

Committee Substitute for Senate Bill No. 388

An act relating to assisted care communities; creating ch. 429, F.S.; transferring part III of ch. 400, F.S., relating to assisted living facilities, to part I of ch. 429, F.S.; transferring part VII of ch. 400, F.S., relating to adult family-care homes, to part II of ch. 429, F.S.; transferring part V of ch. 400, F.S., relating to adult day care centers, to part III of ch. 429, F.S.; amending ss. 101.655, 189.428, 196.1975, 202.125, 205.1965, 212.031, 212.08, 296.02, 381.0035, 381.745, 393.063, 393.506, 394.455, 394.4574, 394.463, 400.0063, 400.0069, 400.0073, 400.0077, 400.0239, 400.119, 400.141, 400.191, 400.215, 400.402, 400.404, 400.407, 400.4071, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4178, 400.418, 400.419, 400.42, 400.422, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.428, 400.429, 400.4293, 400.431, 400.441, 400.442, 400.444, 400.447, 400.452, 400.462, 400.464, 400.497, 400.55, 400.551, 400.552, 400.553, 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571, 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563, 400.564, 400.601, 400.616, 400.617, 400.618, 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625, 400.6255, 400.628, 400.629, 400.93, 400.962, 400.980, 400.9905, 401.23, 402.164, 408.032, 408.033, 408.034, 408.831, 409.212, 409.905, 409.906, 409.907, 409.912, 410.031, 410.034, 415.1111, 430.601, 430.703, 435.03, 435.04, 440.13, 465.0235, 468.1685, 468.505, 477.025, 509.032, 509.241, 627.732, 651.011, 651.022, 651.023, 651.055, 651.095, 651.118, 765.1103, 765.205, 768.735, 893.13, 943.0585, and 943.059, F.S., to conform references to changes made by the act; providing that physician assistants are subject to certain requirements in the same manner as physicians; requesting the Division of Statutory Revision to make necessary conforming changes to the Florida Statutes; providing an effective date.

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

Section 1. Chapter 429, Florida Statutes, is created, to be entitled “Assisted Care Communities.”

Section 2. Sections 400.401, 400.402, 400.404, 400.407, 400.4071, 400.4075, 400.408, 400.411, 400.412, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.4177, 400.4178, 400.418, 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423, 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.4275, 400.428, 400.429, 400.4293, 400.4294, 400.4295, 400.4296, 400.4297, 400.4298, 400.431, 400.434, 400.435, 400.441, 400.442, 400.444, 400.4445, 400.447, 400.449, 400.451, 400.452, 400.453, and 400.454, Florida Statutes, are renumbered as sections 429.01, 429.02, 429.04, 429.07, 429.071, 429.075, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17, 429.174, 429.176, 429.177, 429.178, 429.18, 429.19, 429.195, 429.20, 429.21, 429.22, 429.23, 429.24, 429.255, 429.256, 429.26, 429.27, 429.275, 429.28, 429.29, 429.293, 429.294, 429.295, 429.296, 429.297, 429.298, 429.31, 429.34, 429.35, 429.41,

429.42, 429.44, 429.445, 429.47, 429.49, 429.51, 429.52, 429.53, and 429.54, Florida Statutes, respectively, designated as part I of chapter 429, Florida Statutes, and entitled "ASSISTED LIVING FACILITIES."

Section 3. Sections 400.616, 400.617, 400.618, 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622, 400.625, 400.6255, 400.628, 400.629, Florida Statutes, are renumbered as sections 429.60, 429.63, 429.65, 429.67, 429.69, 429.71, 429.73, 429.75, 429.77, 429.81, 429.83, 429.85, and 429.87, Florida Statutes, respectively, designated as part II of chapter 429, Florida Statutes, and entitled "ADULT FAMILY-CARE HOMES."

Section 4. Sections 400.55, 400.551, 400.552, 400.553, 400.554, 400.555, 400.556, 400.5565, 400.557, 400.5571, 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562, 400.563, and 400.564, Florida Statutes, are renumbered as sections 429.90, 429.901, 429.903, 429.905, 429.907, 429.909, 429.911, 429.913, 429.915, 429.917, 429.919, 429.921, 429.923, 429.925, 429.927, 429.929, 429.931, and 429.933, Florida Statutes, designated as part III of chapter 429, Florida Statutes, and entitled "ADULT DAY CARE CENTERS."

Section 5. Subsection (1) of section 101.655, Florida Statutes, is amended to read:

101.655 Supervised voting by absent electors in certain facilities.—

(1) The supervisor of elections of a county shall provide supervised voting for absent electors residing in any assisted living facility, as defined in s. 429.02 s. 400.402, or nursing home facility, as defined in s. 400.021, within that county at the request of any administrator of such a facility. Such request for supervised voting in the facility shall be made by submitting a written request to the supervisor of elections no later than 21 days prior to the election for which that request is submitted. The request shall specify the name and address of the facility and the name of the electors who wish to vote absentee in that election. If the request contains the names of fewer than five voters, the supervisor of elections is not required to provide supervised voting.

Section 6. Subsection (9) of section 189.428, Florida Statutes, is amended to read:

189.428 Special districts; oversight review process.—

(9) This section does not apply to a deepwater port listed in s. 311.09(1) which is in compliance with a port master plan adopted pursuant to s. 163.3178(2)(k), or to an airport authority operating in compliance with an airport master plan approved by the Federal Aviation Administration, or to any special district organized to operate health systems and facilities licensed under chapter 395, ~~or~~ chapter 400, ~~or~~ chapter 429.

Section 7. Paragraph (b) of subsection (2) of section 196.1975, Florida Statutes, is amended to read:

196.1975 Exemption for property used by nonprofit homes for the aged.—Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(2) A facility will not qualify as a “home for the aged” unless at least 75 percent of the occupants are over the age of 62 years or totally and permanently disabled. For homes for the aged which are exempt from paying income taxes to the United States as specified in subsection (1), licensing by the Agency for Health Care Administration is required for ad valorem tax exemption hereunder only if the home:

(b) Qualifies as an assisted living facility under ~~part III of chapter 429~~ 400.

Section 8. Paragraph (c) of subsection (4) of section 202.125, Florida Statutes, is amended to read:

202.125 Sales of communications services; specified exemptions.—

(4) The sale of communications services to a home for the aged, religious institution or educational institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, or by a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code having an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on, is exempt from the taxes imposed or administered pursuant to ss. 202.12 and 202.19. As used in this subsection, the term:

(c) “Home for the aged” includes any nonprofit corporation:

1. In which at least 75 percent of the occupants are 62 years of age or older or totally and permanently disabled; which qualifies for an ad valorem property tax exemption under s. 196.196, s. 196.197, or s. 196.1975; and which is exempt from the sales tax imposed under chapter 212.

2. Licensed as a nursing home under chapter 400 or an assisted living facility under chapter ~~429~~ 400 and which is exempt from the sales tax imposed under chapter 212.

Section 9. Section 205.1965, Florida Statutes, is amended to read:

205.1965 Assisted living facilities.—A county or municipality may not issue an occupational license for the operation of an assisted living facility pursuant to ~~part III of chapter 429~~ 400 without first ascertaining that the applicant has been licensed by the Agency for Health Care Administration to operate such facility at the specified location or locations. The Agency for Health Care Administration shall furnish to local agencies responsible for issuing occupational licenses sufficient instructions for making the above required determinations.

Section 10. Paragraph (b) of subsection (1) of section 212.031, Florida Statutes, is amended to read:

212.031 Tax on rental or license fee for use of real property.—

(1)

(b) When a lease involves multiple use of real property wherein a part of the real property is subject to the tax herein, and a part of the property would be excluded from the tax under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., or subparagraph (a)5., the department shall determine, from the lease or license and such other information as may be available, that portion of the total rental charge which is exempt from the tax imposed by this section. The portion of the premises leased or rented by a for-profit entity providing a residential facility for the aged will be exempt on the basis of a pro rata portion calculated by combining the square footage of the areas used for residential units by the aged and for the care of such residents and dividing the resultant sum by the total square footage of the rented premises. For purposes of this section, the term "residential facility for the aged" means a facility that is licensed or certified in whole or in part under chapter 400, ~~chapter 429~~, or chapter 651; or that provides residences to the elderly and is financed by a mortgage or loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act; or other such similar facility that provides residences primarily for the elderly.

Section 11. Paragraph (i) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(i) Hospital meals and rooms.—Also exempt from payment of the tax imposed by this chapter on rentals and meals are patients and inmates of any hospital or other physical plant or facility designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated, or otherwise dependent on special care or attention. Residents of a home for the aged are exempt from payment of taxes on meals provided through the facility. A home for the aged is defined as a facility that

is licensed or certified in part or in whole under chapter 400, chapter 429, or chapter 651, or that is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act, or other such similar facility designed and operated primarily for the care of the aged.

Section 12. Subsection (5) of section 296.02, Florida Statutes, is amended to read:

296.02 Definitions.—For the purposes of this part, except where the context clearly indicates otherwise:

(5) “Extended congregate care” has the meaning given to that term under s. 429.02 ~~s. 400.402~~.

Section 13. Subsections (1) and (3) of section 381.0035, Florida Statutes, are amended to read:

381.0035 Educational course on HIV and AIDS; employees and clients of certain health care facilities.—

(1) The Department of Health shall require all employees and clients of facilities licensed under chapters 393, 394, and 397 and employees of facilities licensed under chapter 395, ~~and parts II, III, and IV, and VI~~ of chapter 400, ~~and part I of chapter 429~~ to complete, biennially, a continuing educational course on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. Such instruction shall include information on current Florida law and its impact on testing, confidentiality of test results, and treatment of patients and any protocols and procedures applicable to human immunodeficiency counseling and testing, reporting, the offering of HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

(3) Facilities licensed under chapters 393, 394, 395, and 397, ~~and parts II, III, and IV, and VI~~ of chapter 400, and part I of chapter 429 shall maintain a record of employees and dates of attendance at human immunodeficiency virus and acquired immune deficiency syndrome educational courses.

Section 14. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss. 381.739-381.79, the term:

(9) “Transitional living facility” means a state-approved facility, as defined and licensed under chapter 400 or chapter 429, or a facility approved by the brain and spinal cord injury program in accordance with this chapter.

Section 15. Subsection (24) of section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.—For the purposes of this chapter:

(24) “Intermediate care facility for the developmentally disabled” or “ICF/DD” means a residential facility licensed and certified pursuant to part VIII XI of chapter 400.

Section 16. Paragraph (b) of subsection (1) of section 393.506, Florida Statutes, is amended to read:

393.506 Administration of medication.—

(1) Notwithstanding the provisions of part I of chapter 464, the Nurse Practice Act, unlicensed direct care services staff providing services to persons with developmental disabilities may administer oral, transdermal, inhaled, or topical prescription medications as provided in this section.

(b) For intermediate care facilities for the developmentally disabled licensed pursuant to part VIII XI of chapter 400, unlicensed staff designated by the director may provide medication assistance under the general supervision of a registered nurse licensed pursuant to chapter 464.

Section 17. Subsection (10) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(10) “Facility” means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness or have been diagnosed as having a mental illness. “Facility” does not include any program or entity licensed pursuant to chapter 400 or chapter 429.

Section 18. Paragraphs (b), (c), and (e) of subsection (2) of section 394.4574, Florida Statutes, are amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(2) The department must ensure that:

(b) A cooperative agreement, as required in s. 429.075 ~~s. 400.4075~~, is developed between the mental health care services provider that serves a mental health resident and the administrator of the assisted living facility with a limited mental health license in which the mental health resident is living. Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity’s prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

(c) The community living support plan, as defined in s. 429.02 s. 400.402, has been prepared by a mental health resident and a mental health case manager of that resident in consultation with the administrator of the facility or the administrator's designee. The plan must be provided to the administrator of the assisted living facility with a limited mental health license in which the mental health resident lives. The support plan and the agreement may be in one document.

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development of and implementation of the community living support plan defined in s. 429.02 s. 400.402. The plan must be updated at least annually.

