500 therefor, may be limited as provided in the General
4501 Appropriations Act and do not include services, equipment, or
4502 supplies provided to a person residing in a hospital or nursing
4503 facility.
4504 (a) In providing home health care services, the agency may
4505 require prior authorization of care based on diagnosis.
4506 (b) The agency shall implement a comprehensive utilization
4507 management program that requires prior authorization of all
4508 private duty nursing services, an individualized treatment plan

4509 that includes information about medication and treatment orders,
4510 treatment goals, methods of care to be used, and plans for care
4511 coordination by nurses and other health professionals. The
4512 utilization management program shall also include a process for
4513 periodically reviewing the ongoing use of private duty nursing
4514 services. The assessment of need shall be based on a child's
4515 condition, family support and care supplements, a family's
4516 ability to provide care, and a family's and child's schedule
4517 regarding work, school, sleep, and care for other family
4518 dependents. When implemented, the private duty nursing
4519 utilization management program shall replace the current
4520 authorization program used by the Agency for Health Care
4521 Administration and the Children's Medical Services program of
4522 the Department of Health. The agency may competitively bid on a
4523 contract to select a qualified organization to provide
4524 utilization management of private duty nursing services. The
4525 agency is authorized to seek federal waivers to implement this
4526 initiative.
4527 Section 89. Subsection (14) of section 409.906, Florida
4528 Statutes, is amended to read:
4529 409.906 Optional Medicaid services.--Subject to specific
4530 appropriations, the agency may make payments for services which
4531 are optional to the state under Title XIX of the Social Security
4532 Act and are furnished by Medicaid providers to recipients who
4533 are determined to be eligible on the dates on which the services
4534 were provided. Any optional service that is provided shall be
4535 provided only when medically necessary and in accordance with
4536 state and federal law. Optional services rendered by providers

4537 in mobile units to Medicaid recipients may be restricted or
4538 prohibited by the agency. Nothing in this section shall be
4539 construed to prevent or limit the agency from adjusting fees,
4540 reimbursement rates, lengths of stay, number of visits, or
4541 number of services, or making any other adjustments necessary to
4542 comply with the availability of moneys and any limitations or
4543 directions provided for in the General Appropriations Act or
4544 chapter 216. If necessary to safeguard the state's systems of
4545 providing services to elderly and disabled persons and subject
4546 to the notice and review provisions of s. 216.177, the Governor
4547 may direct the Agency for Health Care Administration to amend
4548 the Medicaid state plan to delete the optional Medicaid service
4549 known as "Intermediate Care Facilities for the Developmentally
4550 Disabled." Optional services may include:
4551 (14) HOSPICE CARE SERVICES.--The agency may pay for all
4552 reasonable and necessary services for the palliation or
4553 management of a recipient's terminal illness, if the services
4554 are provided by a hospice that is licensed under part IV ~~VI~~ of
4555 chapter 400 and meets Medicare certification requirements.
4556 Section 90. Subsection (7) and paragraph (a) of subsection
4557 (8) of section 409.907, Florida Statutes, are amended to read:
4558 409.907 Medicaid provider agreements.--The agency may make
4559 payments for medical assistance and related services rendered to
4560 Medicaid recipients only to an individual or entity who has a
4561 provider agreement in effect with the agency, who is performing
4562 services or supplying goods in accordance with federal, state,
4563 and local law, and who agrees that no person shall, on the
4564 grounds of handicap, race, color, or national origin, or for any

4565 other reason, be subjected to discrimination under any program
4566 or activity for which the provider receives payment from the
4567 agency.
4568 (7) The agency may require, as a condition of
4569 participating in the Medicaid program and before entering into
4570 the provider agreement, that the provider submit information, in
4571 an initial and any required renewal applications, concerning the
4572 professional, business, and personal background of the provider
4573 and permit an onsite inspection of the provider's service
4574 location by agency staff or other personnel designated by the
4575 agency to perform this function. The agency shall perform a
4576 random onsite inspection, within 60 days after receipt of a
4577 fully complete new provider's application, of the provider's
4578 service location prior to making its first payment to the
4579 provider for Medicaid services to determine the applicant's
4580 ability to provide the services that the applicant is proposing
4581 to provide for Medicaid reimbursement. The agency is not
4582 required to perform an onsite inspection of a provider or
4583 program that is licensed by the agency, that provides services
4584 under waiver programs for home and community-based services, or
4585 that is licensed as a medical foster home by the Department of
4586 Children and Family Services. As a continuing condition of
4587 participation in the Medicaid program, a provider shall
4588 immediately notify the agency of any current or pending
4589 bankruptcy filing. Before entering into the provider agreement,
4590 or as a condition of continuing participation in the Medicaid
4591 program, the agency may also require that Medicaid providers
4592 reimbursed on a fee-for-services basis or fee schedule basis

4593 which is not cost-based, post a surety bond not to exceed
4594 $50,000 or the total amount billed by the provider to the
4595 program during the current or most recent calendar year,
4596 whichever is greater. For new providers, the amount of the
4597 surety bond shall be determined by the agency based on the
4598 provider's estimate of its first year's billing. If the
4599 provider's billing during the first year exceeds the bond
4600 amount, the agency may require the provider to acquire an
4601 additional bond equal to the actual billing level of the
4602 provider. A provider's bond shall not exceed $50,000 if a
4603 physician or group of physicians licensed under chapter 458,
4604 chapter 459, or chapter 460 has a 50 percent or greater
4605 ownership interest in the provider or if the provider is an
4606 assisted living facility licensed under ~~part III of~~ chapter 429
4607 ~~400~~. The bonds permitted by this section are in addition to the
4608 bonds referenced in s. 400.179(5)(d). If the provider is a
4609 corporation, partnership, association, or other entity, the
4610 agency may require the provider to submit information concerning
4611 the background of that entity and of any principal of the
4612 entity, including any partner or shareholder having an ownership
4613 interest in the entity equal to 5 percent or greater, and any
4614 treating provider who participates in or intends to participate
4615 in Medicaid through the entity. The information must include:
4616 (a) Proof of holding a valid license or operating
4617 certificate, as applicable, if required by the state or local
4618 jurisdiction in which the provider is located or if required by
4619 the Federal Government.
4620 (b) Information concerning any prior violation, fine,

4621 suspension, termination, or other administrative action taken
4622 under the Medicaid laws, rules, or regulations of this state or
4623 of any other state or the Federal Government; any prior
4624 violation of the laws, rules, or regulations relating to the
4625 Medicare program; any prior violation of the rules or
4626 regulations of any other public or private insurer; and any
4627 prior violation of the laws, rules, or regulations of any
4628 regulatory body of this or any other state.
4629 (c) Full and accurate disclosure of any financial or
4630 ownership interest that the provider, or any principal, partner,
4631 or major shareholder thereof, may hold in any other Medicaid
4632 provider or health care related entity or any other entity that
4633 is licensed by the state to provide health or residential care
4634 and treatment to persons.
4635 (d) If a group provider, identification of all members of
4636 the group and attestation that all members of the group are
4637 enrolled in or have applied to enroll in the Medicaid program.
4638 (8)(a) Each provider, or each principal of the provider if
4639 the provider is a corporation, partnership, association, or
4640 other entity, seeking to participate in the Medicaid program
4641 must submit a complete set of his or her fingerprints to the
4642 agency for the purpose of conducting a criminal history record
4643 check. Principals of the provider include any officer,
4644 director, billing agent, managing employee, or affiliated
4645 person, or any partner or shareholder who has an ownership
4646 interest equal to 5 percent or more in the provider. However, a
4647 director of a not-for-profit corporation or organization is not
4648 a principal for purposes of a background investigation as

4649 required by this section if the director: serves solely in a
4650 voluntary capacity for the corporation or organization, does not
4651 regularly take part in the day-to-day operational decisions of
4652 the corporation or organization, receives no remuneration from
4653 the not-for-profit corporation or organization for his or her
4654 service on the board of directors, has no financial interest in
4655 the not-for-profit corporation or organization, and has no
4656 family members with a financial interest in the not-for-profit
4657 corporation or organization; and if the director submits an
4658 affidavit, under penalty of perjury, to this effect to the
4659 agency and the not-for-profit corporation or organization
4660 submits an affidavit, under penalty of perjury, to this effect
4661 to the agency as part of the corporation's or organization's
4662 Medicaid provider agreement application. Notwithstanding the
4663 above, the agency may require a background check for any person
4664 reasonably suspected by the agency to have been convicted of a
4665 crime. This subsection shall not apply to:
4666 1. A hospital licensed under chapter 395;
4667 2. A nursing home licensed under chapter 400;
4668 3. A hospice licensed under chapter 400;
4669 4. An assisted living facility licensed under chapter 429;
4670 ~~400.~~
4671 5. A unit of local government, except that requirements of
4672 this subsection apply to nongovernmental providers and entities
4673 when contracting with the local government to provide Medicaid
4674 services. The actual cost of the state and national criminal
4675 history record checks must be borne by the nongovernmental
4676 provider or entity; or

4677 6. Any business that derives more than 50 percent of its
4678 revenue from the sale of goods to the final consumer, and the
4679 business or its controlling parent either is required to file a
4680 form 10-K or other similar statement with the Securities and
4681 Exchange Commission or has a net worth of $50 million or more.
4682 Section 91. Paragraph (c) of subsection (5) of section
4683 409.912, Florida Statutes, is amended to read:
4684 409.912 Cost-effective purchasing of health care.--The
4685 agency shall purchase goods and services for Medicaid recipients
4686 in the most cost-effective manner consistent with the delivery
4687 of quality medical care. To ensure that medical services are
4688 effectively utilized, the agency may, in any case, require a
4689 confirmation or second physician's opinion of the correct
4690 diagnosis for purposes of authorizing future services under the
4691 Medicaid program. This section does not restrict access to
4692 emergency services or poststabilization care services as defined
4693 in 42 C.F.R. part 438.114. Such confirmation or second opinion
4694 shall be rendered in a manner approved by the agency. The agency
4695 shall maximize the use of prepaid per capita and prepaid
4696 aggregate fixed-sum basis services when appropriate and other
4697 alternative service delivery and reimbursement methodologies,
4698 including competitive bidding pursuant to s. 287.057, designed
4699 to facilitate the cost-effective purchase of a case-managed
4700 continuum of care. The agency shall also require providers to
4701 minimize the exposure of recipients to the need for acute
4702 inpatient, custodial, and other institutional care and the
4703 inappropriate or unnecessary use of high-cost services. The
4704 agency shall contract with a vendor to monitor and evaluate the