Section 19. Paragraph (b) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(b) A person shall not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A receiving facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the Agency for Health Care Administration of such admission by certified mail no later than the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

Section 20. Paragraph (b) of subsection (3) of section 400.0063, Florida Statutes, is amended to read:

400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.—

(3)

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the ombudsman in carrying out the duties of the office with respect to the abuse, neglect, or violation of rights of residents of long-term care facilities.

2. Assisting the state and local ombudsman councils in carrying out their responsibilities under this part.

3. Initiating and prosecuting legal and equitable actions to enforce the rights of long-term care facility residents as defined in this chapter or chapter 429.

4. Serving as legal counsel to the state and local ombudsman councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

Section 21. Subsection (3) of section 400.0069, Florida Statutes, is amended to read:

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

(3) In order to carry out the duties specified in subsection (2), the local ombudsman council is authorized, pursuant to ss. 400.19(1) and 429.34 ~~400.434~~, to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0073(5).

Section 22. Paragraphs (c) and (f) of subsection (5) and subsection (6) of section 400.0073, Florida Statutes, are amended to read:

400.0073 State and local ombudsman council investigations.—

(5) Any onsite administrative inspection conducted by an ombudsman council shall be subject to the following:

(c) Inspections shall be conducted in a manner which will impose no unreasonable burden on nursing homes or long-term care facilities, consistent with the underlying purposes of this part and chapter 429. Unnecessary duplication of efforts among council members or the councils shall be reduced to the extent possible.

(f) All inspections shall be limited to compliance with ~~part parts II, III, and VII~~ of this chapter, chapter 429, and 42 U.S.C. ss. 1396(a) et seq., and any rules or regulations promulgated pursuant to such laws.

(6) An inspection may not be accomplished by forcible entry. Refusal of a long-term care facility to allow entry of any ombudsman council member constitutes a violation of part II, ~~part III, or part VII~~ of this chapter or chapter 429.

Section 23. Subsection (4) of section 400.0077, Florida Statutes, is amended to read:

400.0077 Confidentiality.—

(4) Members of any state or local ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under ~~s. 429.14 s. 400.414~~ except as may be necessary to enforce the provisions of this act.

Section 24. Subsection (1) of section 400.0239, Florida Statutes, is amended to read:

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

(1) There is created within the Agency for Health Care Administration a Quality of Long-Term Care Facility Improvement Trust Fund to support activities and programs directly related to improvement of the care of nursing home and assisted living facility residents. The trust fund shall be funded through proceeds generated pursuant to ss. 400.0238 and 429.298 ~~400.4298~~, through funds specifically appropriated by the Legislature, through gifts, endowments, and other charitable contributions allowed under federal and state law, and through federal nursing home civil monetary penalties collected by the Centers for Medicare and Medicaid Services and returned to the state. These funds must be utilized in accordance with federal requirements.

Section 25. Subsections (1) and (4) of section 400.119, Florida Statutes, are amended to read:

400.119 Confidentiality of records and meetings of risk management and quality assurance committees.—

(1) Records of meetings of the risk management and quality assurance committee of a long-term care facility licensed under this part or part ~~I III~~ I III of this chapter 429, as well as incident reports filed with the facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse incident reports from the facility are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, if the Agency for Health Care Administration has a reasonable belief that conduct by a staff member or employee of a facility is criminal activity or grounds for disciplinary action by a regulatory board, the agency may disclose such records to the appropriate law enforcement agency or regulatory board.

(4) The meetings of an internal risk management and quality assurance committee of a long-term care facility licensed under this part or part ~~I III~~ I III of this chapter 429 are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution and are not open to the public.

Section 26. Subsections (4) and (7) of section 400.141, Florida Statutes, are amended to read:

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

(4) Provide for resident use of a community pharmacy as specified in s. 400.022(1)(q). Any other law to the contrary notwithstanding, a registered pharmacist licensed in Florida, that is under contract with a facility licensed under this chapter or chapter 429, shall repackage a nursing facility resident's bulk prescription medication which has been packaged by another pharmacist licensed in any state in the United States into a unit dose system compatible with the system used by the nursing facility, if the pharmacist is requested to offer such service. In order to be eligible for the repackaging,

a resident or the resident's spouse must receive prescription medication benefits provided through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. s. 831, or a long-term care policy as defined in s. 627.9404(1). A pharmacist who correctly repackages and relabels the medication and the nursing facility which correctly administers such repackaged medication under the provisions of this subsection shall not be held liable in any civil or administrative action arising from the repackaging. In order to be eligible for the repackaging, a nursing facility resident for whom the medication is to be repackaged shall sign an informed consent form provided by the facility which includes an explanation of the repackaging process and which notifies the resident of the immunities from liability provided herein. A pharmacist who repackages and relabels prescription medications, as authorized under this subsection, may charge a reasonable fee for costs resulting from the implementation of this provision.

(7) If the facility has a standard license or is a Gold Seal facility, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a continuing care facility licensed under chapter 651 or a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429, part IV, or part V on a single campus, be allowed to share programming and staff. At the time of inspection and in the semiannual report required pursuant to subsection (15), a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the nursing home facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(a). Compliance with the minimum staffing ratios shall be based on total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This subsection does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

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

Section 27. Paragraph (a) of subsection (2) of section 400.191, Florida Statutes, is amended to read:

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

(2) The agency shall provide additional information in consumer-friendly printed and electronic formats to assist consumers and their families in comparing and evaluating nursing home facilities.

(a) The agency shall provide an Internet site which shall include at least the following information either directly or indirectly through a link to another established site or sites of the agency's choosing:

1. A list by name and address of all nursing home facilities in this state.
2. Whether such nursing home facilities are proprietary or nonproprietary.
3. The current owner of the facility's license and the year that that entity became the owner of the license.
4. The name of the owner or owners of each facility and whether the facility is affiliated with a company or other organization owning or managing more than one nursing facility in this state.
5. The total number of beds in each facility.
6. The number of private and semiprivate rooms in each facility.
7. The religious affiliation, if any, of each facility.
8. The languages spoken by the administrator and staff of each facility.
9. Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.
10. Recreational and other programs available at each facility.
11. Special care units or programs offered at each facility.
12. Whether the facility is a part of a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429, part IV, or part V.
13. Survey and deficiency information contained on the Online Survey Certification and Reporting (OSCAR) system of the federal Health Care Financing Administration, including annual survey, revisit, and complaint survey information, for each facility for the past 45 months. For noncertified nursing homes, state survey and deficiency information, including annual survey, revisit, and complaint survey information for the past 45 months shall be provided.
14. A summary of the Online Survey Certification and Reporting (OSCAR) data for each facility over the past 45 months. Such summary may include a score, rating, or comparison ranking with respect to other facilities based on the number of citations received by the facility of annual, revisit, and complaint surveys; the severity and scope of the citations; and the number of annual recertification surveys the facility has had during the past

45 months. The score, rating, or comparison ranking may be presented in either numeric or symbolic form for the intended consumer audience.

Section 28. Paragraph (b) of subsection (2) of section 400.215, Florida Statutes, is amended to read:

400.215 Personnel screening requirement.—

(2) Employers and employees shall comply with the requirements of s. 435.05.

(b) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Level 2 screening shall not be required of employees or prospective employees who attest in writing under penalty of perjury that they meet the residency requirement. Completion of level 2 screening shall require the employee or prospective employee to furnish to the nursing facility a full set of fingerprints to enable a criminal background investigation to be conducted. The nursing facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (c) and forward the request to the Department of Law Enforcement, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results of the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (c). The agency shall notify the administrator of the requesting nursing facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, chapter 429, or this chapter, as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.

Section 29. Section 400.402, Florida Statutes, is renumbered as section 429.02, Florida Statutes, and amended to read:

429.02 ~~400.402~~ Definitions.—When used in this part, the term:

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

(2) “Administrator” means an individual at least 21 years of age who is responsible for the operation and maintenance of an assisted living facility.

(3) “Agency” means the Agency for Health Care Administration.

(4) “Aging in place” or “age in place” means the process of providing increased or adjusted services to a person to compensate for the physical or

mental decline that may occur with the aging process, in order to maximize the person's dignity and independence and permit them to remain in a familiar, noninstitutional, residential environment for as long as possible. Such services may be provided by facility staff, volunteers, family, or friends, or through contractual arrangements with a third party.

(5) "Applicant" means an individual owner, corporation, partnership, firm, association, or governmental entity that applies for a license.

(6) "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

(7) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms.

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

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

(10) "Department" means the Department of Elderly Affairs.

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

(12) "Extended congregate care" means acts beyond those authorized in subsection (17) that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(13) “Guardian” means a person to whom the law has entrusted the custody and control of the person or property, or both, of a person who has been legally adjudged incapacitated.

(14) “Limited nursing services” means acts that may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties but limited to those acts which the department specifies by rule. Acts which may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for assisted living facilities and shall not be complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints.

(15) “Managed risk” means the process by which the facility staff discuss the service plan and the needs of the resident with the resident and, if applicable, the resident’s representative or designee or the resident’s surrogate, guardian, or attorney in fact, in such a way that the consequences of a decision, including any inherent risk, are explained to all parties and reviewed periodically in conjunction with the service plan, taking into account changes in the resident’s status and the ability of the facility to respond accordingly.

(16) “Mental health resident” means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

(17) “Personal services” means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the department may define by rule. “Personal services” shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

(18) “Physical restraint” means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term “physical restraint” shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury.

(19) “Relative” means an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of an owner or administrator.

(20) “Resident” means a person 18 years of age or older, residing in and receiving care from a facility.

(21) “Resident’s representative or designee” means a person other than the owner, or an agent or employee of the facility, designated in writing by the resident, if legally competent, to receive notice of changes in the contract executed pursuant to ~~s. 429.24 s. 400.424~~; to receive notice of and to participate in meetings between the resident and the facility owner, administrator, or staff concerning the rights of the resident; to assist the resident in contacting the ombudsman council if the resident has a complaint against the facility; or to bring legal action on behalf of the resident pursuant to s. 429.29 ~~s. 400.429~~.

(22) “Service plan” means a written plan, developed and agreed upon by the resident and, if applicable, the resident’s representative or designee or the resident’s surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

(23) “Shared responsibility” means exploring the options available to a resident within a facility and the risks involved with each option when making decisions pertaining to the resident’s abilities, preferences, and service needs, thereby enabling the resident and, if applicable, the resident’s representative or designee, or the resident’s surrogate, guardian, or attorney in fact, and the facility to develop a service plan which best meets the resident’s needs and seeks to improve the resident’s quality of life.

(24) “Supervision” means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.

(25) “Supplemental security income,” Title XVI of the Social Security Act, means a program through which the Federal Government guarantees a minimum monthly income to every person who is age 65 or older, or disabled, or blind and meets the income and asset requirements.

(26) “Supportive services” means services designed to encourage and assist aged persons or adults with disabilities to remain in the least restrictive living environment and to maintain their independence as long as possible.

(27) “Twenty-four-hour nursing supervision” means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services shall be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident’s condition or the disease state or stage.

Section 30. Section 400.404, Florida Statutes, is renumbered as section 429.04, Florida Statutes, and amended to read:

429.04 400.404 Facilities to be licensed; exemptions.—

(1) For the administration of this part, facilities to be licensed by the agency shall include all assisted living facilities as defined in this part.

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

(a) Any facility, institution, or other place operated by the Federal Government or any agency of the Federal Government.

(b) Any facility or part of a facility licensed under chapter 393 or chapter 394.

(c) Any facility licensed as an adult family-care home under part II of chapter 429 VII.

(d) Any person who provides housing, meals, and one or more personal services on a 24-hour basis in the person's own home to not more than two adults who do not receive optional state supplementation. The person who provides the housing, meals, and personal services must own or rent the home and reside therein.

(e) Any home or facility approved by the United States Department of Veterans Affairs as a residential care home wherein care is provided exclusively to three or fewer veterans.

(f) Any facility that has been incorporated in this state for 50 years or more on or before July 1, 1983, and the board of directors of which is nominated or elected by the residents, until the facility is sold or its ownership is transferred; or any facility, with improvements or additions thereto, which has existed and operated continuously in this state for 60 years or more on or before July 1, 1989, is directly or indirectly owned and operated by a nationally recognized fraternal organization, is not open to the public, and accepts only its own members and their spouses as residents.