4705 clinical practice patterns of providers in order to identify
4706 trends that are outside the normal practice patterns of a
4707 provider's professional peers or the national guidelines of a
4708 provider's professional association. The vendor must be able to
4709 provide information and counseling to a provider whose practice
4710 patterns are outside the norms, in consultation with the agency,
4711 to improve patient care and reduce inappropriate utilization.
4712 The agency may mandate prior authorization, drug therapy
4713 management, or disease management participation for certain
4714 populations of Medicaid beneficiaries, certain drug classes, or
4715 particular drugs to prevent fraud, abuse, overuse, and possible
4716 dangerous drug interactions. The Pharmaceutical and Therapeutics
4717 Committee shall make recommendations to the agency on drugs for
4718 which prior authorization is required. The agency shall inform
4719 the Pharmaceutical and Therapeutics Committee of its decisions
4720 regarding drugs subject to prior authorization. The agency is
4721 authorized to limit the entities it contracts with or enrolls as
4722 Medicaid providers by developing a provider network through
4723 provider credentialing. The agency may competitively bid single-
4724 source-provider contracts if procurement of goods or services
4725 results in demonstrated cost savings to the state without
4726 limiting access to care. The agency may limit its network based
4727 on the assessment of beneficiary access to care, provider
4728 availability, provider quality standards, time and distance
4729 standards for access to care, the cultural competence of the
4730 provider network, demographic characteristics of Medicaid
4731 beneficiaries, practice and provider-to-beneficiary standards,
4732 appointment wait times, beneficiary use of services, provider

4733 turnover, provider profiling, provider licensure history,
4734 previous program integrity investigations and findings, peer
4735 review, provider Medicaid policy and billing compliance records,
4736 clinical and medical record audits, and other factors. Providers
4737 shall not be entitled to enrollment in the Medicaid provider
4738 network. The agency shall determine instances in which allowing
4739 Medicaid beneficiaries to purchase durable medical equipment and
4740 other goods is less expensive to the Medicaid program than long-
4741 term rental of the equipment or goods. The agency may establish
4742 rules to facilitate purchases in lieu of long-term rentals in
4743 order to protect against fraud and abuse in the Medicaid program
4744 as defined in s. 409.913. The agency may seek federal waivers
4745 necessary to administer these policies.
4746 (5) By December 1, 2005, the Agency for Health Care
4747 Administration, in partnership with the Department of Elderly
4748 Affairs, shall create an integrated, fixed-payment delivery
4749 system for Medicaid recipients who are 60 years of age or older.
4750 The Agency for Health Care Administration shall implement the
4751 integrated system initially on a pilot basis in two areas of the
4752 state. In one of the areas enrollment shall be on a voluntary
4753 basis. The program must transfer all Medicaid services for
4754 eligible elderly individuals who choose to participate into an
4755 integrated-care management model designed to serve Medicaid
4756 recipients in the community. The program must combine all
4757 funding for Medicaid services provided to individuals 60 years
4758 of age or older into the integrated system, including funds for
4759 Medicaid home and community-based waiver services; all Medicaid
4760 services authorized in ss. 409.905 and 409.906, excluding funds

4761 for Medicaid nursing home services unless the agency is able to
4762 demonstrate how the integration of the funds will improve
4763 coordinated care for these services in a less costly manner; and
4764 Medicare coinsurance and deductibles for persons dually eligible
4765 for Medicaid and Medicare as prescribed in s. 409.908(13).
4766 (c) The agency must ensure that the capitation-rate-
4767 setting methodology for the integrated system is actuarially
4768 sound and reflects the intent to provide quality care in the
4769 least restrictive setting. The agency must also require
4770 integrated-system providers to develop a credentialing system
4771 for service providers and to contract with all Gold Seal nursing
4772 homes, where feasible, and exclude, where feasible, chronically
4773 poor-performing facilities and providers as defined by the
4774 agency. The integrated system must provide that if the recipient
4775 resides in a noncontracted residential facility licensed under
4776 chapter 400 <u>or chapter 429</u> at the time the integrated system is
4777 initiated, the recipient must be permitted to continue to reside
4778 in the noncontracted facility as long as the recipient desires.
4779 The integrated system must also provide that, in the absence of
4780 a contract between the integrated-system provider and the
4781 residential facility licensed under chapter 400 <u>or chapter 429</u>,
4782 current Medicaid rates must prevail. The agency and the
4783 Department of Elderly Affairs must jointly develop procedures to
4784 manage the services provided through the integrated system in
4785 order to ensure quality and recipient choice.
4786 Section 92. Section 410.031, Florida Statutes, is amended
4787 to read:
4788 410.031 Legislative intent.--It is the intent of the

4789 Legislature to encourage the provision of care for disabled
4790 adults in family-type living arrangements in private homes as an
4791 alternative to institutional or nursing home care for such
4792 persons. The provisions of ss. 410.031-410.036 are intended to
4793 be supplemental to the provisions of chapters ~~chapter~~ 400 and
4794 429, relating to the licensing and regulation of nursing homes
4795 and assisted living facilities, and do not exempt any person who
4796 is otherwise subject to regulation under chapter 400 or chapter
4797 429.
4798 Section 93. Section 410.034, Florida Statutes, is amended
4799 to read:
4800 410.034 Department determination of fitness to provide
4801 home care.--In accordance with s. 429.02 ~~s. 400.402~~, a person
4802 caring for an adult who is related to such person by blood or
4803 marriage is not subject to the Assisted Living Facilities Act.
4804 If, however, the person who plans to provide home care under
4805 this act is found by the department to be unable to provide this
4806 care, the department shall notify the person wishing to provide
4807 home care of this determination, and the person shall not be
4808 eligible for subsidy payments under ss. 410.031-410.036.
4809 Section 94. Subsection (31) of section 413.20, Florida
4810 Statutes, is amended to read:
4811 413.20 Definitions.--As used in this part, the term:
4812 (31) "Transitional living facility" means a state-approved
4813 facility as defined and licensed pursuant to chapter 400 or
4814 chapter 429 and division-approved in accord with this part.
4815 Section 95. Section 415.1111, Florida Statutes, is amended
4816 to read:

4817 415.1111 Civil actions.--A vulnerable adult who has been
4818 abused, neglected, or exploited as specified in this chapter has
4819 a cause of action against any perpetrator and may recover actual
4820 and punitive damages for such abuse, neglect, or exploitation.
4821 The action may be brought by the vulnerable adult, or that
4822 person's guardian, by a person or organization acting on behalf
4823 of the vulnerable adult with the consent of that person or that
4824 person's guardian, or by the personal representative of the
4825 estate of a deceased victim without regard to whether the cause
4826 of death resulted from the abuse, neglect, or exploitation. The
4827 action may be brought in any court of competent jurisdiction to
4828 enforce such action and to recover actual and punitive damages
4829 for any deprivation of or infringement on the rights of a
4830 vulnerable adult. A party who prevails in any such action may be
4831 entitled to recover reasonable attorney's fees, costs of the
4832 action, and damages. The remedies provided in this section are
4833 in addition to and cumulative with other legal and
4834 administrative remedies available to a vulnerable adult.
4835 Notwithstanding the foregoing, any civil action for damages
4836 against any licensee or entity who establishes, controls,
4837 conducts, manages, or operates a facility licensed under part II
4838 of chapter 400 relating to its operation of the licensed
4839 facility shall be brought pursuant to s. 400.023, or against any
4840 licensee or entity who establishes, controls, conducts, manages,
4841 or operates a facility licensed under part I ~~III~~ of chapter 429
4842 ~~400~~ relating to its operation of the licensed facility shall be
4843 brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or
4844 entity shall not be vicariously liable for the acts or omissions

4845 of its employees or agents or any other third party in an action
4846 brought under this section.
4847 Section 96. Paragraph (d) of subsection (1) of section
4848 419.001, Florida Statutes, is amended to read:
4849 419.001 Site selection of community residential homes.--
4850 (1) For the purposes of this section, the following
4851 definitions shall apply:
4852 (d) "Resident" means any of the following: a frail elder
4853 as defined in s. 429.65 ~~s. 400.618~~; a physically disabled or
4854 handicapped person as defined in s. 760.22(7)(a); a
4855 developmentally disabled person as defined in s. 393.063; a
4856 nondangerous mentally ill person as defined in s. 394.455(18);
4857 or a child as defined in s. 39.01(14), s. 984.03(9) or (12), or
4858 s. 985.03(8).
4859 Section 97. Section 430.601, Florida Statutes, is amended
4860 to read:
4861 430.601 Home care for the elderly; legislative intent.--It
4862 is the intent of the Legislature to encourage the provision of
4863 care for the elderly in family-type living arrangements in
4864 private homes as an alternative to institutional or nursing home
4865 care for such persons. The provisions of ss. 430.601-430.606 are
4866 intended to be supplemental to the provisions of chapters
4867 ~~chapter~~ 400 and 429, relating to the licensing and regulation of
4868 nursing homes and assisted living facilities, and do not exempt
4869 any person who is otherwise subject to regulation under those
4870 chapters ~~the provisions of that chapter~~.
4871 Section 98. Subsection (7) of section 430.703, Florida
4872 Statutes, is amended to read:

4873 430.703 Definitions.--As used in this act, the term:
4874 (7) "Other qualified provider" means an entity licensed
4875 under chapter 400 or chapter 429 that demonstrates a long-term
4876 care continuum and meets all requirements pursuant to an
4877 interagency agreement between the agency and the department.
4878 Section 99. Paragraph (a) of subsection (3) of section
4879 435.03, Florida Statutes, is amended to read:
4880 435.03 Level 1 screening standards.--
4881 (3) Standards must also ensure that the person:
4882 (a) For employees and employers licensed or registered
4883 pursuant to chapter 400 or chapter 429, and for employees and
4884 employers of developmental services institutions as defined in
4885 s. 393.063, intermediate care facilities for the developmentally
4886 disabled as defined in s. 393.063, and mental health treatment
4887 facilities as defined in s. 394.455, meets the requirements of
4888 this chapter.
4889 Section 100. Paragraph (a) of subsection (4) of section
4890 435.04, Florida Statutes, is amended to read:
4891 435.04 Level 2 screening standards.--
4892 (4) Standards must also ensure that the person:
4893 (a) For employees or employers licensed or registered
4894 pursuant to chapter 400 or chapter 429, does not have a
4895 confirmed report of abuse, neglect, or exploitation as defined
4896 in s. 415.102(6), which has been uncontested or upheld under s.
4897 415.103.
4898 Section 101. Paragraph (g) of subsection (1) of section
4899 440.13, Florida Statutes, is amended to read:
4900 440.13 Medical services and supplies; penalty for

4901 violations; limitations.--
4902 (1) DEFINITIONS.--As used in this section, the term:
4903 (g) "Health care facility" means any hospital licensed
4904 under chapter 395 and any health care institution licensed under
4905 chapter 400 or chapter 429.
4906 Section 102. Subsection (8) of section 468.1685, Florida
4907 Statutes, is amended to read:
4908 468.1685 Powers and duties of board and department.--It is
4909 the function and duty of the board, together with the
4910 department, to:
4911 (8) Set up procedures by rule for advising and acting
4912 together with the Department of Health and other boards of other
4913 health professions in matters affecting procedures and methods
4914 for effectively enforcing the purpose of this part and the
4915 administration of chapters ~~chapter~~ 400 and 429.
4916 Section 103. Paragraph (k) of subsection (1) of section
4917 468.505, Florida Statutes, is amended to read:
4918 468.505 Exemptions; exceptions.--
4919 (1) Nothing in this part may be construed as prohibiting
4920 or restricting the practice, services, or activities of:
4921 (k) A person employed by a hospital licensed under chapter
4922 395, ~~or~~ by a nursing home ~~or assisted living facility~~ licensed
4923 under part II ~~or part III~~ of chapter 400, by an assisted living
4924 facility licensed under chapter 429, or by a continuing care
4925 facility certified under chapter 651, if the person is employed
4926 in compliance with the laws and rules adopted thereunder
4927 regarding the operation of its dietetic department.
4928 Section 104. Subsection (11) of section 477.025, Florida

4929 Statutes, is amended to read:
4930 477.025 Cosmetology salons; specialty salons; requisites;
4931 licensure; inspection; mobile cosmetology salons.--
4932 (11) Facilities licensed under part II ~~or part III~~ of
4933 chapter 400 or under chapter 429 are ~~shall be~~ exempt from ~~the~~
4934 ~~provisions of~~ this section, and a cosmetologist licensed
4935 pursuant to s. 477.019 may provide salon services exclusively
4936 for facility residents.
4937 Section 105. Subsection (5) of section 483.285, Florida
4938 Statutes, is amended to read:
4939 483.285 Application of part; exemptions.--This part
4940 applies to all multiphasic health testing centers within the
4941 state, but does not apply to:
4942 (5) A home health agency licensed under part III ~~IV~~ of
4943 chapter 400.
4944 Section 106. Paragraph (a) of subsection (2) of section
4945 509.032, Florida Statutes, is amended to read:
4946 509.032 Duties.--
4947 (2) INSPECTION OF PREMISES.--
4948 (a) The division has responsibility and jurisdiction for
4949 all inspections required by this chapter. The division has
4950 responsibility for quality assurance. Each licensed
4951 establishment shall be inspected at least biannually, except for
4952 transient and nontransient apartments, which shall be inspected
4953 at least annually, and shall be inspected at such other times as
4954 the division determines is necessary to ensure the public's
4955 health, safety, and welfare. The division shall establish a
4956 system to determine inspection frequency. Public lodging units

4957 classified as resort condominiums or resort dwellings are not
4958 subject to this requirement, but shall be made available to the
4959 division upon request. If, during the inspection of a public
4960 lodging establishment classified for renting to transient or
4961 nontransient tenants, an inspector identifies vulnerable adults
4962 who appear to be victims of neglect, as defined in s. 415.102,
4963 or, in the case of a building that is not equipped with
4964 automatic sprinkler systems, tenants or clients who may be
4965 unable to self-preserve in an emergency, the division shall
4966 convene meetings with the following agencies as appropriate to
4967 the individual situation: the Department of Health, the
4968 Department of Elderly Affairs, the area agency on aging, the
4969 local fire marshal, the landlord and affected tenants and
4970 clients, and other relevant organizations, to develop a plan
4971 which improves the prospects for safety of affected residents
4972 and, if necessary, identifies alternative living arrangements
4973 such as facilities licensed under part II ~~or part III~~ of chapter
4974 400 <u>or under chapter 429</u>.
4975 Section 107. Subsection (1) of section 509.241, Florida
4976 Statutes, is amended to read:
4977 509.241 Licenses required; exceptions.--
4978 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
4979 establishment and public food service establishment shall obtain
4980 a license from the division. Such license may not be transferred
4981 from one place or individual to another. It shall be a
4982 misdemeanor of the second degree, punishable as provided in s.
4983 775.082 or s. 775.083, for such an establishment to operate
4984 without a license. Local law enforcement shall provide immediate

4985 assistance in pursuing an illegally operating establishment. The
4986 division may refuse a license, or a renewal thereof, to any
4987 establishment that is not constructed and maintained in
4988 accordance with law and with the rules of the division. The
4989 division may refuse to issue a license, or a renewal thereof, to
4990 any establishment an operator of which, within the preceding 5
4991 years, has been adjudicated guilty of, or has forfeited a bond
4992 when charged with, any crime reflecting on professional
4993 character, including soliciting for prostitution, pandering,
4994 letting premises for prostitution, keeping a disorderly place,
4995 or illegally dealing in controlled substances as defined in
4996 chapter 893, whether in this state or in any other jurisdiction
4997 within the United States, or has had a license denied, revoked,
4998 or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be
4999 renewed annually, and the division shall adopt a rule
5000 establishing a staggered schedule for license renewals. If any
5001 license expires while administrative charges are pending against
5002 the license, the proceedings against the license shall continue
5003 to conclusion as if the license were still in effect.
5004 Section 108. Subsection (1) of section 627.6617, Florida
5005 Statutes, is amended to read:
5006 627.6617 Coverage for home health care services.--
5007 (1) Any group health insurance policy providing coverage
5008 on an expense-incurred basis shall provide coverage for home
5009 health care by a home health care agency licensed pursuant to
5010 part III ~~IV~~ of chapter 400. Such coverage may be limited to home
5011 health care under a plan of treatment prescribed by a licensed
5012 physician. Services may be performed by a registered graduate

5013 nurse, a licensed practical nurse, a physical therapist, a
5014 speech therapist, an occupational therapist, or a home health
5015 aide. Provisions for utilization review may be imposed, provided
5016 that similar provisions apply to all other types of health care
5017 services.
5018 Section 109. Subsection (1) of section 627.732, Florida
5019 Statutes, is amended to read:
5020 627.732 Definitions.--As used in ss. 627.730-627.7405, the
5021 term:
5022 (1) "Broker" means any person not possessing a license
5023 under chapter 395, chapter 400, chapter 429, chapter 458,
5024 chapter 459, chapter 460, chapter 461, or chapter 641 who
5025 charges or receives compensation for any use of medical
5026 equipment and is not the 100-percent owner or the 100-percent
5027 lessee of such equipment. For purposes of this section, such
5028 owner or lessee may be an individual, a corporation, a
5029 partnership, or any other entity and any of its 100-percent-
5030 owned affiliates and subsidiaries. For purposes of this
5031 subsection, the term "lessee" means a long-term lessee under a
5032 capital or operating lease, but does not include a part-time
5033 lessee. The term "broker" does not include a hospital or
5034 physician management company whose medical equipment is
5035 ancillary to the practices managed, a debt collection agency, or
5036 an entity that has contracted with the insurer to obtain a
5037 discounted rate for such services; nor does the term include a
5038 management company that has contracted to provide general
5039 management services for a licensed physician or health care
5040 facility and whose compensation is not materially affected by

5041 the usage or frequency of usage of medical equipment or an
5042 entity that is 100-percent owned by one or more hospitals or
5043 physicians. The term "broker" does not include a person or
5044 entity that certifies, upon request of an insurer, that:
5045 (a) It is a clinic licensed under ss. 400.990-400.995;
5046 (b) It is a 100-percent owner of medical equipment; and
5047 (c) The owner's only part-time lease of medical equipment
5048 for personal injury protection patients is on a temporary basis
5049 not to exceed 30 days in a 12-month period, and such lease is
5050 solely for the purposes of necessary repair or maintenance of
5051 the 100-percent-owned medical equipment or pending the arrival
5052 and installation of the newly purchased or a replacement for the
5053 100-percent-owned medical equipment, or for patients for whom,
5054 because of physical size or claustrophobia, it is determined by
5055 the medical director or clinical director to be medically
5056 necessary that the test be performed in medical equipment that
5057 is open-style. The leased medical equipment cannot be used by
5058 patients who are not patients of the registered clinic for
5059 medical treatment of services. Any person or entity making a
5060 false certification under this subsection commits insurance
5061 fraud as defined in s. 817.234. However, the 30-day period
5062 provided in this paragraph may be extended for an additional 60
5063 days as applicable to magnetic resonance imaging equipment if
5064 the owner certifies that the extension otherwise complies with
5065 this paragraph.
5066 Section 110. Subsection (2) of section 651.011, Florida
5067 Statutes, is amended to read:
5068 651.011 Definitions.--For the purposes of this chapter,

5069 the term:
5070 (2) "Continuing care" or "care" means furnishing pursuant
5071 to a contract shelter and either nursing care or personal
5072 services as defined in s. 429.02 ~~s. 400.402~~, whether such
5073 nursing care or personal services are provided in the facility
5074 or in another setting designated by the contract for continuing
5075 care, to an individual not related by consanguinity or affinity
5076 to the provider furnishing such care, upon payment of an
5077 entrance fee. Other personal services provided shall be
5078 designated in the continuing care contract. Contracts to provide
5079 continuing care include agreements to provide care for any
5080 duration, including contracts that are terminable by either
5081 party.
5082 Section 111. Paragraph (c) of subsection (2) of section
5083 651.022, Florida Statutes, is amended to read:
5084 651.022 Provisional certificate of authority;
5085 application.--
5086 (2) The application for a provisional certificate of
5087 authority shall be on a form prescribed by the commission and
5088 shall contain the following information:
5089 (c)1. Evidence that the applicant is reputable and of
5090 responsible character. If the applicant is a firm, association,
5091 organization, partnership, business trust, corporation, or
5092 company, the form shall require evidence that the members or
5093 shareholders are reputable and of responsible character, and the
5094 person in charge of providing care under a certificate of
5095 authority shall likewise be required to produce evidence of
5096 being reputable and of responsible character.