(g) Any facility certified under chapter 651, or a retirement community, may provide services authorized under this part or part III ~~IV~~ of ~~this~~ chapter 400 to its residents who live in single-family homes, duplexes, quadruplexes, or apartments located on the campus without obtaining a license to operate an assisted living facility if residential units within such buildings are used by residents who do not require staff supervision for that portion of the day when personal services are not being delivered and the owner obtains a home health license to provide such services. However, any building or distinct part of a building on the campus that is designated for persons who receive personal services and require supervision beyond that which is available while such services are being rendered must be licensed in accordance with this part. If a facility provides personal services to residents who do not otherwise require supervision and the owner is not licensed as a home health agency, the buildings or distinct parts of buildings where such services are rendered must be licensed under this part. A resident of a facility

that obtains a home health license may contract with a home health agency of his or her choice, provided that the home health agency provides liability insurance and workers' compensation coverage for its employees. Facilities covered by this exemption may establish policies that give residents the option of contracting for services and care beyond that which is provided by the facility to enable them to age in place. For purposes of this section, a retirement community consists of a facility licensed under this part or under part II of chapter 400, and apartments designed for independent living located on the same campus.

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

Section 31. Section 400.407, Florida Statutes, is renumbered as section 429.07, Florida Statutes, and amended to read:

429.07 ~~400.407~~ License required; fee, display.—

(1) A license issued by the agency is required for an assisted living facility operating in this state.

(2) Separate licenses shall be required for facilities maintained in separate premises, even though operated under the same management. A separate license shall not be required for separate buildings on the same grounds.

(3) Any license granted by the agency must state the maximum resident capacity of the facility, the type of care for which the license is granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the agency. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.

(a) A standard license shall be issued to facilities providing one or more of the personal services identified in s. 429.02 ~~s. 400.402~~. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 429.255 ~~s. 400.4255~~.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to part I of chapter 464 by persons licensed thereunder, and supportive services defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and

whether the designation applies to all or part of a facility. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

- a. A class I or class II violation;
- b. Three or more repeat or recurring class III violations of identical or similar resident care standards as specified in rule from which a pattern of noncompliance is found by the agency;
- c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;
- d. Violation of resident care standards resulting in a requirement to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or
- f. Imposition of a moratorium on admissions or initiation of injunctive proceedings.

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

3. Facilities that are licensed to provide extended congregate care services shall:

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

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

c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency, as necessary.

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

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

f. Implement the concept of managed risk.

g. Provide, either directly or through contract, the services of a person licensed pursuant to part I of chapter 464.

h. In addition to the training mandated in s. 429.52 ~~s. 400.452~~, provide specialized training as defined by rule for facility staff.

4. Facilities licensed to provide extended congregate care services are exempt from the criteria for continued residency as set forth in rules adopted under s. 429.41 ~~s. 400.441~~. Facilities so licensed shall adopt their own requirements within guidelines for continued residency set forth by the department in rule. However, such facilities may not serve residents who require 24-hour nursing supervision. Facilities licensed to provide extended congregate care services shall provide each resident with a written copy of facility policies governing admission and retention.

5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility.

6. Before admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 400.26(4) ~~s. 400.426(4)~~ and the facility must develop a preliminary service plan for the individual.

7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility shall make arrangements for relocating the person in accordance with s. 429.28(1)(k) ~~s. 400.428(1)(k)~~.

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

9. No later than January 1 of each year, the department, in consultation with the agency, shall prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of appropriate legislative committees, a report on the status of, and recommendations related to, extended congregate care services. The status report must include, but need not be limited to, the following information:

a. A description of the facilities licensed to provide such services, including total number of beds licensed under this part.

b. The number and characteristics of residents receiving such services.

c. The types of services rendered that could not be provided through a standard license.

d. An analysis of deficiencies cited during licensure inspections.

e. The number of residents who required extended congregate care services at admission and the source of admission.

f. Recommendations for statutory or regulatory changes.

g. The availability of extended congregate care to state clients residing in facilities licensed under this part and in need of additional services, and recommendations for appropriations to subsidize extended congregate care services for such persons.

h. Such other information as the department considers appropriate.

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

1. In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide limited nursing services shall have maintained a standard license and may not have been subject to administrative sanctions that affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

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

3. A person who receives limited nursing services under this part must meet the admission criteria established by the agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with ~~s. 429.28(1)(k)~~ ~~s. 400.428(1)(k)~~, unless the facility is licensed to provide extended congregate care services.

(4)(a) The biennial license fee required of a facility is \$300 per license, with an additional fee of \$50 per resident based on the total licensed resident capacity of the facility, except that no additional fee will be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212. The total fee may not exceed \$10,000, no part of which shall be returned to the facility. The agency shall adjust the per bed license fee and the total licensure fee annually by not more than the change in the consumer price index based on the 12 months immediately preceding the increase.

(b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$400 per license, with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility. No part of this fee shall be returned to the facility. The agency may adjust the per bed license fee and the annual license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.

(c) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide limited nursing services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$250 per license, with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility. No part of this fee shall be returned to the facility. The agency may adjust the per bed license fee and the biennial license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.

(5) Counties or municipalities applying for licenses under this part are exempt from the payment of license fees.

(6) The license shall be displayed in a conspicuous place inside the facility.

(7) A license shall be valid only in the possession of the individual, firm, partnership, association, or corporation to which it is issued and shall not be subject to sale, assignment, or other transfer, voluntary or involuntary; nor shall a license be valid for any premises other than that for which originally issued.

(8) A fee may be charged to a facility requesting a duplicate license. The fee shall not exceed the actual cost of duplication and postage.

Section 32. Section 400.4071, Florida Statutes, is renumbered as section 429.071, Florida Statutes, and amended to read:

429.071 ~~400.4071~~ Intergenerational respite care assisted living facility pilot program.—

(1) It is the intent of the Legislature to establish a pilot program to:

(a) Facilitate the receipt of in-home, family-based care by minors and adults with disabilities and elderly persons with special needs through respite care for up to 14 days.

(b) Prevent caregiver “burnout,” in which the caregiver’s health declines and he or she is unable to continue to provide care so that the only option for the person with disabilities or special needs is to receive institutional care.

(c) Foster the development of intergenerational respite care assisted living facilities to temporarily care for minors and adults with disabilities and elderly persons with special needs in the same facility and to give caregivers the time they need for rejuvenation and healing.

(2) The Agency for Health Care Administration shall establish a 5-year pilot program, which shall license an intergenerational respite care assisted living facility that will provide temporary personal, respite, and custodial care to minors and adults with disabilities and elderly persons with special needs who do not require 24-hour nursing services. The intergenerational respite care assisted living facility must:

(a) Meet all applicable requirements and standards contained in this part III of this chapter, except that, for purposes of this section, the term “resident” means a person of any age temporarily residing in and receiving care from the facility.

(b) Provide respite care services for minors and adults with disabilities and elderly persons with special needs for a period of at least 24 hours but not for more than 14 consecutive days.

(c) Provide a facility or facilities in which minors and adults reside in distinct and separate living units.

(d) Provide a facility that has a maximum of 48 beds, is located in Miami-Dade County, and is operated by a not-for-profit entity.

(3) The agency may establish policies necessary to achieve the objectives specific to the pilot program and may adopt rules necessary to implement the program.

(4) After 4 years, the agency shall present its report on the effectiveness of the pilot program to the President of the Senate and the Speaker of the House of Representatives and its recommendation as to whether the Legislature should make the program permanent.

Section 33. Section 400.408, Florida Statutes, is renumbered as section 429.08, Florida Statutes, and amended to read:

429.08 ~~400.408~~ Unlicensed facilities; referral of person for residency to unlicensed facility; penalties; verification of licensure status.—

(1)(a) It is unlawful to own, operate, or maintain an assisted living facility without obtaining a license under this part.

(b) Except as provided under paragraph (d), any person who owns, operates, or maintains an unlicensed assisted living facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(c) Any person found guilty of violating paragraph (a) a second or subsequent time commits a felony of the second degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(d) Any person who owns, operates, or maintains an unlicensed assisted living facility due to a change in this part or a modification in department rule within 6 months after the effective date of such change and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license under this part commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(e) Any facility that fails to cease operation after agency notification may be fined for each day of noncompliance pursuant to s. 429.19 ~~s. 400.419~~.

(f) When a licensee has an interest in more than one assisted living facility, and fails to license any one of these facilities, the agency may revoke the license, impose a moratorium, or impose a fine pursuant to s. 429.19 ~~s. 400.419~~, on any or all of the licensed facilities until such time as the unlicensed facility is licensed or ceases operation.

(g) If the agency determines that an owner is operating or maintaining an assisted living facility without obtaining a license and determines that a condition exists in the facility that poses a threat to the health, safety, or welfare of a resident of the facility, the owner is subject to the same actions and fines imposed against a licensed facility as specified in ss. 429.14 and 429.19 ~~ss. 400.414 and 400.419~~.

(h) Any person aware of the operation of an unlicensed assisted living facility must report that facility to the agency. The agency shall provide to the department's elder information and referral providers a list, by county, of licensed assisted living facilities, to assist persons who are considering an assisted living facility placement in locating a licensed facility.

(i) Each field office of the Agency for Health Care Administration shall establish a local coordinating workgroup which includes representatives of local law enforcement agencies, state attorneys, the Medicaid Fraud Control Unit of the Department of Legal Affairs, local fire authorities, the Department of Children and Family Services, the district long-term care ombudsman council, and the district human rights advocacy committee to assist in identifying the operation of unlicensed facilities and to develop and implement a plan to ensure effective enforcement of state laws relating to such facilities. The workgroup shall report its findings, actions, and recommendations semiannually to the Director of Health Facility Regulation of the agency.

(2) It is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility; to an assisted living facility the license of which is under denial or has been suspended or revoked; or to an assisted living facility that has a moratorium on admissions. Any person who violates this subsection commits a noncriminal violation, punishable by a fine not exceeding \$500 as provided in s. 775.083.

(a) Any health care practitioner, as defined in s. 456.001, who is aware of the operation of an unlicensed facility shall report that facility to the agency. Failure to report a facility that the practitioner knows or has reasonable cause to suspect is unlicensed shall be reported to the practitioner's licensing board.

(b) Any hospital or community mental health center licensed under chapter 395 or chapter 394 which knowingly discharges a patient or client to an unlicensed facility is subject to sanction by the agency.

(c) Any employee of the agency or department, or the Department of Children and Family Services, who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium on admissions is subject to disciplinary action by the agency or department, or the Department of Children and Family Services.

(d) The employer of any person who is under contract with the agency or department, or the Department of Children and Family Services, and who knowingly refers a person for residency to an unlicensed facility; to a facility the license of which is under denial or has been suspended or revoked; or to a facility that has a moratorium on admissions shall be fined and required to prepare a corrective action plan designed to prevent such referrals.

(e) The agency shall provide the department and the Department of Children and Family Services with a list of licensed facilities within each county and shall update the list at least quarterly.

(f) At least annually, the agency shall notify, in appropriate trade publications, physicians licensed under chapter 458 or chapter 459, hospitals licensed under chapter 395, nursing home facilities licensed under part II of this chapter 400, and employees of the agency or the department, or the Department of Children and Family Services, who are responsible for referring persons for residency, that it is unlawful to knowingly refer a person for residency to an unlicensed assisted living facility and shall notify them of the penalty for violating such prohibition. The department and the Department of Children and Family Services shall, in turn, notify service providers under contract to the respective departments who have responsibility for resident referrals to facilities. Further, the notice must direct each noticed facility and individual to contact the appropriate agency office in order to verify the licensure status of any facility prior to referring any person for residency. Each notice must include the name, telephone number, and mailing address of the appropriate office to contact.

Section 34. Section 400.411, Florida Statutes, is renumbered as section 429.11, Florida Statutes, and amended to read:

429.11 ~~400.411~~ Initial application for license; provisional license.—

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

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

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

(a) The name, address, date of birth, and social security number of the applicant and the name by which the facility is to be known. If the applicant is a firm, partnership, or association, the application shall contain the name, address, date of birth, and social security number of every member thereof. If the applicant is a corporation, the application shall contain the corporation's name and address; the name, address, date of birth, and social security number of each of its directors and officers; and the name and address of each person having at least a 5-percent ownership interest in the corporation.

(b) The name and address of any professional service, firm, association, partnership, or corporation that is to provide goods, leases, or services to the facility if a 5-percent or greater ownership interest in the service, firm, association, partnership, or corporation is owned by a person whose name must be listed on the application under paragraph (a).

(c) The name and address of any long-term care facility with which the applicant, administrator, or financial officer has been affiliated through ownership or employment within 5 years of the date of this license application; and a signed affidavit disclosing any financial or ownership interest that the applicant, or any person listed in paragraph (a), holds or has held within the last 5 years in any facility licensed under this part, or in any other entity licensed by this state or another state to provide health or residential

care, which facility or entity closed or ceased to operate as a result of financial problems, or has had a receiver appointed or a license denied, suspended or revoked, or was subject to a moratorium on admissions, or has had an injunctive proceeding initiated against it.

(d) A description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with disclosure of ownership and control interest requirements of the Medicaid or Medicare programs shall be accepted in lieu of this submission.

(e) The names and addresses of persons of whom the agency may inquire as to the character, reputation, and financial responsibility of the owner and, if different from the applicant, the administrator and financial officer.

(f) Identification of all other homes or facilities, including the addresses and the license or licenses under which they operate, if applicable, which are currently operated by the applicant or administrator and which provide housing, meals, and personal services to residents.

(g) The location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(h) The name, address, date of birth, social security number, education, and experience of the administrator, if different from the applicant.

(4) The applicant shall furnish satisfactory proof of financial ability to operate and conduct the facility in accordance with the requirements of this part. A certificate of authority, pursuant to chapter 651, may be provided as proof of financial ability.

(5) If the applicant is a continuing care facility certified under chapter 651, a copy of the facility's certificate of authority must be provided.

(6) The applicant shall provide proof of liability insurance as defined in s. 624.605.

(7) If the applicant is a community residential home, the applicant must provide proof that it has met the requirements specified in chapter 419.

(8) The applicant must provide the agency with proof of legal right to occupy the property.

(9) The applicant must furnish proof that the facility has received a satisfactory firesafety inspection. The local authority having jurisdiction or the State Fire Marshal must conduct the inspection within 30 days after written request by the applicant.

(10) The applicant must furnish documentation of a satisfactory sanitation inspection of the facility by the county health department.

(11) The applicant must furnish proof of compliance with level 2 background screening as required under s. 429.174 ~~s. 400.4174~~.

(12) A provisional license may be issued to an applicant making initial application for licensure or making application for a change of ownership. A provisional license shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency.

(13) A county or municipality may not issue an occupational license that is being obtained for the purpose of operating a facility regulated under this part without first ascertaining that the applicant has been licensed to operate such facility at the specified location or locations by the agency. The agency shall furnish to local agencies responsible for issuing occupational licenses sufficient instruction for making such determinations.

Section 35. Section 400.412, Florida Statutes, is renumbered as section 429.12, Florida Statutes, and amended to read:

429.12 ~~400.412~~ Sale or transfer of ownership of a facility.—It is the intent of the Legislature to protect the rights of the residents of an assisted living facility when the facility is sold or the ownership thereof is transferred. Therefore, whenever a facility is sold or the ownership thereof is transferred, including leasing:

(1) The transferee shall make application to the agency for a new license at least 60 days before the date of transfer of ownership. The application must comply with the provisions of s. 429.11 ~~s. 400.411~~.

(2)(a) The transferor shall notify the agency in writing at least 60 days before the date of transfer of ownership.

(b) The new owner shall notify the residents, in writing, of the transfer of ownership within 7 days of his or her receipt of the license.

(3) The transferor shall be responsible and liable for:

(a) The lawful operation of the facility and the welfare of the residents domiciled in the facility until the date the transferee is licensed by the agency.

(b) Any and all penalties imposed against the facility for violations occurring before the date of transfer of ownership unless the penalty imposed is a moratorium on admissions or denial of licensure. The moratorium on admissions or denial of licensure remains in effect after the transfer of ownership, unless the agency has approved the transferee's corrective action plan or the conditions which created the moratorium or denial have been corrected, and may be grounds for denial of license to the transferee in accordance with chapter 120.

(c) Any outstanding liability to the state, unless the transferee has agreed, as a condition of sale or transfer, to accept the outstanding liabilities and to guarantee payment therefor; except that, if the transferee fails to meet these obligations, the transferor shall remain liable for the outstanding liability.

(4) The transferor of a facility the license of which is denied pending an administrative hearing shall, as a part of the written transfer-of-ownership

contract, advise the transferee that a plan of correction must be submitted by the transferee and approved by the agency at least 7 days before the transfer of ownership and that failure to correct the condition which resulted in the moratorium on admissions or denial of licensure is grounds for denial of the transferee's license.

(5) The transferee must provide the agency with proof of legal right to occupy the property before a license may be issued. Proof may include, but is not limited to, copies of warranty deeds, or copies of lease or rental agreements, contracts for deeds, quitclaim deeds, or other such documentation.

Section 36. Section 400.414, Florida Statutes, is renumbered as section 429.14, Florida Statutes, and amended to read:

429.14 ~~400.414~~ Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—

(1) The agency may deny, revoke, or suspend any license issued under this part, or impose an administrative fine in the manner provided in chapter 120, for any of the following actions by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 429.174 ~~s. 400.4174~~, or for the actions of any facility employee:

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

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

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

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

(e) A citation of any of the following deficiencies as defined in s. 429.19 ~~s. 400.419~~:

1. One or more cited class I deficiencies.
2. Three or more cited class II deficiencies.
3. Five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.

(f) A determination that a person subject to level 2 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ does not meet the screening standards of s. 435.04 or that the facility is retaining an employee subject to level 1 background screening standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.

(g) A determination that an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person is granted an exemption.

(h) Violation of a moratorium.

(i) Failure of the license applicant, the licensee during relicensure, or a licensee that holds a provisional license to meet the minimum license requirements of this part, or related rules, at the time of license application or renewal.

(j) A fraudulent statement or omission of any material fact on an application for a license or any other document required by the agency, including the submission of a license application that conceals the fact that any board member, officer, or person owning 5 percent or more of the facility may not meet the background screening requirements of s. 429.174 s. 400.4174, or that the applicant has been excluded, permanently suspended, or terminated from the Medicaid or Medicare programs.

(k) An intentional or negligent life-threatening act in violation of the uniform firesafety standards for assisted living facilities or other firesafety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the agency by the local authority having jurisdiction or the State Fire Marshal.

(l) Exclusion, permanent suspension, or termination from the Medicare or Medicaid programs.

(m) Knowingly operating any unlicensed facility or providing without a license any service that must be licensed under this chapter or chapter 400.

(n) Any act constituting a ground upon which application for a license may be denied.

Administrative proceedings challenging agency action under this subsection shall be reviewed on the basis of the facts and conditions that resulted in the agency action.

(2) Upon notification by the local authority having jurisdiction or by the State Fire Marshal, the agency may deny or revoke the license of an assisted living facility that fails to correct cited fire code violations that affect or threaten the health, safety, or welfare of a resident of a facility.

(3) The agency may deny a license to any applicant or to any officer or board member of an applicant who is a firm, corporation, partnership, or association or who owns 5 percent or more of the facility, if the applicant, officer, or board member has or had a 25-percent or greater financial or ownership interest in any other facility licensed under this part, or in any entity licensed by this state or another state to provide health or residential care, which facility or entity during the 5 years prior to the application for

a license closed due to financial inability to operate; had a receiver appointed or a license denied, suspended, or revoked; was subject to a moratorium on admissions; had an injunctive proceeding initiated against it; or has an outstanding fine assessed under this chapter or chapter 400.

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

(5) An action taken by the agency to suspend, deny, or revoke a facility's license under this part, in which the agency claims that the facility owner or an employee of the facility has threatened the health, safety, or welfare of a resident of the facility be heard by the Division of Administrative Hearings of the Department of Management Services within 120 days after receipt of the facility's request for a hearing, unless that time limitation is waived by both parties. The administrative law judge must render a decision within 30 days after receipt of a proposed recommended order.

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

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

(8) The agency may issue a temporary license pending final disposition of a proceeding involving the suspension or revocation of an assisted living facility license.

Section 37. Section 400.415, Florida Statutes, is renumbered as section 429.15, Florida Statutes, and amended to read:

429.15 ~~400.415~~ Moratorium on admissions; notice.—The agency may impose an immediate moratorium on admissions to any assisted living facility if the agency determines that any condition in the facility presents a threat to the health, safety, or welfare of the residents in the facility.

(1) A facility the license of which is denied, revoked, or suspended pursuant to s. 429.14 ~~s. 400.414~~ may be subject to immediate imposition of a moratorium on admissions to run concurrently with licensure denial, revocation, or suspension.

(2) When a moratorium is placed on a facility, notice of the moratorium shall be posted and visible to the public at the facility until the moratorium is lifted.

(3) The department may by rule establish conditions that constitute grounds for imposing a moratorium on a facility and procedures for imposing and lifting a moratorium, as necessary to administer this section.

Section 38. Section 400.417, Florida Statutes, is renumbered as section 429.17, Florida Statutes, and amended to read:

429.17 ~~400.417~~ Expiration of license; renewal; conditional license.—

(1) Biennial licenses, unless sooner suspended or revoked, shall expire 2 years from the date of issuance. Limited nursing, extended congregate care, and limited mental health licenses shall expire at the same time as the facility's standard license, regardless of when issued. The agency shall notify the facility at least 120 days prior to expiration that a renewal license is necessary to continue operation. The notification must be provided electronically or by mail delivery. Ninety days prior to the expiration date, an application for renewal shall be submitted to the agency. Fees must be prorated. The failure to file a timely renewal application shall result in a late fee charged to the facility in an amount equal to 50 percent of the current fee.

(2) A license shall be renewed within 90 days upon the timely filing of an application on forms furnished by the agency and the provision of satisfactory proof of ability to operate and conduct the facility in accordance with the requirements of this part and adopted rules, including proof that the facility has received a satisfactory firesafety inspection, conducted by the local authority having jurisdiction or the State Fire Marshal, within the preceding 12 months and an affidavit of compliance with the background screening requirements of s. 429.174 ~~s. 400.4174~~.

(3) An applicant for renewal of a license who has complied with the provisions of s. 429.11 ~~s. 400.411~~ with respect to proof of financial ability to operate shall not be required to provide further proof unless the facility or any other facility owned or operated in whole or in part by the same person has demonstrated financial instability as provided under s. 429.47(2) ~~s. 400.447(2)~~ or unless the agency suspects that the facility is not financially stable as a result of the annual survey or complaints from the public or a report from the State Long-Term Care Ombudsman Council. Each facility must report to the agency any adverse court action concerning the facility's financial viability, within 7 days after its occurrence. The agency shall have access to books, records, and any other financial documents maintained by the facility to the extent necessary to determine the facility's financial stability. A license for the operation of a facility shall not be renewed if the licensee has any outstanding fines assessed pursuant to this part which are in final order status.

(4) A licensee against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the agency. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional license for the duration of the judicial proceeding.

(5) A conditional license may be issued to an applicant for license renewal if the applicant fails to meet all standards and requirements for licensure. A conditional license issued under this subsection shall be limited in duration to a specific period of time not to exceed 6 months, as determined by the agency, and shall be accompanied by an agency-approved plan of correction.

(6) When an extended care or limited nursing license is requested during a facility's biennial license period, the fee shall be prorated in order to permit the additional license to expire at the end of the biennial license period. The fee shall be calculated as of the date the additional license application is received by the agency.

(7) The department may by rule establish renewal procedures, identify forms, and specify documentation necessary to administer this section.