5097 2. Evidence satisfactory to the office of the ability of
5098 the applicant to comply with the provisions of this chapter and
5099 with rules adopted by the commission pursuant to this chapter.
5100 3. A statement of whether a person identified in the
5101 application for a provisional certificate of authority or the
5102 administrator or manager of the facility, if such person has
5103 been designated, or any such person living in the same location:
5104 a. Has been convicted of a felony or has pleaded nolo
5105 contendere to a felony charge, or has been held liable or has
5106 been enjoined in a civil action by final judgment, if the felony
5107 or civil action involved fraud, embezzlement, fraudulent
5108 conversion, or misappropriation of property.
5109 b. Is subject to a currently effective injunctive or
5110 restrictive order or federal or state administrative order
5111 relating to business activity or health care as a result of an
5112 action brought by a public agency or department, including,
5113 without limitation, an action affecting a license under chapter
5114 400 <u>or chapter 429</u>.
5115
5116 The statement shall set forth the court or agency, the date of
5117 conviction or judgment, and the penalty imposed or damages
5118 assessed, or the date, nature, and issuer of the order. Before
5119 determining whether a provisional certificate of authority is to
5120 be issued, the office may make an inquiry to determine the
5121 accuracy of the information submitted pursuant to subparagraphs
5122 1. and 2.
5123 Section 112. Subsection (6) of section 651.023, Florida
5124 Statutes, is amended to read:

5125 651.023 Certificate of authority; application.--
5126 (6) The timeframes provided under s. 651.022(5) and (6)
5127 apply to applications submitted under s. 651.021(2). The office
5128 may not issue a certificate of authority under this chapter to
5129 any facility which does not have a component which is to be
5130 licensed pursuant to part II ~~or part III~~ of chapter 400 or
5131 chapter 429 or which will not offer personal services or nursing
5132 services through written contractual agreement. Any written
5133 contractual agreement must be disclosed in the continuing care
5134 contract and is subject to the provisions of s. 651.1151,
5135 relating to administrative, vendor, and management contracts.
5136 Section 113. Subsection (8) of section 651.055, Florida
5137 Statutes, is amended to read:
5138 651.055 Contracts; right to rescind.--
5139 (8) The provisions of this section shall control over any
5140 conflicting provisions contained in part II ~~or part III~~ of
5141 chapter 400 or in chapter 429.
5142 Section 114. Subsection (5) of section 651.095, Florida
5143 Statutes, is amended to read:
5144 651.095 Advertisements; requirements; penalties.--
5145 (5) The provisions of this section shall control over any
5146 conflicting provisions contained in part II ~~or part III~~ of
5147 chapter 400 or in chapter 429.
5148 Section 115. Subsections (1), (4), (6), (7), and (8) of
5149 section 651.118, Florida Statutes, are amended to read:
5150 651.118 Agency for Health Care Administration;
5151 certificates of need; sheltered beds; community beds.--
5152 (1) The provisions of this section shall control in the

5153 case of conflict with the provisions of the Health Facility and
5154 Services Development Act, ss. 408.031-408.045; the provisions of
5155 chapter 395; ~~or~~ the provisions of part II ~~parts II and III~~ of
5156 chapter 400; or the provisions of chapter 429.
5157 (4) The Agency for Health Care Administration shall
5158 approve one sheltered nursing home bed for every four proposed
5159 residential units, including those that are licensed under
5160 chapter 429 ~~part III of chapter 400~~, in the continuing care
5161 facility unless the provider demonstrates the need for a lesser
5162 number of sheltered nursing home beds based on proposed
5163 utilization by prospective residents or demonstrates the need
5164 for additional sheltered nursing home beds based on actual
5165 utilization and demand by current residents.
5166 (6) Unless the provider already has a component that is to
5167 be a part of the continuing care facility and that is licensed
5168 under chapter 395, ~~or~~ part II ~~or part III~~ of chapter 400, or
5169 chapter 429 at the time of construction of the continuing care
5170 facility, the provider must construct the nonnursing home
5171 portion of the facility and the nursing home portion of the
5172 facility at the same time. If a provider constructs less than
5173 the number of residential units approved in the certificate of
5174 authority, the number of licensed sheltered nursing home beds
5175 shall be reduced by a proportionate share.
5176 (7) Notwithstanding the provisions of subsection (2), at
5177 the discretion of the continuing care provider, sheltered
5178 nursing home beds may be used for persons who are not residents
5179 of the continuing care facility and who are not parties to a
5180 continuing care contract for a period of up to 5 years after the

5181 date of issuance of the initial nursing home license. A provider
5182 whose 5-year period has expired or is expiring may request the
5183 Agency for Health Care Administration for an extension, not to
5184 exceed 30 percent of the total sheltered nursing home beds, if
5185 the utilization by residents of the nursing home facility in the
5186 sheltered beds will not generate sufficient income to cover
5187 nursing home facility expenses, as evidenced by one of the
5188 following:
5189 (a) The nursing home facility has a net loss for the most
5190 recent fiscal year as determined under generally accepted
5191 accounting principles, excluding the effects of extraordinary or
5192 unusual items, as demonstrated in the most recently audited
5193 financial statement; or
5194 (b) The nursing home facility would have had a pro forma
5195 loss for the most recent fiscal year, excluding the effects of
5196 extraordinary or unusual items, if revenues were reduced by the
5197 amount of revenues from persons in sheltered beds who were not
5198 residents, as reported on by a certified public accountant.
5199
5200 The agency shall be authorized to grant an extension to the
5201 provider based on the evidence required in this subsection. The
5202 agency may request a continuing care facility to use up to 25
5203 percent of the patient days generated by new admissions of
5204 nonresidents during the extension period to serve Medicaid
5205 recipients for those beds authorized for extended use if there
5206 is a demonstrated need in the respective service area and if
5207 funds are available. A provider who obtains an extension is
5208 prohibited from applying for additional sheltered beds under the

5209 provision of subsection (2), unless additional residential units
5210 are built or the provider can demonstrate need by continuing
5211 care facility residents to the Agency for Health Care
5212 Administration. The 5-year limit does not apply to up to five
5213 sheltered beds designated for inpatient hospice care as part of
5214 a contractual arrangement with a hospice licensed under part IV
5215 ~~VI~~ of chapter 400. A continuing care facility that uses such
5216 beds after the 5-year period shall report such use to the Agency
5217 for Health Care Administration. For purposes of this subsection,
5218 "resident" means a person who, upon admission to the continuing
5219 care facility, initially resides in a part of the continuing
5220 care facility not licensed under part II of chapter 400.
5221 (8) A provider may petition the Agency for Health Care
5222 Administration to use a designated number of sheltered nursing
5223 home beds to provide extended congregate care as defined in s.
5224 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the
5225 nursing home which can be adapted to meet the requirements for
5226 extended congregate care. The provider may subsequently use such
5227 beds as sheltered beds after notifying the agency of the
5228 intended change. Any sheltered beds used to provide extended
5229 congregate care pursuant to this subsection may not qualify for
5230 funding under the Medicaid waiver. Any sheltered beds used to
5231 provide extended congregate care pursuant to this subsection may
5232 share common areas, services, and staff with beds designated for
5233 nursing home care, provided that all of the beds are under
5234 common ownership. For the purposes of this subsection, fire and
5235 life safety codes applicable to nursing home facilities shall
5236 apply.

5237 Section 116. Subsection (2) of section 765.1103, Florida
5238 Statutes, is amended to read:
5239 765.1103 Pain management and palliative care.--
5240 (2) Health care providers and practitioners regulated
5241 under chapter 458, chapter 459, or chapter 464 must, as
5242 appropriate, comply with a request for pain management or
5243 palliative care from a patient under their care or, for an
5244 incapacitated patient under their care, from a surrogate, proxy,
5245 guardian, or other representative permitted to make health care
5246 decisions for the incapacitated patient. Facilities regulated
5247 under chapter 395, ~~or~~ chapter 400, or chapter 429 must comply
5248 with the pain management or palliative care measures ordered by
5249 the patient's physician.
5250 Section 117. Subsection (2) of section 765.205, Florida
5251 Statutes, is amended to read:
5252 765.205 Responsibility of the surrogate.--
5253 (2) The surrogate may authorize the release of information
5254 and medical records to appropriate persons to ensure the
5255 continuity of the principal's health care and may authorize the
5256 admission, discharge, or transfer of the principal to or from a
5257 health care facility or other facility or program licensed under
5258 chapter 400 or chapter 429.
5259 Section 118. Subsection (1) of section 768.735, Florida
5260 Statutes, is amended to read:
5261 768.735 Punitive damages; exceptions; limitation.--
5262 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not
5263 apply to any civil action based upon child abuse, abuse of the
5264 elderly under chapter 415, or abuse of the developmentally

5265 disabled. Such actions are governed by applicable statutes and
5266 controlling judicial precedent. This section does not apply to
5267 claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.
5268 Section 119. Paragraph (h) of subsection (1) of section
5269 893.13, Florida Statutes, is amended to read:
5270 893.13 Prohibited acts; penalties.--
5271 (1)
5272 (h) Except as authorized by this chapter, it is unlawful
5273 for any person to sell, manufacture, or deliver, or possess with
5274 intent to sell, manufacture, or deliver, a controlled substance
5275 in, on, or within 1,000 feet of the real property comprising an
5276 assisted living facility, as that term is used in chapter 429
5277 ~~400~~. Any person who violates this paragraph with respect to:
5278 1. A controlled substance named or described in s.
5279 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
5280 commits a felony of the first degree, punishable as provided in
5281 s. 775.082, s. 775.083, or s. 775.084.
5282 2. A controlled substance named or described in s.
5283 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
5284 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
5285 the second degree, punishable as provided in s. 775.082, s.
5286 775.083, or s. 775.084.
5287 Section 120. Paragraph (a) of subsection (4) of section
5288 943.0585, Florida Statutes, is amended to read:
5289 943.0585 Court-ordered expunction of criminal history
5290 records.--The courts of this state have jurisdiction over their
5291 own procedures, including the maintenance, expunction, and
5292 correction of judicial records containing criminal history

5293 information to the extent such procedures are not inconsistent
5294 with the conditions, responsibilities, and duties established by
5295 this section. Any court of competent jurisdiction may order a
5296 criminal justice agency to expunge the criminal history record
5297 of a minor or an adult who complies with the requirements of
5298 this section. The court shall not order a criminal justice
5299 agency to expunge a criminal history record until the person
5300 seeking to expunge a criminal history record has applied for and
5301 received a certificate of eligibility for expunction pursuant to
5302 subsection (2). A criminal history record that relates to a
5303 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5304 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5305 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5306 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5307 expunged, without regard to whether adjudication was withheld,
5308 if the defendant was found guilty of or pled guilty or nolo
5309 contendere to the offense, or if the defendant, as a minor, was
5310 found to have committed, or pled guilty or nolo contendere to
5311 committing, the offense as a delinquent act. The court may only
5312 order expunction of a criminal history record pertaining to one
5313 arrest or one incident of alleged criminal activity, except as
5314 provided in this section. The court may, at its sole discretion,
5315 order the expunction of a criminal history record pertaining to
5316 more than one arrest if the additional arrests directly relate
5317 to the original arrest. If the court intends to order the
5318 expunction of records pertaining to such additional arrests,
5319 such intent must be specified in the order. A criminal justice
5320 agency may not expunge any record pertaining to such additional

5321 arrests if the order to expunge does not articulate the
5322 intention of the court to expunge a record pertaining to more
5323 than one arrest. This section does not prevent the court from
5324 ordering the expunction of only a portion of a criminal history
5325 record pertaining to one arrest or one incident of alleged
5326 criminal activity. Notwithstanding any law to the contrary, a
5327 criminal justice agency may comply with laws, court orders, and
5328 official requests of other jurisdictions relating to expunction,
5329 correction, or confidential handling of criminal history records
5330 or information derived therefrom. This section does not confer
5331 any right to the expunction of any criminal history record, and
5332 any request for expunction of a criminal history record may be
5333 denied at the sole discretion of the court.
5334 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5335 criminal history record of a minor or an adult which is ordered
5336 expunged by a court of competent jurisdiction pursuant to this
5337 section must be physically destroyed or obliterated by any
5338 criminal justice agency having custody of such record; except
5339 that any criminal history record in the custody of the
5340 department must be retained in all cases. A criminal history
5341 record ordered expunged that is retained by the department is
5342 confidential and exempt from the provisions of s. 119.07(1) and
5343 s. 24(a), Art. I of the State Constitution and not available to
5344 any person or entity except upon order of a court of competent
5345 jurisdiction. A criminal justice agency may retain a notation
5346 indicating compliance with an order to expunge.
5347 (a) The person who is the subject of a criminal history
5348 record that is expunged under this section or under other