Section 39. Section 400.4174, Florida Statutes, is renumbered as section 429.174, Florida Statutes, and amended to read:

429.174 ~~400.4174~~ Background screening; exemptions.—

(1)(a) Level 2 background screening must be conducted on each of the following persons, who shall be considered employees for the purposes of conducting screening under chapter 435:

1. The facility owner if an individual, the administrator, and the financial officer.

2. An officer or board member if the facility owner is a firm, corporation, partnership, or association, or any person owning 5 percent or more of the facility if the agency has probable cause to believe that such person has been convicted of any offense prohibited by s. 435.04. For each officer, board member, or person owning 5 percent or more who has been convicted of any such offense, the facility shall submit to the agency a description and explanation of the conviction at the time of license application. This subparagraph does not apply to a board member of a not-for-profit corporation or organization if the board member serves solely in a voluntary capacity, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the board member and facility submit a statement affirming that the board member's relationship to the facility satisfies the requirements of this subparagraph.

(b) Proof of compliance with level 2 screening standards which has been submitted within the previous 5 years to meet any facility or professional licensure requirements of the agency or the Department of Health satisfies the requirements of this subsection, provided that such proof is accompanied, under penalty of perjury, by an affidavit of compliance with the provisions of chapter 435. Proof of compliance with the background screening requirements of the Financial Services Commission and the Office of Insurance Regulation for applicants for a certificate of authority to operate a continuing care retirement community under chapter 651, submitted within the last 5 years, satisfies the Department of Law Enforcement and Federal Bureau of Investigation portions of a level 2 background check.

(c) The agency may grant a provisional license to a facility applying for an initial license when each individual required by this subsection to undergo screening has completed the Department of Law Enforcement background checks, but has not yet received results from the Federal Bureau of

Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

(2) The owner or administrator of an assisted living facility must conduct level 1 background screening, as set forth in chapter 435, on all employees hired on or after October 1, 1998, who perform personal services as defined in s. 429.02(17) ~~s. 400.402(17)~~. The agency may exempt an individual from employment disqualification as set forth in chapter 435. Such persons shall be considered as having met this requirement if:

(a) Proof of compliance with level 1 screening requirements obtained to meet any professional license requirements in this state is provided and accompanied, under penalty of perjury, by a copy of the person's current professional license and an affidavit of current compliance with the background screening requirements.

(b) The person required to be screened has been continuously employed in the same type of occupation for which the person is seeking employment without a breach in service which exceeds 180 days, and proof of compliance with the level 1 screening requirement which is no more than 2 years old is provided. Proof of compliance shall be provided directly from one employer or contractor to another, and not from the person screened. Upon request, a copy of screening results shall be provided by the employer retaining documentation of the screening to the person screened.

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

Section 40. Section 400.4176, Florida Statutes, is renumbered as section 429.176, Florida Statutes, and amended to read:

429.176 ~~400.4176~~ Notice of change of administrator.—If, during the period for which a license is issued, the owner changes administrators, the owner must notify the agency of the change within 10 days and provide documentation within 90 days that the new administrator has completed the applicable core educational requirements under s. 429.52 ~~s. 400.452~~. Background screening shall be completed on any new administrator as specified in s. 429.174 ~~s. 400.4174~~.

Section 41. Section 400.4178, Florida Statutes, is renumbered as section 429.178, Florida Statutes, and amended to read:

429.178 ~~400.4178~~ Special care for persons with Alzheimer's disease or other related disorders.—

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

(a)1. If the facility has 17 or more residents, have an awake staff member on duty at all hours of the day and night; or

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

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

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

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

(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training shall be completed within 3 months after beginning employment and shall satisfy the core training requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training shall be completed within 9 months after beginning employment and shall satisfy the core training requirements of s. 429.52(2)(g) ~~s. 400.452(2)(g)~~.

(c) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with Alzheimer's disease or other related disorders, within 3 months after beginning employment.

(3) In addition to the training required under subsection (2), a direct caregiver must participate in a minimum of 4 contact hours of continuing education each calendar year. The continuing education must include one or more topics included in the dementia-specific training developed or approved by the department, in which the caregiver has not received previous training.

(4) Upon completing any training listed in subsection (2), the employee or direct caregiver shall be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility. The employee or direct caregiver must comply with other applicable continuing education requirements.

(5) The department, or its designee, shall approve the initial and continuing education courses and providers.

(6) The department shall keep a current list of providers who are approved to provide initial and continuing education for staff of facilities that provide special care for persons with Alzheimer's disease or other related disorders.

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

(8) The department shall adopt rules to establish standards for trainers and training and to implement this section.

Section 42. Section 400.418, Florida Statutes, is renumbered as section 429.18, Florida Statutes, and amended to read:

429.18 ~~400.418~~ Disposition of fees and administrative fines.—

(1) Income from license fees, inspection fees, late fees, and administrative fines generated pursuant to ss. 429.07, 429.08, 429.17, 429.19, and 429.31 ~~ss. 400.407, 400.408, 400.417, 400.419, and 400.431~~ shall be deposited in the Health Care Trust Fund administered by the agency. Such funds shall be directed to and used by the agency for the following purposes:

(a) Up to 50 percent of the trust funds accrued each fiscal year under this part may be used to offset the expenses of receivership, pursuant to s. 429.22 ~~s. 400.422~~, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(b) An amount of \$5,000 of the trust funds accrued each year under this part shall be allocated to pay for inspection-related physical and mental health examinations requested by the agency pursuant to s. 429.26 ~~s. 400.426~~ for residents who are either recipients of supplemental security income or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to supplemental security income recipients, as provided for in s. 409.212. Such funds shall only be used where the resident is ineligible for Medicaid.

(c) Any trust funds accrued each year under this part and not used for the purposes specified in paragraphs (a) and (b) shall be used to offset the costs of the licensure program, including the costs of conducting background investigations, verifying information submitted, defraying the costs of processing the names of applicants, and conducting inspections and monitoring visits pursuant to this part.

(2) Income from fees generated pursuant to s. 429.41(5) ~~s. 400.441(5)~~ shall be deposited in the Health Care Trust Fund and used to offset the costs of printing and postage.

Section 43. Section 400.419, Florida Statutes, is renumbered as section 429.19, Florida Statutes, and amended to read:

429.19 ~~400.419~~ Violations; imposition of administrative fines; grounds.—

(1) The agency shall impose an administrative fine in the manner provided in chapter 120 for any of the actions or violations as set forth within this section by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 429.174 ~~s. 400.4174~~, for the actions of any facility employee, or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

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

(a) Class “I” violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines present an imminent danger to the residents or guests of the facility or a substantial probability that death or serious physical or emotional harm would result therefrom. The condition or practice constituting a class I violation shall be abated or eliminated within 24 hours, unless a fixed period, as determined by the agency, is required for correction. The agency shall impose an administrative fine for a cited class I violation in an amount not less than \$5,000 and not exceeding \$10,000 for each violation. A fine may be levied notwithstanding the correction of the violation.

(b) Class “II” violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines directly threaten the physical or emotional health, safety, or security of the facility residents, other than class I violations. The agency shall impose an administrative fine for a cited class II violation in an amount not less than \$1,000 and not exceeding \$5,000 for each violation. A fine shall be levied notwithstanding the correction of the violation.

(c) Class “III” violations are those conditions or occurrences related to the operation and maintenance of a facility or to the personal care of residents which the agency determines indirectly or potentially threaten the physical or emotional health, safety, or security of facility residents, other than class I or class II violations. The agency shall impose an administrative fine for a cited class III violation in an amount not less than \$500 and not exceeding \$1,000 for each violation. A citation for a class III violation must specify the time within which the violation is required to be corrected. If a class III violation is corrected within the time specified, no fine may be imposed, unless it is a repeated offense.

(d) Class “IV” violations are those conditions or occurrences related to the operation and maintenance of a building or to required reports, forms, or documents that do not have the potential of negatively affecting residents. These violations are of a type that the agency determines do not threaten

the health, safety, or security of residents of the facility. The agency shall impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation. A citation for a class IV violation must specify the time within which the violation is required to be corrected. If a class IV violation is corrected within the time specified, no fine shall be imposed. Any class IV violation that is corrected during the time an agency survey is being conducted will be identified as an agency finding and not as a violation.

(3) In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner or administrator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the facility of committing or continuing the violation.

(e) The licensed capacity of the facility.

(4) Each day of continuing violation after the date fixed for termination of the violation, as ordered by the agency, constitutes an additional, separate, and distinct violation.

(5) Any action taken to correct a violation shall be documented in writing by the owner or administrator of the facility and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated facility, revoke or deny a facility's license when a facility administrator fraudulently misrepresents action taken to correct a violation.

(6) For fines that are upheld following administrative or judicial review, the violator shall pay the fine, plus interest at the rate as specified in s. 55.03, for each day beyond the date set by the agency for payment of the fine.

(7) Any unlicensed facility that continues to operate after agency notification is subject to a \$1,000 fine per day.

(8) Any licensed facility whose owner or administrator concurrently operates an unlicensed facility shall be subject to an administrative fine of \$5,000 per day.

(9) Any facility whose owner fails to apply for a change-of-ownership license in accordance with s. 429.12 ~~s. 400.412~~ and operates the facility under the new ownership is subject to a fine of \$5,000.

(10) In addition to any administrative fines imposed, the agency may assess a survey fee, equal to the lesser of one half of the facility's biennial

license and bed fee or \$500, to cover the cost of conducting initial complaint investigations that result in the finding of a violation that was the subject of the complaint or monitoring visits conducted under s. 429.28(3)(c) ~~s. 400.428(3)(e)~~ to verify the correction of the violations.

(11) The agency, as an alternative to or in conjunction with an administrative action against a facility for violations of this part and adopted rules, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner or administrator of the facility, prior to written notification. The agency, instead of fixing a period within which the facility shall enter into compliance with standards, may request a plan of corrective action from the facility which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the agency.

(12) Administrative fines paid by any facility under this section shall be deposited into the Health Care Trust Fund and expended as provided in s. 429.18 ~~s. 400.418~~.

(13) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined \$5,000 or more for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the area agencies on aging, the Florida Statewide Advocacy Council, and the state and local ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 44. Section 400.42, Florida Statutes, is renumbered as section 429.20, Florida Statutes, and amended to read:

429.20 ~~400.42~~ Certain solicitation prohibited; third-party supplementation.—

(1) A person may not, in connection with the solicitation of contributions by or on behalf of an assisted living facility or facilities, misrepresent or mislead any person, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if that is not the fact.

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

(3) The admission or maintenance of assisted living facility residents whose care is supported, in whole or in part, by state funds may not be

conditioned upon the receipt of any manner of contribution or donation from any person. The solicitation or receipt of contributions in violation of this subsection is grounds for denial, suspension, or revocation of license, as provided in s. 429.14 ~~s. 400.414~~, for any assisted living facility by or on behalf of which such contributions were solicited.

(4) An assisted living facility may accept additional supplementation from third parties on behalf of residents receiving optional state supplementation in accordance with s. 409.212.

Section 45. Section 400.422, Florida Statutes, is renumbered as section 429.22, Florida Statutes, and amended to read:

429.22 ~~400.422~~ Receivership proceedings.—

(1) As an alternative to or in conjunction with an injunctive proceeding, the agency may petition a court of competent jurisdiction for the appointment of a receiver, if suitable alternate placements are not available, when any of the following conditions exist:

(a) The facility is operating without a license and refuses to make application for a license as required by ss. 429.07 and 429.08 ~~ss. 400.407 and 400.408~~.

(b) The facility is closing or has informed the agency that it intends to close and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

(c) The agency determines there exist in the facility conditions which present an imminent danger to the health, safety, or welfare of the residents of the facility or a substantial probability that death or serious physical harm would result therefrom.

(d) The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

(2) Petitions for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, shall have priority. A hearing shall be conducted within 5 days of the filing of the petition, at which time all interested parties shall have the opportunity to present evidence pertaining to the petition. The agency shall notify, by certified mail, the owner or administrator of the facility named in the petition and the facility resident or, if applicable, the resident's representative or designee, or the resident's surrogate, guardian, or attorney in fact, of its filing, the substance of the violation, and the date and place set for the hearing. The court shall grant the petition only upon finding that the health, safety, or welfare of facility residents would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver shall not be appointed ex parte unless the court determines that one or more of the conditions in subsection (1) exist; that the facility owner or administrator cannot be found; that all reasonable means of locating the owner or administrator and notifying him

or her of the petition and hearing have been exhausted; or that the owner or administrator after notification of the hearing chooses not to attend. After such findings, the court may appoint any qualified person as a receiver, except it may not appoint any owner or affiliate of the facility which is in receivership. The receiver may be selected from a list of persons qualified to act as receivers developed by the agency and presented to the court with each petition for receivership. Under no circumstances may the agency or designated agency employee be appointed as a receiver for more than 60 days; however, the receiver may petition the court, one time only, for a 30-day extension. The court shall grant the extension upon a showing of good cause.