5349 provisions of law, including former s. 893.14, former s. 901.33,
5350 and former s. 943.058, may lawfully deny or fail to acknowledge
5351 the arrests covered by the expunged record, except when the
5352 subject of the record:
5353 1. Is a candidate for employment with a criminal justice
5354 agency;
5355 2. Is a defendant in a criminal prosecution;
5356 3. Concurrently or subsequently petitions for relief under
5357 this section or s. 943.059;
5358 4. Is a candidate for admission to The Florida Bar;
5359 5. Is seeking to be employed or licensed by or to contract
5360 with the Department of Children and Family Services or the
5361 Department of Juvenile Justice or to be employed or used by such
5362 contractor or licensee in a sensitive position having direct
5363 contact with children, the developmentally disabled, the aged,
5364 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5365 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5366 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
5367 985.407, ~~or~~ chapter 400<u>, or chapter 429</u>; or
5368 6. Is seeking to be employed or licensed by the Department
5369 of Education, any district school board, any university
5370 laboratory school, any charter school, any private or parochial
5371 school, or any local governmental entity that licenses child
5372 care facilities.
5373 Section 121. Paragraph (a) of subsection (4) of section
5374 943.059, Florida Statutes, is amended to read:
5375 943.059 Court-ordered sealing of criminal history
5376 records.--The courts of this state shall continue to have

5377 jurisdiction over their own procedures, including the
5378 maintenance, sealing, and correction of judicial records
5379 containing criminal history information to the extent such
5380 procedures are not inconsistent with the conditions,
5381 responsibilities, and duties established by this section. Any
5382 court of competent jurisdiction may order a criminal justice
5383 agency to seal the criminal history record of a minor or an
5384 adult who complies with the requirements of this section. The
5385 court shall not order a criminal justice agency to seal a
5386 criminal history record until the person seeking to seal a
5387 criminal history record has applied for and received a
5388 certificate of eligibility for sealing pursuant to subsection
5389 (2). A criminal history record that relates to a violation of s.
5390 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
5391 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
5392 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
5393 a violation enumerated in s. 907.041 may not be sealed, without
5394 regard to whether adjudication was withheld, if the defendant
5395 was found guilty of or pled guilty or nolo contendere to the
5396 offense, or if the defendant, as a minor, was found to have
5397 committed or pled guilty or nolo contendere to committing the
5398 offense as a delinquent act. The court may only order sealing of
5399 a criminal history record pertaining to one arrest or one
5400 incident of alleged criminal activity, except as provided in
5401 this section. The court may, at its sole discretion, order the
5402 sealing of a criminal history record pertaining to more than one
5403 arrest if the additional arrests directly relate to the original
5404 arrest. If the court intends to order the sealing of records

5405 pertaining to such additional arrests, such intent must be
5406 specified in the order. A criminal justice agency may not seal
5407 any record pertaining to such additional arrests if the order to
5408 seal does not articulate the intention of the court to seal
5409 records pertaining to more than one arrest. This section does
5410 not prevent the court from ordering the sealing of only a
5411 portion of a criminal history record pertaining to one arrest or
5412 one incident of alleged criminal activity. Notwithstanding any
5413 law to the contrary, a criminal justice agency may comply with
5414 laws, court orders, and official requests of other jurisdictions
5415 relating to sealing, correction, or confidential handling of
5416 criminal history records or information derived therefrom. This
5417 section does not confer any right to the sealing of any criminal
5418 history record, and any request for sealing a criminal history
5419 record may be denied at the sole discretion of the court.
5420 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
5421 history record of a minor or an adult which is ordered sealed by
5422 a court of competent jurisdiction pursuant to this section is
5423 confidential and exempt from the provisions of s. 119.07(1) and
5424 s. 24(a), Art. I of the State Constitution and is available only
5425 to the person who is the subject of the record, to the subject's
5426 attorney, to criminal justice agencies for their respective
5427 criminal justice purposes, or to those entities set forth in
5428 subparagraphs (a)1., 4., 5., and 6. for their respective
5429 licensing and employment purposes.
5430 (a) The subject of a criminal history record sealed under
5431 this section or under other provisions of law, including former
5432 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

5433 deny or fail to acknowledge the arrests covered by the sealed
5434 record, except when the subject of the record:
5435 1. Is a candidate for employment with a criminal justice
5436 agency;
5437 2. Is a defendant in a criminal prosecution;
5438 3. Concurrently or subsequently petitions for relief under
5439 this section or s. 943.0585;
5440 4. Is a candidate for admission to The Florida Bar;
5441 5. Is seeking to be employed or licensed by or to contract
5442 with the Department of Children and Family Services or the
5443 Department of Juvenile Justice or to be employed or used by such
5444 contractor or licensee in a sensitive position having direct
5445 contact with children, the developmentally disabled, the aged,
5446 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
5447 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
5448 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
5449 (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or
5450 6. Is seeking to be employed or licensed by the Department
5451 of Education, any district school board, any university
5452 laboratory school, any charter school, any private or parochial
5453 school, or any local governmental entity that licenses child
5454 care facilities.
5455 Section 122. The Division of Statutory Revision of the
5456 Office of Legislative Services is requested to prepare a
5457 reviser's bill for introduction at a subsequent session of the
5458 Legislature to conform the Florida Statutes to changes made by
5459 this act.
5460 Section 123. This act shall take effect July 1, 2006.

Presentation

From Laboratory Bench to Human Benefit: Developing Effective Therapeutics against Alzheimer's

Gary W. Arendash, Ph.D.

Professor

The Byrd Alzheimer's Institute &

University of South Florida

Alzheimer's Disease Characteristics

Behavioral

- Memory Impairment, usually beginning after 65
- Time-course: 2 – 20 years

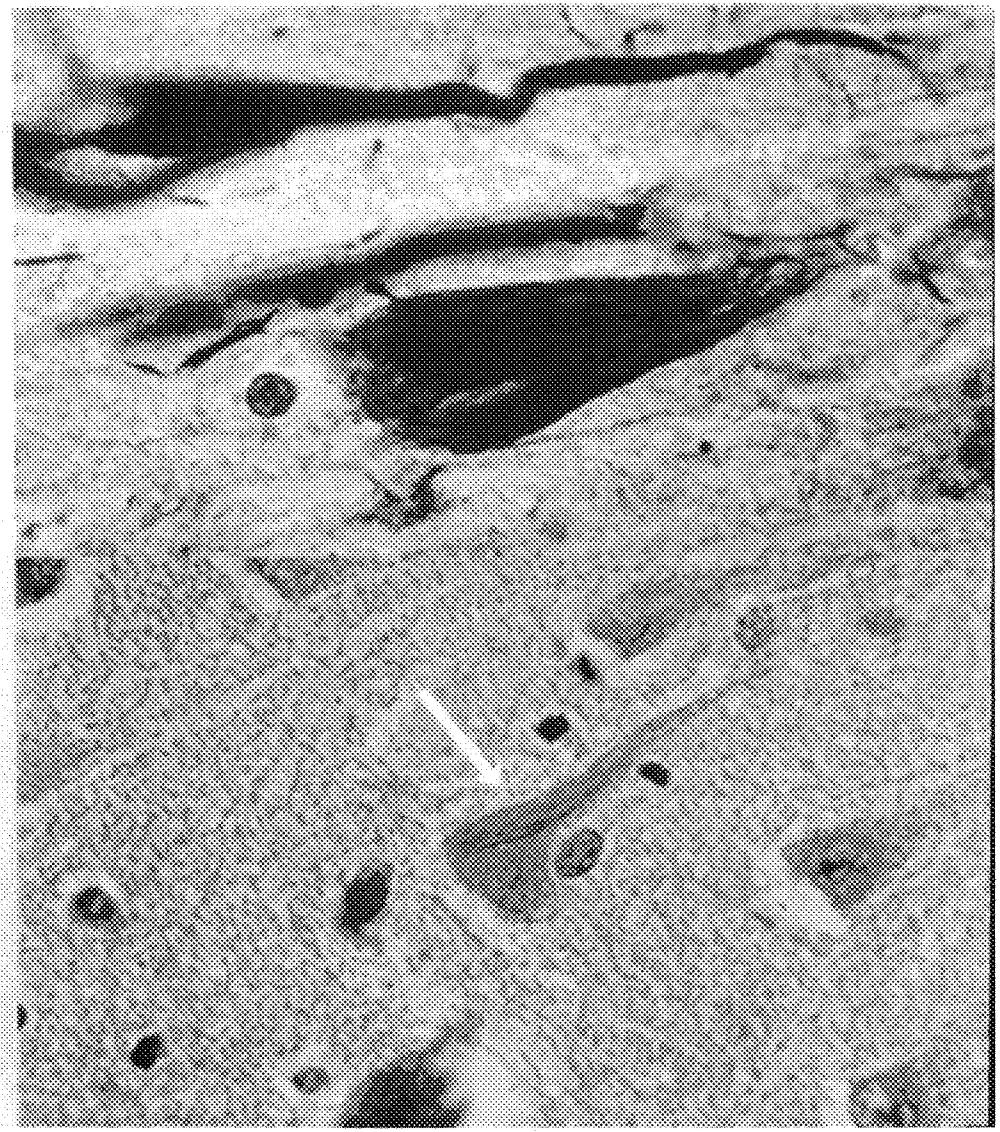
Brain Pathology

- Neurofibrillary tangles in brain cells
- Neuritic plaques
- Loss of brain cells

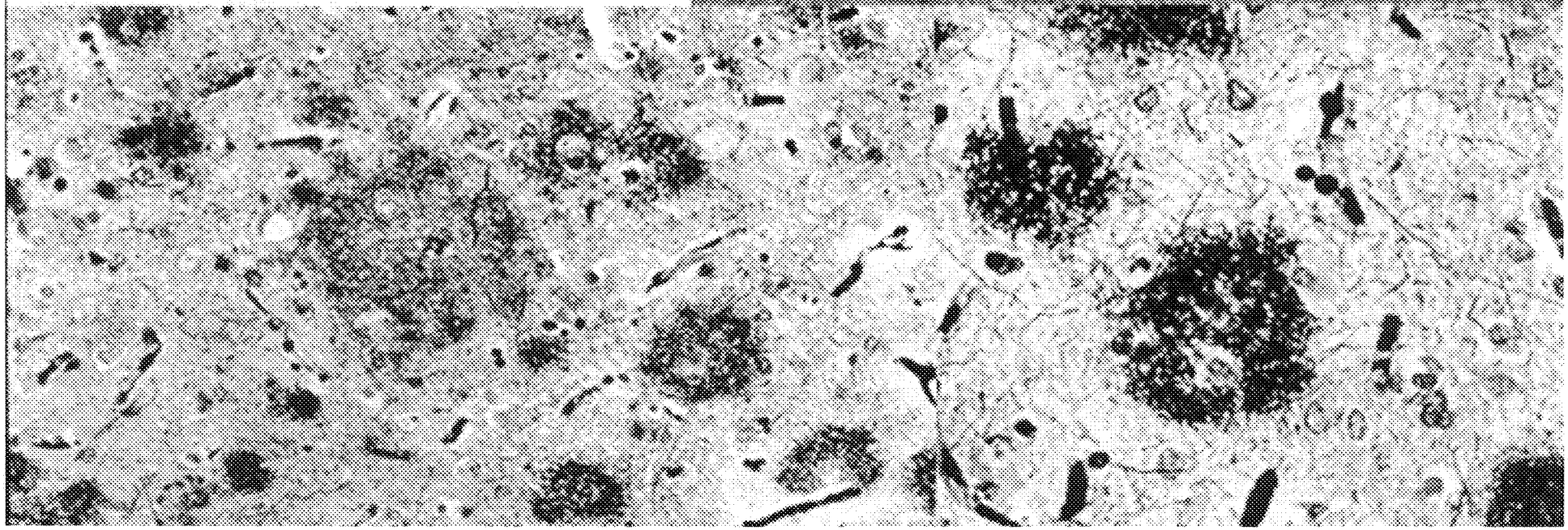
NEUROFIBRILLARY TANGLES

CHARACTERISTICS:

- Found within neurons
- Consist of paired helical filaments twisted around each other
- Cause death of neurons (tombstone left)



Neuritic (Amyloid) Plaques



Alzheimer's Disease Characteristics

Behavioral

- Memory Impairment, usually beginning after 65
- Time-course: 2 – 20 years

Brain Pathology

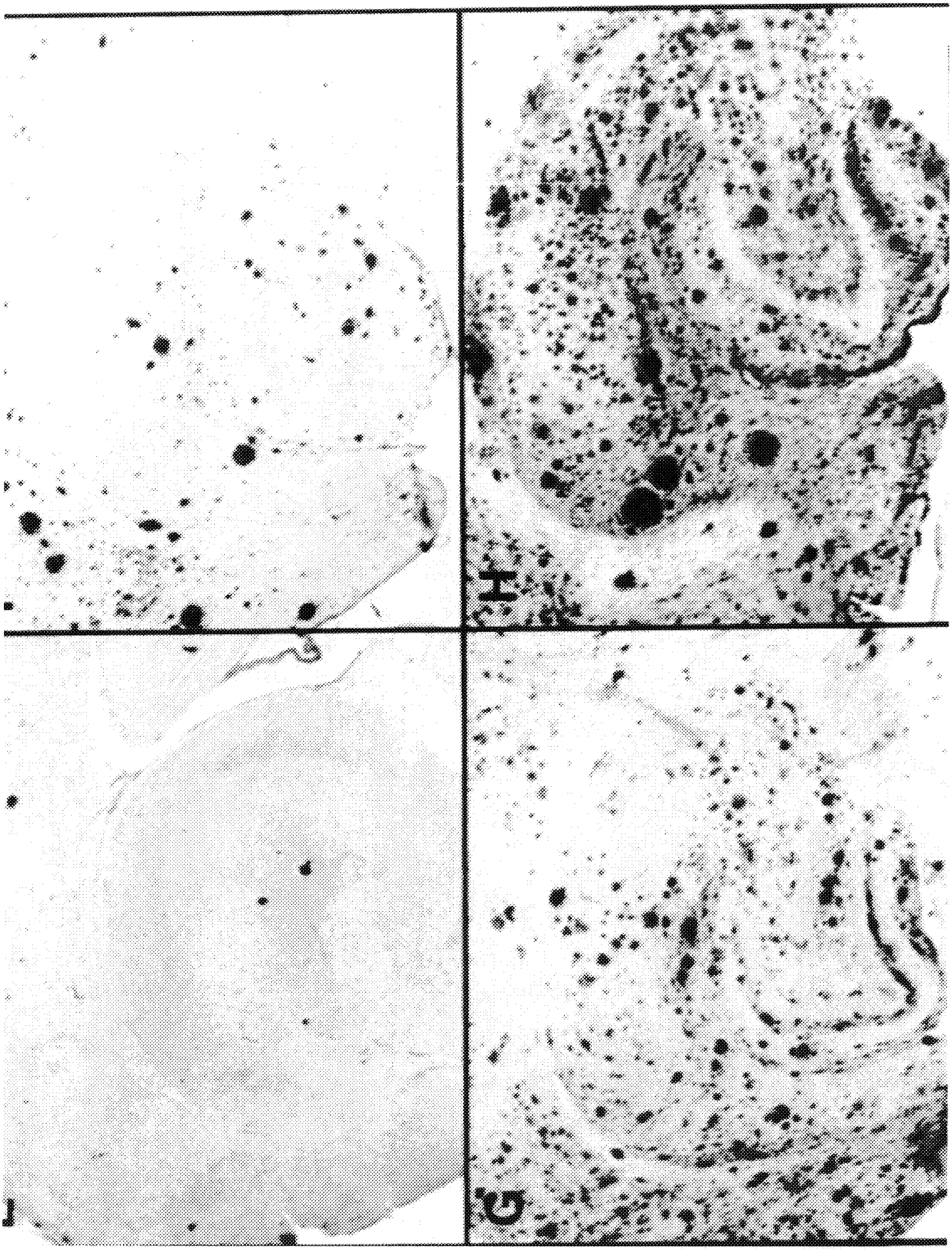
- Neurofibrillary tangles in brain cells
- Neuritic plaques
- Loss of brain cells

In Florida:

- Over 435,000 Floridians suffer from AD
- AD costs the state economy $10 billion per year

Alzheimer's Mice:

Develop AD brain pathology and cognitive impairment as they age


H
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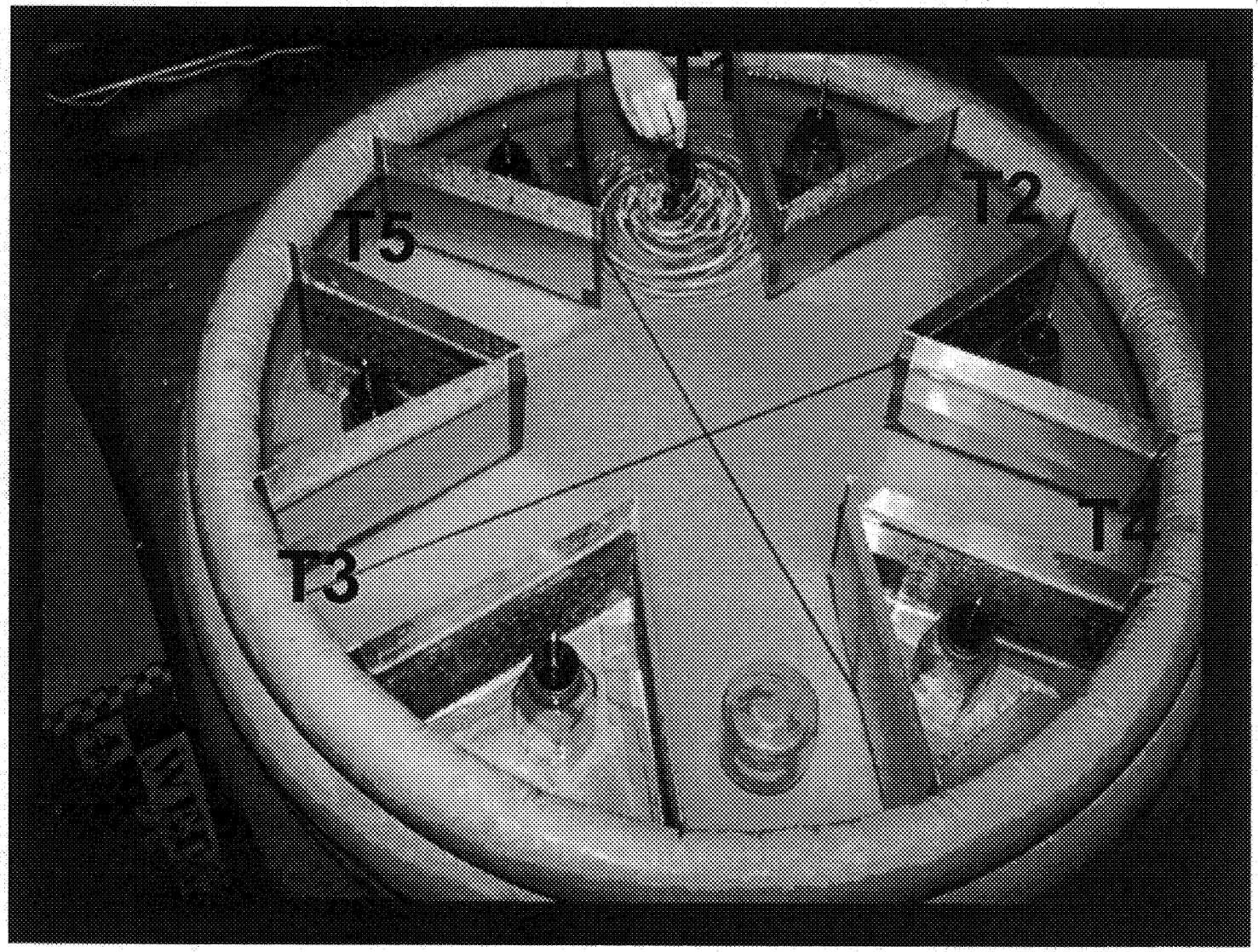
Radial Arm Water Maze