(3) The receiver must make provisions for the continued health, safety, and welfare of all residents of the facility and:

(a) Shall exercise those powers and perform those duties set out by the court.

(b) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(c) Shall take such action as is reasonably necessary to protect or conserve the assets or property of the facility for which the receiver is appointed, or the proceeds from any transfer thereof, and may use them only in the performance of the powers and duties set forth in this section and by order of the court.

(d) May use the building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed. The receiver shall collect payments for all goods and services provided to residents or others during the period of the receivership at the same rate of payment charged by the owners at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court.

(e) May correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, if the total cost of correction does not exceed \$10,000. The court may order expenditures for this purpose in excess of \$10,000 on application from the receiver after notice to the owner and a hearing.

(f) May let contracts and hire agents and employees to carry out the powers and duties of the receiver.

(g) Shall honor all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of the receivership, or which, in the case of a purchase agreement, become due during the period of the receivership.

(h) Shall have full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have. The receiver shall pay employees at the rate of compensation, including benefits, approved by the court. A receivership does not relieve the owner of any obligation to employees made prior to the appointment of a receiver and not carried out by the receiver.

(i) Shall be entitled to and take possession of all property or assets of residents which are in the possession of a facility or its owner. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and records to the new placement of any transferred resident. An inventory list certified by the owner and receiver shall be made immediately at the time the receiver takes possession of the facility.

(4)(a) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the owner. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit accounts received in a separate account and shall use this account for all disbursements.

(b) The receiver may bring an action to enforce the liability created by paragraph (a).

(c) A payment to the receiver of any sum owing to the facility or its owner shall discharge any obligation to the facility to the extent of the payment.

(5)(a) A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions. Any relief in this form provided by the court shall be limited to the life of the receivership, unless otherwise determined by the court.

(b) If the receiver is in possession of real estate or goods subject to a lease, mortgage, or security interest which the receiver has obtained a court order to avoid under paragraph (a), and if the real estate or goods are necessary for the continued operation of the facility under this section, the receiver may apply to the court to set a reasonable rental, price, or rate of interest to be paid by the receiver during the duration of the receivership. The court shall hold a hearing on the application within 15 days. The receiver shall send notice of the application to any known persons who own the property involved at least 10 days prior to the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to any action against the receiver for payment or for possession of the goods or real estate subject to the lease, security interest, or mortgage involved by any person who received such notice, but the payment does not relieve the owner

of the facility of any liability for the difference between the amount paid by the receiver and the amount due under the original lease, security interest, or mortgage involved.

(6) The court shall set the compensation of the receiver, which will be considered a necessary expense of a receivership.

(7) A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts, or breach of fiduciary duty.

(8) The court may require a receiver to post a bond.

(9) The court may direct the agency to allocate funds from the Health Care Trust Fund to the receiver, subject to the provisions of s. 429.18(1) ~~s. 400.418(1)~~.

(10) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist or the agency grants the facility a new license; or

(b) All of the residents in the facility have been transferred or discharged.

(11) Within 30 days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

(12) Nothing in this section shall be deemed to relieve any owner, administrator, or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, administrator, or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee, or any other person for the payment of mortgages or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court which ordered the receivership.

Section 46. Section 400.424, Florida Statutes, is renumbered as section 429.24, Florida Statutes, and amended to read:

429.24 ~~400.424~~ Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed at the time of admission or prior thereto, between the licensee and the resident or his or her designee or legal representative. Each party to the contract shall be provided with a duplicate original thereof, and the licensee shall keep on file in the facility all such contracts. The licensee may not destroy or otherwise dispose of any such contract until 5 years after its expiration.

(2) Each contract must contain express provisions specifically setting forth the services and accommodations to be provided by the facility; the rates or charges; provision for at least 30 days' written notice of a rate increase; the rights, duties, and obligations of the residents, other than those specified in s. 429.28 s. 400.428; and other matters that the parties deem appropriate. Whenever money is deposited or advanced by a resident in a contract as security for performance of the contract agreement or as advance rent for other than the next immediate rental period:

(a) Such funds shall be deposited in a banking institution in this state that is located, if possible, in the same community in which the facility is located; shall be kept separate from the funds and property of the facility; may not be represented as part of the assets of the facility on financial statements; and shall be used, or otherwise expended, only for the account of the resident.

(b) The licensee shall, within 30 days of receipt of advance rent or a security deposit, notify the resident or residents in writing of the manner in which the licensee is holding the advance rent or security deposit and state the name and address of the depository where the moneys are being held. The licensee shall notify residents of the facility's policy on advance deposits.

(3)(a) The contract shall include a refund policy to be implemented at the time of a resident's transfer, discharge, or death. The refund policy shall provide that the resident or responsible party is entitled to a prorated refund based on the daily rate for any unused portion of payment beyond the termination date after all charges, including the cost of damages to the residential unit resulting from circumstances other than normal use, have been paid to the licensee. For the purpose of this paragraph, the termination date shall be the date the unit is vacated by the resident and cleared of all personal belongings. If the amount of belongings does not preclude renting the unit, the facility may clear the unit and charge the resident or his or her estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 20 percent of the regular rate for the unit, provided that 14 days' advance written notification is given. If the resident's possessions are not claimed within 45 days after notification, the facility may dispose of them. The contract shall also specify any other conditions under which claims will be made against the refund due the resident. Except in the case of death or a discharge due to medical reasons, the refunds shall be computed in accordance with the notice of relocation requirements specified in the contract. However, a resident may not be required to provide the licensee with more than 30 days' notice of termination. If after a contract is terminated, the facility intends to make a claim against a refund due the resident, the facility shall notify the resident or responsible party in writing of the claim and shall provide said party with a reasonable time period of no less than 14 calendar days to respond. The facility shall provide a refund to the resident or responsible party within 45 days after the transfer, discharge, or death of the resident. The agency shall impose a fine upon a facility that fails to comply with the refund provisions of the paragraph, which fine shall be equal to three times the amount due to the resident. One-half of the fine shall be remitted to the resident or his or her estate, and the

other half to the Health Care Trust Fund to be used for the purpose specified in s. 429.18 ~~s. 400.418~~.

(b) If a licensee agrees to reserve a bed for a resident who is admitted to a medical facility, including, but not limited to, a nursing home, health care facility, or psychiatric facility, the resident or his or her responsible party shall notify the licensee of any change in status that would prevent the resident from returning to the facility. Until such notice is received, the agreed-upon daily rate may be charged by the licensee.

(c) The purpose of any advance payment and a refund policy for such payment, including any advance payment for housing, meals, or personal services, shall be covered in the contract.

(4) The contract shall state whether or not the facility is affiliated with any religious organization and, if so, which organization and its general responsibility to the facility.

(5) Neither the contract nor any provision thereof relieves any licensee of any requirement or obligation imposed upon it by this part or rules adopted under this part.

(6) In lieu of the provisions of this section, facilities certified under chapter 651 shall comply with the requirements of s. 651.055.

(7) Notwithstanding the provisions of this section, facilities which consist of 60 or more apartments may require refund policies and termination notices in accordance with the provisions of part II of chapter 83, provided that the lease is terminated automatically without financial penalty in the event of a resident's death or relocation due to psychiatric hospitalization or to medical reasons which necessitate services or care beyond which the facility is licensed to provide. The date of termination in such instances shall be the date the unit is fully vacated. A lease may be substituted for the contract if it meets the disclosure requirements of this section. For the purpose of this section, the term "apartment" means a room or set of rooms with a kitchen or kitchenette and lavatory located within one or more buildings containing other similar or like residential units.

(8) The department may by rule clarify terms, establish procedures, clarify refund policies and contract provisions, and specify documentation as necessary to administer this section.

Section 47. Section 400.4255, Florida Statutes, is renumbered as section 429.255, Florida Statutes, and are amended to read:

429.255 ~~400.4255~~ Use of personnel; emergency care.—

(1)(a) Persons under contract to the facility, facility staff, or volunteers, who are licensed according to part I of chapter 464, or those persons exempt under s. 464.022(1), and others as defined by rule, may administer medications to residents, take residents' vital signs, manage individual weekly pill organizers for residents who self-administer medication, give prepackaged enemas ordered by a physician, observe residents, document observations

on the appropriate resident's record, report observations to the resident's physician, and contract or allow residents or a resident's representative, designee, surrogate, guardian, or attorney in fact to contract with a third party, provided residents meet the criteria for appropriate placement as defined in s. 429.26 s. 400.426. Nursing assistants certified pursuant to part II of chapter 464 may take residents' vital signs as directed by a licensed nurse or physician.

(b) All staff in facilities licensed under this part shall exercise their professional responsibility to observe residents, to document observations on the appropriate resident's record, and to report the observations to the resident's physician. However, the owner or administrator of the facility shall be responsible for determining that the resident receiving services is appropriate for residence in the facility.

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

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

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

Section 48. Section 400.4256, Florida Statutes, is renumbered as section 429.256, Florida Statutes, and is amended to read:

429.256 ~~400.4256~~ Assistance with self-administration of medication.—

(1) For the purposes of this section, the term:

(a) "Informed consent" means advising the resident, or the resident's surrogate, guardian, or attorney in fact, that an assisted living facility is not required to have a licensed nurse on staff, that the resident may be receiving assistance with self-administration of medication from an unlicensed person, and that such assistance, if provided by an unlicensed person, will or will not be overseen by a licensed nurse.

(b) "Unlicensed person" means an individual not currently licensed to practice nursing or medicine who is employed by or under contract to an

assisted living facility and who has received training with respect to assisting with the self-administration of medication in an assisted living facility as provided under ~~s. 429.52 s. 400.452~~ prior to providing such assistance as described in this section.

(2) Residents who are capable of self-administering their own medications without assistance shall be encouraged and allowed to do so. However, an unlicensed person may, consistent with a dispensed prescription's label or the package directions of an over-the-counter medication, assist a resident whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered. Assistance with self-medication by an unlicensed person may occur only upon a documented request by, and the written informed consent of, a resident or the resident's surrogate, guardian, or attorney in fact. For the purposes of this section, self-administered medications include both legend and over-the-counter oral dosage forms, topical dosage forms and topical ophthalmic, otic, and nasal dosage forms including solutions, suspensions, sprays, and inhalers.

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

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

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

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

(d) Applying topical medications.

(e) Returning the medication container to proper storage.

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

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

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

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

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

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

- (e) Administration of parenteral preparations.
- (f) Irrigations or debriding agents used in the treatment of a skin condition.
- (g) Rectal, urethral, or vaginal preparations.
- (h) Medications ordered by the physician or health care professional with prescriptive authority to be given “as needed,” unless the order is written with specific parameters that preclude independent judgment on the part of the unlicensed person, and at the request of a competent resident.
- (i) Medications for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.
- (5) Assistance with the self-administration of medication by an unlicensed person as described in this section shall not be considered administration as defined in s. 465.003.
- (6) The department may by rule establish facility procedures and interpret terms as necessary to implement this section.

Section 49. Section 400.426, Florida Statutes, is renumbered as section 429.26, Florida Statutes, and amended to read:

429.26 ~~400.426~~ Appropriateness of placements; examinations of residents.—

(1) The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility. A determination shall be based upon an assessment of the strengths, needs, and preferences of the resident, the care and services offered or arranged for by the facility in accordance with facility policy, and any limitations in law or rule related to admission criteria or continued residency for the type of license held by the facility under this part. A resident may not be moved from one facility to another without consultation with and agreement from the resident or, if applicable, the resident’s representative or designee or the resident’s family, guardian, surrogate, or attorney in fact. In the case of a resident who has been placed by the department or the Department of Children and Family Services, the administrator must notify the appropriate contact person in the applicable department.

(2) A physician, physician assistant, or nurse practitioner who is employed by an assisted living facility to provide an initial examination for admission purposes may not have financial interest in the facility.

(3) Persons licensed under part I of chapter 464 who are employed by or under contract with a facility shall, on a routine basis or at least monthly, perform a nursing assessment of the residents for whom they are providing nursing services ordered by a physician, except administration of medication, and shall document such assessment, including any substantial

changes in a resident's status which may necessitate relocation to a nursing home, hospital, or specialized health care facility. Such records shall be maintained in the facility for inspection by the agency and shall be forwarded to the resident's case manager, if applicable.

(4) If possible, each resident shall have been examined by a licensed physician, a licensed physician assistant, or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall use the information contained therein to assist in the determination of the appropriateness of the resident's admission and continued stay in the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection or upon request. An assessment that has been completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills the requirements for a medical examination under this subsection and s. 429.07(3)(b)6. ~~s. 400.407(3)(b)6.~~

(5) Except as provided in s. 429.07 ~~s. 400.407~~, if a medical examination has not been completed within 60 days before the admission of the resident to the facility, a licensed physician, licensed physician assistant, or licensed nurse practitioner shall examine the resident and complete a medical examination form provided by the agency within 30 days following the admission to the facility to enable the facility owner or administrator to determine the appropriateness of the admission. The medical examination form shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection by the agency or upon request.

(6) Any resident accepted in a facility and placed by the department or the Department of Children and Family Services shall have been examined by medical personnel within 30 days before placement in the facility. The examination shall include an assessment of the appropriateness of placement in a facility. The findings of this examination shall be recorded on the examination form provided by the agency. The completed form shall accompany the resident and shall be submitted to the facility owner or administrator. Additionally, in the case of a mental health resident, the Department of Children and Family Services must provide documentation that the individual has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be in the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident providing it was completed within 90 days prior to admission to the facility. The applicable department shall provide to the facility administrator any information about the resident that would help the administrator meet his or her responsibilities under subsection (1). Further, department personnel shall explain to the facility operator any special needs of the resident and advise the operator whom to call should

problems arise. The applicable department shall advise and assist the facility administrator where the special needs of residents who are recipients of optional state supplementation require such assistance.

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

(8) The Department of Children and Family Services may require an examination for supplemental security income and optional state supplementation recipients residing in facilities at any time and shall provide the examination whenever a resident's condition requires it. Any facility administrator; personnel of the agency, the department, or the Department of Children and Family Services; or long-term care ombudsman council member who believes a resident needs to be evaluated shall notify the resident's case manager, who shall take appropriate action. A report of the examination findings shall be provided to the resident's case manager and the facility administrator to help the administrator meet his or her responsibilities under subsection (1).

(9) If, at any time after admission to a facility, a resident appears to need care beyond that which the facility is licensed to provide, the agency shall require the resident to be physically examined by a licensed physician, physician assistant, or licensed nurse practitioner. This examination shall, to the extent possible, be performed by the resident's preferred physician or nurse practitioner and shall be paid for by the resident with personal funds, except as provided in ~~s. 429.18(1)(b) s. 400.418(1)(b)~~. Following this examination, the examining physician, physician assistant, or licensed nurse practitioner shall complete and sign a medical form provided by the agency. The completed medical form shall be submitted to the agency within 30 days after the date the facility owner or administrator is notified by the agency that the physical examination is required. After consultation with the physician, physician assistant, or licensed nurse practitioner who performed the examination, a medical review team designated by the agency shall then determine whether the resident is appropriately residing in the facility. The medical review team shall base its decision on a comprehensive review of the resident's physical and functional status, including the resident's preferences, and not on an isolated health-related problem. In the case of a mental health resident, if the resident appears to have needs in addition to those identified in the community living support plan, the agency may require an evaluation by a mental health professional, as determined by the Department of Children and Family Services. A facility may not be required to retain a resident who requires more services or care than the facility is able to provide in accordance with its policies and criteria for admission and continued residency. Members of the medical review team making the final determination may not include the agency personnel who initially questioned the appropriateness of a resident's placement. Such determination is

final and binding upon the facility and the resident. Any resident who is determined by the medical review team to be inappropriately residing in a facility shall be given 30 days' written notice to relocate by the owner or administrator, unless the resident's continued residence in the facility presents an imminent danger to the health, safety, or welfare of the resident or a substantial probability exists that death or serious physical harm would result to the resident if allowed to remain in the facility.

(10) A terminally ill resident who no longer meets the criteria for continued residency may remain in the facility if the arrangement is mutually agreeable to the resident and the facility; additional care is rendered through a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident are being met.

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

(12) No resident who requires 24-hour nursing supervision, except for a resident who is an enrolled hospice patient pursuant to part IV ~~VI~~ of this chapter 400, shall be retained in a facility licensed under this part.

Section 50. Section 400.427, Florida Statutes, is renumbered as section 429.27, Florida Statutes, is amended to read:

429.27 ~~400.427~~ Property and personal affairs of residents.—

(1)(a) A resident shall be given the option of using his or her own belongings, as space permits; choosing his or her roommate; and, whenever possible, unless the resident is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(b) The admission of a resident to a facility and his or her presence therein shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident; nor shall such admission or presence confer on any of such persons any authority or responsibility for the personal affairs of the resident, except that which may be necessary for the safe management of the facility or for the safety of the resident.

(2) A facility, or an owner, administrator, employee, or representative thereof, may not act as the guardian, trustee, or conservator for any resident of the assisted living facility or any of such resident's property. An owner, administrator, or staff member, or representative thereof, may not act as a competent resident's payee for social security, veteran's, or railroad benefits without the consent of the resident. Any facility whose owner, administrator, or staff, or representative thereof, serves as representative payee for any resident of the facility shall file a surety bond with the agency in an amount

equal to twice the average monthly aggregate income or personal funds due to residents, or expendable for their account, which are received by a facility. Any facility whose owner, administrator, or staff, or a representative thereof, is granted power of attorney for any resident of the facility shall file a surety bond with the agency for each resident for whom such power of attorney is granted. The surety bond shall be in an amount equal to twice the average monthly income of the resident, plus the value of any resident's property under the control of the attorney in fact. The bond shall be executed by the facility as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the facility with this section and shall run to the agency for the benefit of any resident who suffers a financial loss as a result of the misuse or misappropriation by a facility of funds held pursuant to this subsection. Any surety company that cancels or does not renew the bond of any licensee shall notify the agency in writing not less than 30 days in advance of such action, giving the reason for the cancellation or nonrenewal. Any facility owner, administrator, or staff, or representative thereof, who is granted power of attorney for any resident of the facility shall, on a monthly basis, be required to provide the resident a written statement of any transaction made on behalf of the resident pursuant to this subsection, and a copy of such statement given to the resident shall be retained in each resident's file and available for agency inspection.

(3) A facility, upon mutual consent with the resident, shall provide for the safekeeping in the facility of personal effects not in excess of \$500 and funds of the resident not in excess of \$200 cash, and shall keep complete and accurate records of all such funds and personal effects received. If a resident is absent from a facility for 24 hours or more, the facility may provide for the safekeeping of the resident's personal effects in excess of \$500.

(4) Any funds or other property belonging to or due to a resident, or expendable for his or her account, which is received by a facility shall be trust funds which shall be kept separate from the funds and property of the facility and other residents or shall be specifically credited to such resident. Such trust funds shall be used or otherwise expended only for the account of the resident. At least once every 3 months, unless upon order of a court of competent jurisdiction, the facility shall furnish the resident and his or her guardian, trustee, or conservator, if any, a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. In any event, the facility shall furnish such statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property to the account of a resident shall also be entitled to receive such statement annually and upon the discharge or transfer of the resident.

(5) Any personal funds available to facility residents may be used by residents as they choose to obtain clothing, personal items, leisure activities, and other supplies and services for their personal use. A facility may not demand, require, or contract for payment of all or any part of the personal funds in satisfaction of the facility rate for supplies and services beyond that amount agreed to in writing and may not levy an additional charge to the individual or the account for any supplies or services that the facility has

agreed by contract to provide as part of the standard monthly rate. Any service or supplies provided by the facility which are charged separately to the individual or the account may be provided only with the specific written consent of the individual, who shall be furnished in advance of the provision of the services or supplies with an itemized written statement to be attached to the contract setting forth the charges for the services or supplies.

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

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

2. Borrows from or pledges any personal funds of a resident, other than the amount agreed to by written contract under s. 429.24 ~~s. 400.424~~,

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

(b) Any facility owner, administrator, or staff, or representative thereof, who is granted power of attorney for any resident of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

Section 51. Section 400.428, Florida Statutes, is renumbered as section 429.28, Florida Statutes, and amended to read:

429.28 ~~400.428~~ Resident bill of rights.—

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

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. 429.27 ~~s. 400.427~~.

(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons

for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(1) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility shall establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

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

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located to discuss residents' experiences within the facility.

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

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

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

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) No facility or employee of a facility may serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

- (a) Exercises any right set forth in this section.
- (b) Appears as a witness in any hearing, inside or outside the facility.
- (c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.
- (6) Any facility which terminates the residency of an individual who participated in activities specified in subsection (5) shall show good cause in a court of competent jurisdiction.
- (7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability therefor, unless such person has acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

Section 52. Section 400.429, Florida Statutes, is renumbered as section 429.29, Florida Statutes, and amended to read:

429.29 ~~400.429~~ Civil actions to enforce rights.—

(1) Any person or resident whose rights as specified in this part are violated shall have a cause of action. The action may be brought by the resident or his or her guardian, or by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall be required to elect either survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual damages, and punitive damages for violation of the rights of a resident or negligence. Any resident who prevails in seeking injunctive relief or a claim for an administrative remedy is entitled to recover the costs of the action and a reasonable attorney's fee assessed against the defendant not to exceed \$25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought together with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. Sections ~~429.29-429.298~~ 400.429-400.4303 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a resident arising out of negligence or a violation of rights specified in s. 429.28 ~~s. 400.428~~. This section does not preclude theories of recovery not arising out of negligence or ~~s. 429.28~~ ~~s. 400.428~~ which are available to a resident or to the agency. The provisions

of chapter 766 do not apply to any cause of action brought under ss. 429.29-429.298 ~~ss. 400.429-400.4303~~.

(2) In any claim brought pursuant to this part alleging a violation of resident's rights or negligence causing injury to or the death of a resident, the claimant shall have the burden of proving, by a preponderance of the evidence, that:

- (a) The defendant owed a duty to the resident;
- (b) The defendant breached the duty to the resident;
- (c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- (d) The resident sustained loss, injury, death, or damage as a result of the breach.

Nothing in this part shall be interpreted to create strict liability. A violation of the rights set forth in s. 429.28 ~~s. 400.428~~ or in any other standard or guidelines specified in this part or in any applicable administrative standard or guidelines of this state or a federal regulatory agency shall be evidence of negligence but shall not be considered negligence per se.

(3) In any claim brought pursuant to this section, a licensee, person, or entity shall have a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances.

(4) In any claim for resident's rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse shall have the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.

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

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

(7) The resident or the resident's legal representative shall serve a copy of any complaint alleging in whole or in part a violation of any rights specified in this part to the Agency for Health Care Administration at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the

complaint to the agency does not impair the resident's legal rights or ability to seek relief for his or her claim.

Section 53. Section 400.4293, Florida Statutes, is renumbered as section 429.293, Florida Statutes, and amended to read:

429.293 ~~400.4293~~ Presuit notice; investigation; notification of violation of residents' rights or alleged negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.—

(1) As used in this section, the term:

(a) "Claim for residents' rights violation or negligence" means a negligence claim alleging injury to or the death of a resident arising out of an asserted violation of the rights of a resident under s. 429.28 ~~s. 400.428~~ or an asserted deviation from the applicable standard of care.

(b) "Insurer" means any self-insurer authorized under s. 627.357, liability insurance carrier, joint underwriting association, or uninsured prospective defendant.