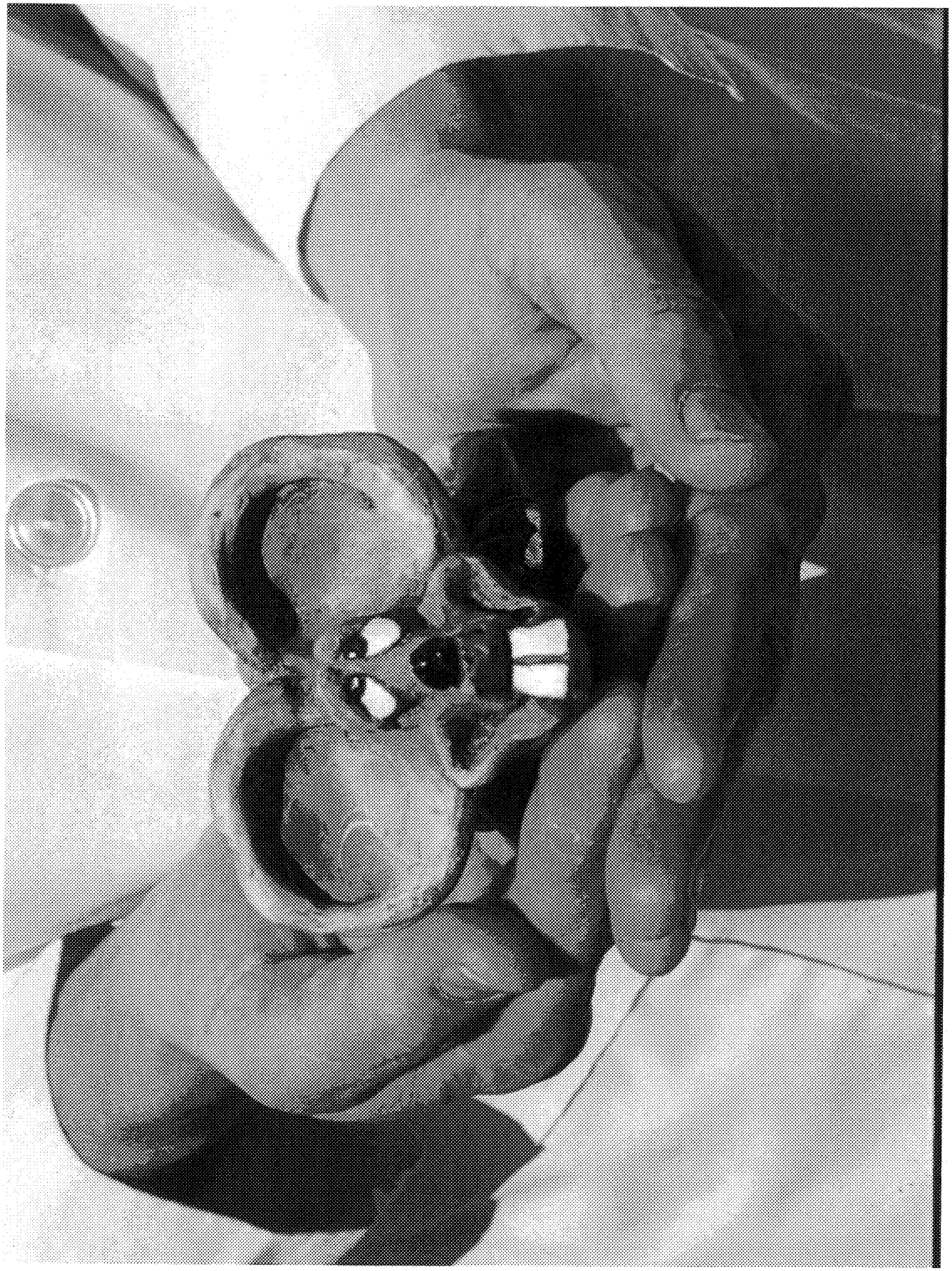
Five Trials each day

Four Learning Trials (T1-T4)

One Memory Retention Trial (T5)

Submerged Platform moved each day





AD Mice: Valuable for determining risk factors, protective strategies, and treatments

Examples:

Risk Factors

100% oxygen

Protective Strategies

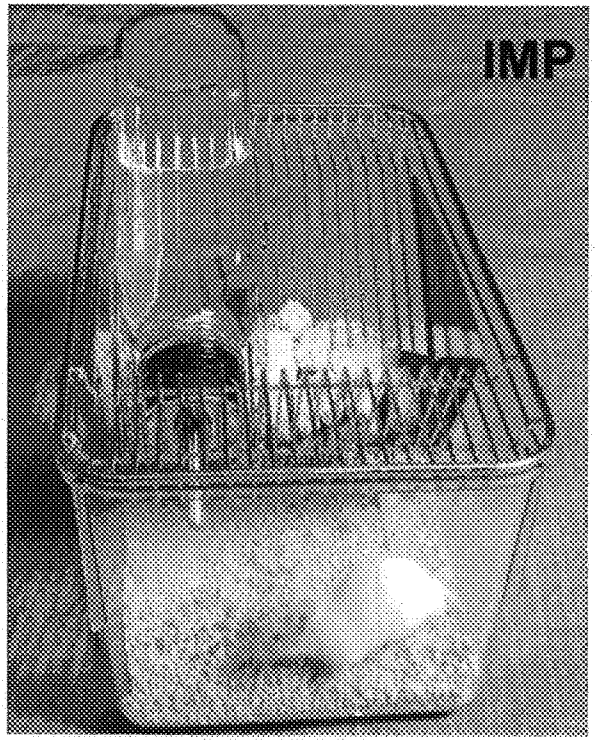
Omega-3 fatty acids (fish)

Caffeine

Cognitive activity

Treatments

Cognitive Stimulation (Rehabilitation)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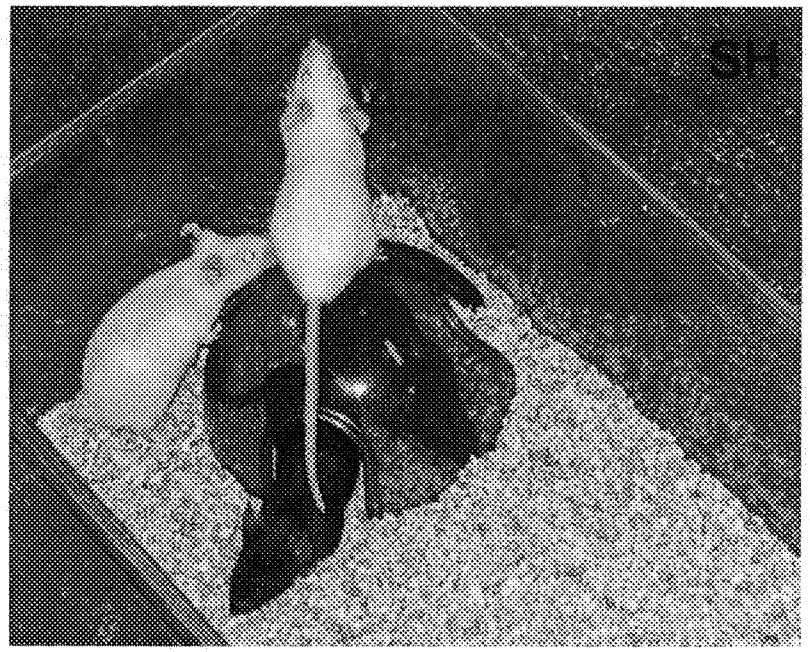
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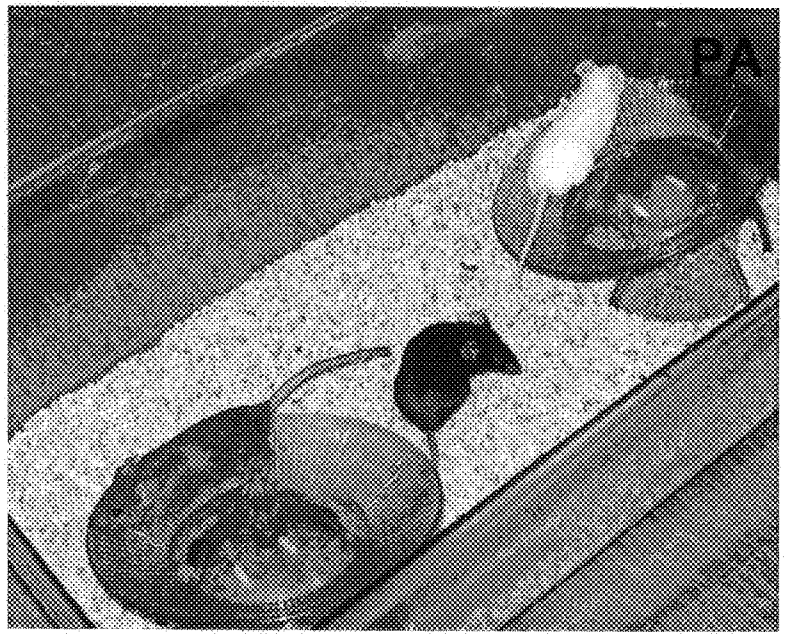
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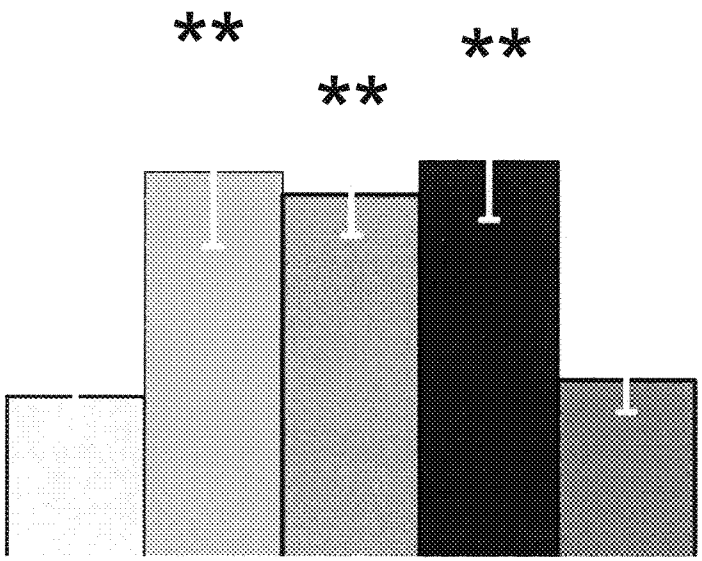
EE

Only "Complete" Environmental Enrichment Protects Against AD Cognitive Impairment



Short-Term Memory Impairment

AD Mice: Valuable for determining risk factors, protective strategies, and treatments

Examples:

Risk Factors

100% oxygen

Protective Strategies

Omega-3 fatty acids (fish)

Caffeine

Cognitive activity

Treatments

Cognitive Stimulation (Rehabilitation)

Cognitive Stimulation as a Treatment for Alzheimer's Disease

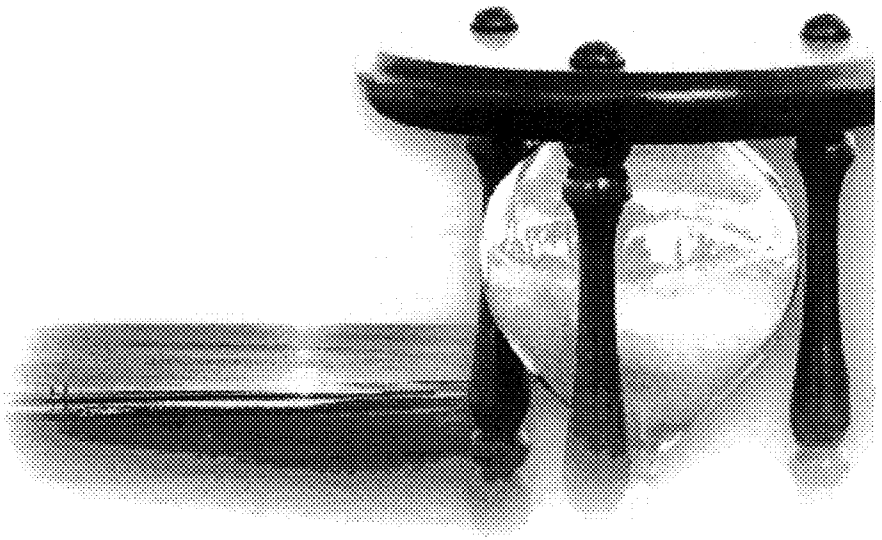
Aged Alzheimer's Mice

- Cognitively impaired; AD pathology
- Benefit from <u>continuous</u> cognitive stimulation.
- Will cognitive sessions work as well?

Alzheimer's Patients

- CS being done currently
- Interface between human & mouse studies

Johnnie B. Byrd, Sr.
Alzheimer's
Center & Research Institute



Our Mission is to Create a World without Alzheimer's.

ADDENDUM

Elder and Long Term Care Committee

Wednesday, January 25, 2006
10:00 AM – 11:00 AM
Reed Hall (102 HOB)

Allan Bense
Speaker

Hugh Gibson, III
Chair

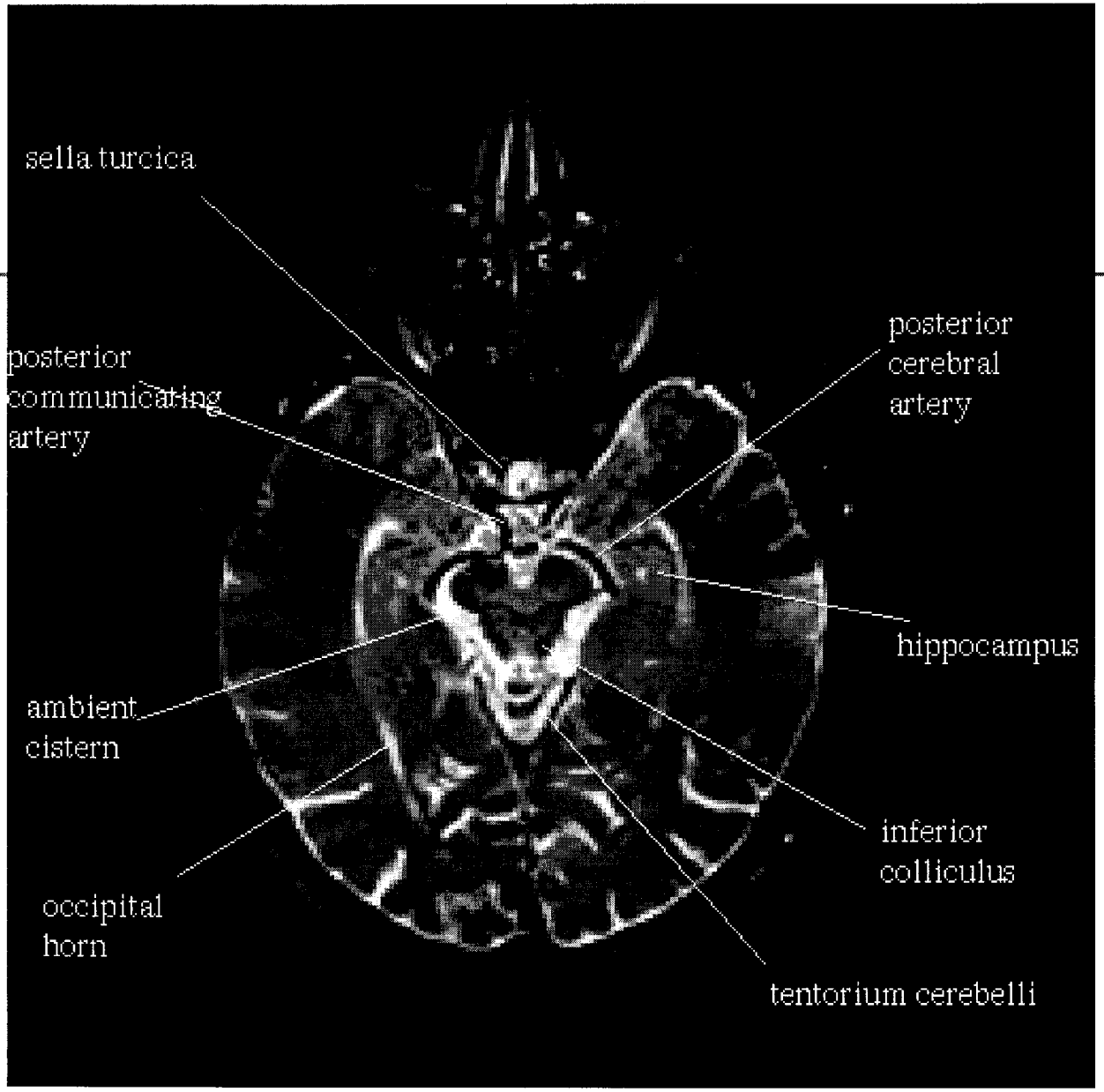
NEW COGNITIVE TREATMENT FOR EARLY ALZHEIMER'S DISEASE

David Loewenstein, Ph.D.
University of Miami and Mount Sinai Medical Center

Supported by the National Institute on Aging and Byrd Center for Alzheimer's Disease

A variety of memory strategies that are effective with the cognitively normal elderly adult have not been effective with patients with AD.

Failure to improve using traditional cognitive rehabilitation approaches is likely due to early involvement of the hippocampus in early AD, which is critical for episodic memory (Fox et al., 1996; Braak & Braak, 1995).


sella turcica
posterior communicating artery
posterior cerebral artery
hippocampus
ambient cistern
inferior colliculus
occipital horn
tentorium cerebelli

Loewenstein, Acevedo, Czaja and Duara, 2004,
American Journal of Geriatric Psychiatry

One of the first evaluations of the effects of an integrated cognitive rehabilitation program versus a non-specific mental stimulation group in mildly impaired Alzheimer's Disease patients prescribed Donepezil

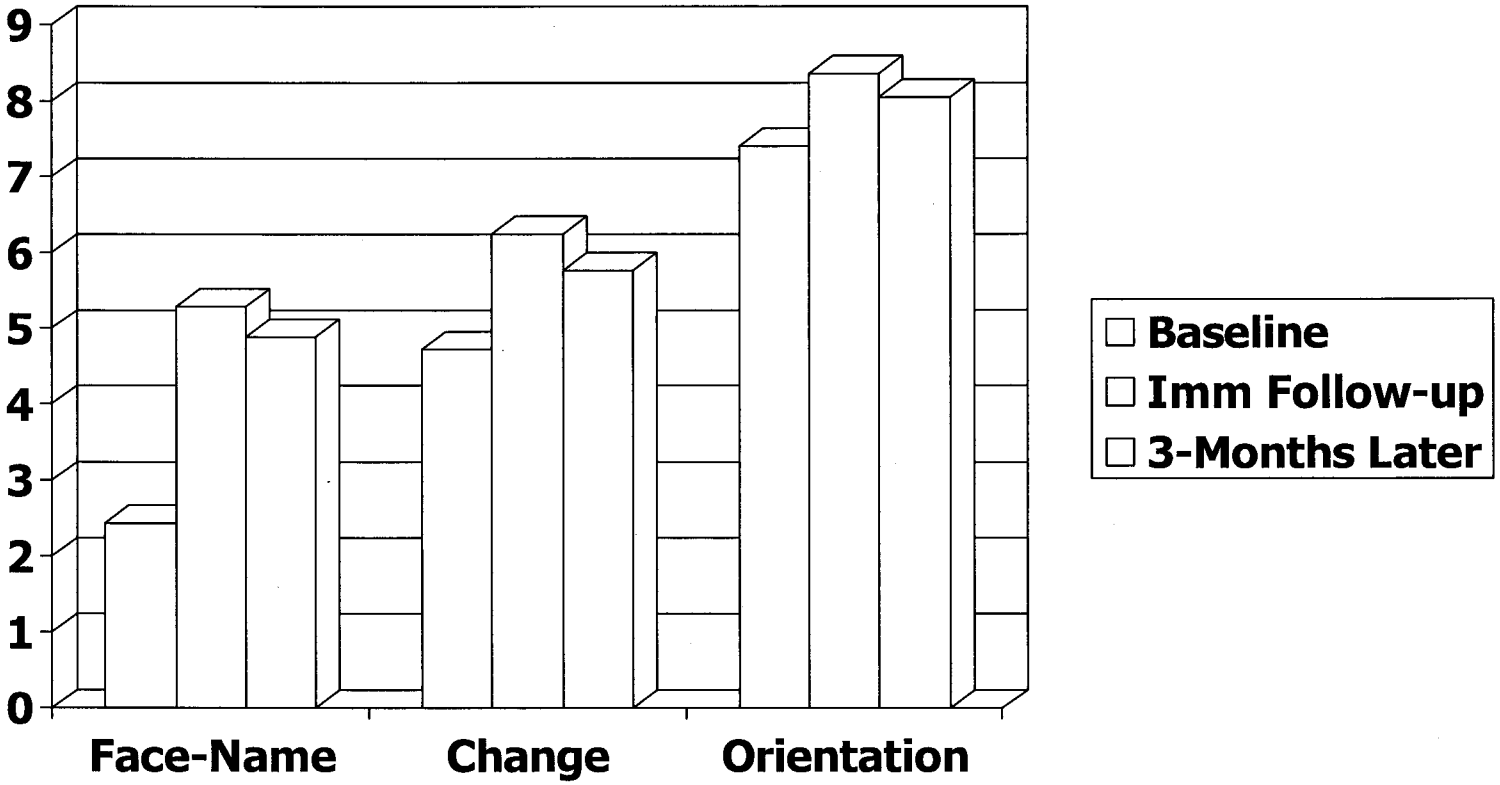
Cognitive Rehabilitation (n=25)

- Trained Face-Name Associations
- Trained Orientation to Time and Place
- Trained Speed of Cognitive Processing
- Trained Functional Skills such as Making Change for a Purchase
- Compensatory Aides such as Memory Notebook
- Homework Exercises where Caregiver Serves as Therapy Extender to Promote Generalization

Mental Stimulation (n=19)

- Computer games such as hangman, concentration, word search and word yacht
- Topic of the Day for Discussion
- Homework assignments to be completed with assistance of caregiver
- Equal Time with Patient as Cognitive Rehabilitation Condition

Mean Improvement from Baseline to Follow-up in Cognitive Rehabilitation group



Current Scientific\Work Florida ADRC supported by the Byrd Center and NIH

- To expand the scope of Cognitive Rehabilitation and include more functionally relevant tasks with 240 subjects
- To determine the added effects of maintenance or booster sessions

Potential of Intervention

1) Learn New Cognitive/Functional Skills
2) Keep the AD Patient Functional for the Longest Period of Time
3) Development of More Effective Treatments for Early AD may Reverse Some Residual Disability.
4) May Synergistically Work With Newer Pharmacological Agents that are Developed