(2) Prior to filing a claim for a violation of a resident's rights or a claim for negligence, a claimant alleging injury to or the death of a resident shall notify each prospective defendant by certified mail, return receipt requested, of an asserted violation of a resident's rights provided in s. 429.28 ~~s. 400.428~~ or deviation from the standard of care. Such notification shall include an identification of the rights the prospective defendant has violated and the negligence alleged to have caused the incident or incidents and a brief description of the injuries sustained by the resident which are reasonably identifiable at the time of notice. The notice shall contain a certificate of counsel that counsel's reasonable investigation gave rise to a good faith belief that grounds exist for an action against each prospective defendant.

(3)(a) No suit may be filed for a period of 75 days after notice is mailed to any prospective defendant. During the 75-day period, the prospective defendants or their insurers shall conduct an evaluation of the claim to determine the liability of each defendant and to evaluate the damages of the claimants. Each defendant or insurer of the defendant shall have a procedure for the prompt evaluation of claims during the 75-day period. The procedure shall include one or more of the following:

1. Internal review by a duly qualified facility risk manager or claims adjuster;

2. Internal review by counsel for each prospective defendant;

3. A quality assurance committee authorized under any applicable state or federal statutes or regulations; or

4. Any other similar procedure that fairly and promptly evaluates the claims.

Each defendant or insurer of the defendant shall evaluate the claim in good faith.

(b) At or before the end of the 75 days, the defendant or insurer of the defendant shall provide the claimant with a written response:

1. Rejecting the claim; or
2. Making a settlement offer.

(c) The response shall be delivered to the claimant if not represented by counsel or to the claimant's attorney, by certified mail, return receipt requested. Failure of the prospective defendant or insurer of the defendant to reply to the notice within 75 days after receipt shall be deemed a rejection of the claim for purposes of this section.

(4) The notification of a violation of a resident's rights or alleged negligence shall be served within the applicable statute of limitations period; however, during the 75-day period, the statute of limitations is tolled as to all prospective defendants. Upon stipulation by the parties, the 75-day period may be extended and the statute of limitations is tolled during any such extension. Upon receiving written notice by certified mail, return receipt requested, of termination of negotiations in an extended period, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

(5) No statement, discussion, written document, report, or other work product generated by presuit claims evaluation procedures under this section is discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit claims evaluation procedure. Any licensed physician or registered nurse may be retained by either party to provide an opinion regarding the reasonable basis of the claim. The presuit opinions of the expert are not discoverable or admissible in any civil action for any purpose by the opposing party.

(6) Upon receipt by a prospective defendant of a notice of claim, the parties shall make discoverable information available without formal discovery as provided in subsection (7).

(7) Informal discovery may be used by a party to obtain unsworn statements and the production of documents or things, as follows:

(a) Unsworn statements.—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of claims evaluation and are not discoverable or admissible in any civil action for any purpose by any party. A party seeking to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of un-

sworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

(b) Documents or things.—Any party may request discovery of relevant documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce relevant and discoverable documents or things within that party's possession or control, if in good faith it can reasonably be done within the timeframe of the claims evaluation process.

(8) Each request for and notice concerning informal discovery pursuant to this section must be in writing, and a copy thereof must be sent to all parties. Such a request or notice must bear a certificate of service identifying the name and address of the person to whom the request or notice is served, the date of the request or notice, and the manner of service thereof.

(9) If a prospective defendant makes a written settlement offer, the claimant shall have 15 days from the date of receipt to accept the offer. An offer shall be deemed rejected unless accepted by delivery of a written notice of acceptance.

(10) To the extent not inconsistent with this part, the provisions of the Florida Mediation Code, Florida Rules of Civil Procedure, shall be applicable to such proceedings.

(11) Within 30 days after the claimant's receipt of defendant's response to the claim, the parties or their designated representatives shall meet in mediation to discuss the issues of liability and damages in accordance with the mediation rules of practice and procedures adopted by the Supreme Court. Upon stipulation of the parties, this 30-day period may be extended and the statute of limitations is tolled during the mediation and any such extension. At the conclusion of mediation, the claimant shall have 60 days or the remainder of the period of the statute of limitations, whichever is greater, within which to file suit.

Section 54. Section 400.431, Florida Statutes, is renumbered as section 429.31, Florida Statutes, and amended to read:

429.31 ~~400.431~~ Closing of facility; notice; penalty.—

(1) Whenever a facility voluntarily discontinues operation, it shall inform the agency in writing at least 90 days prior to the discontinuance of operation. The facility shall also inform each resident or the next of kin, legal representative, or agency acting on each resident's behalf, of the fact and the proposed time of such discontinuance, following the notification requirements provided in ~~s. 429.28(1)(k)~~ ~~s. 400.428(1)(k)~~. In the event a resident has no person to represent him or her, the facility shall be responsible for referral to an appropriate social service agency for placement.

(2) Immediately upon the notice by the agency of the voluntary or involuntary termination of such operation, the agency shall monitor the transfer of residents to other facilities and ensure that residents' rights are being

protected. The department, in consultation with the Department of Children and Family Services, shall specify procedures for ensuring that all residents who receive services are appropriately relocated.

(3) All charges shall be prorated as of the date on which the facility discontinues operation, and if any payments have been made in advance, the payments for services not received shall be refunded to the resident or the resident's guardian within 10 working days of voluntary or involuntary closure of the facility, whether or not such refund is requested by the resident or guardian.

(4) Immediately upon discontinuance of the operation of a facility, the owner shall surrender the license therefor to the agency, and the license shall be canceled.

(5) The agency may levy a fine in an amount no greater than \$5,000 upon each person or business entity that owns any interest in a facility that terminates operation without providing notice to the agency and the residents of the facility at least 30 days before operation ceases. This fine shall not be levied against any facility involuntarily closed at the initiation of the agency. The agency shall use the proceeds of the fines to operate the facility until all residents of the facility are relocated and shall deposit any balance of the proceeds into the Health Care Trust Fund established pursuant to s. 429.18 s. 400.418.

Section 55. Section 400.441, Florida Statutes, is renumbered as section 429.41, Florida Statutes, and amended to read:

429.41 400.441 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

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

1. Evacuation capability determination.—

a. The provisions of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, shall be used for determining the ability of the residents, with or without staff assistance, to relocate from or within a licensed facility to a point of safety as provided in the fire codes adopted herein. An evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. For existing licensed facilities that are not equipped with an automatic fire sprinkler system, the administrator shall evaluate the evacuation capability of residents at least annually. The evacuation capability evaluation for each facility not equipped with an automatic fire sprinkler system shall be validated, without liability, by the State Fire Marshal, by the local fire marshal, or by the local authority having jurisdiction over firesafety, before the license renewal date. If the State Fire Marshal, local fire marshal, or local authority having jurisdiction over firesafety has reason to believe that the evacuation capability of a facility as reported by the administrator may have changed, it may, with assistance from the facility administrator, reevaluate the evacuation capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

- (I) Three minutes or less: prompt.
- (II) More than 3 minutes, but not more than 13 minutes: slow.
- (III) More than 13 minutes: impractical.

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

c. The Office of the State Fire Marshal, in cooperation with provider associations, shall provide or cause the provision of a training program designed to inform facility operators on how to properly review bid documents relating to the installation of automatic fire sprinklers. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

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

2. Firesafety requirements.—

a. Except for the special applications provided herein, effective January 1, 1996, the provisions of the National Fire Protection Association, Life

Safety Code, NFPA 101, 1994 edition, Chapter 22 for new facilities and Chapter 23 for existing facilities shall be the uniform fire code applied by the State Fire Marshal for assisted living facilities, pursuant to s. 633.022.

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

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

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

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

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

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

h. If a licensed facility undergoes major reconstruction or addition to an existing building on or after January 1, 1996, the entire building must be equipped with an automatic fire sprinkler system. Major reconstruction of a building means repair or restoration that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before reconstruction. Multiple reconstruction projects within a 5-year period the total costs of which exceed 50 percent of the initial value of the building at the time the first reconstruction project was permitted are to be considered

as major reconstruction. Application for a permit for an automatic fire sprinkler system is required upon application for a permit for a reconstruction project that creates costs that go over the 50-percent threshold.

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

- (I) Impractical evacuation capability, 24 months.
- (II) Slow evacuation capability, 48 months.
- (III) Prompt evacuation capability, 60 months.

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

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

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

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

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

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

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

(b) The preparation and annual update of a comprehensive emergency management plan. Such standards must be included in the rules adopted by the department after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; communication with families; and responses to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, the Agency for Health Care Administration, and the Department of Community Affairs. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

(c) The number, training, and qualifications of all personnel having responsibility for the care of residents. The rules must require adequate staff to provide for the safety of all residents. Facilities licensed for 17 or more residents are required to maintain an alert staff for 24 hours per day.

(d) All sanitary conditions within the facility and its surroundings which will ensure the health and comfort of residents. The rules must clearly delineate the responsibilities of the agency's licensure and survey staff, the county health departments, and the local authority having jurisdiction over fire safety and ensure that inspections are not duplicative. The agency may collect fees for food service inspections conducted by the county health departments and transfer such fees to the Department of Health.

(e) License application and license renewal, transfer of ownership, proper management of resident funds and personal property, surety bonds, resident contracts, refund policies, financial ability to operate, and facility and staff records.

(f) Inspections, complaint investigations, moratoriums, classification of deficiencies, levying and enforcement of penalties, and use of income from fees and fines.

(g) The enforcement of the resident bill of rights specified in s. 429.28 ~~s. 400.428~~.

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

1. The supervision of residents;
2. The provision of personal services;
3. The provision of, or arrangement for, social and leisure activities;
4. The arrangement for appointments and transportation to appropriate medical, dental, nursing, or mental health services, as needed by residents;
5. The management of medication;
6. The nutritional needs of residents;
7. Resident records; and
8. Internal risk management and quality assurance.

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

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

(k) The use of physical or chemical restraints. The use of physical restraints is limited to half-bed rails as prescribed and documented by the resident's physician with the consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The use of chemical restraints is limited to prescribed dosages of medications authorized by the resident's physician and must be consistent with the resident's diagnosis. Residents who are receiving medications that can serve as chemical restraints must be evaluated by their physician at least annually to assess:

1. The continued need for the medication.
2. The level of the medication in the resident's blood.

3. The need for adjustments in the prescription.

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

(2) In adopting any rules pursuant to this part, the department, in conjunction with the agency, shall make distinct standards for facilities based upon facility size; the types of care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. Rules developed pursuant to this section shall not restrict the use of shared staffing and shared programming in facilities that are part of retirement communities that provide multiple levels of care and otherwise meet the requirements of law and rule. Except for uniform firesafety standards, the department shall adopt by rule separate and distinct standards for facilities with 16 or fewer beds and for facilities with 17 or more beds. The standards for facilities with 16 or fewer beds shall be appropriate for a noninstitutional residential environment, provided that the structure is no more than two stories in height and all persons who cannot exit the facility unassisted in an emergency reside on the first floor. The department, in conjunction with the agency, may make other distinctions among types of facilities as necessary to enforce the provisions of this part. Where appropriate, the agency shall offer alternate solutions for complying with established standards, based on distinctions made by the department and the agency relative to the physical characteristics of facilities and the types of care offered therein.

(3) The department shall submit a copy of proposed rules to the Speaker of the House of Representatives, the President of the Senate, and appropriate committees of substance for review and comment prior to the promulgation thereof.

(a) Rules promulgated by the department shall encourage the development of homelike facilities which promote the dignity, individuality, personal strengths, and decisionmaking ability of residents.

(b) The agency, in consultation with the department, may waive rules promulgated pursuant to this part in order to demonstrate and evaluate innovative or cost-effective congregate care alternatives which enable individuals to age in place. Such waivers may be granted only in instances where there is reasonable assurance that the health, safety, or welfare of residents will not be endangered. To apply for a waiver, the licensee shall submit to the agency a written description of the concept to be demonstrated, including goals, objectives, and anticipated benefits; the number and types of residents who will be affected, if applicable; a brief description of how the demonstration will be evaluated; and any other information deemed appropriate by the agency. Any facility granted a waiver shall submit a report of findings to the agency and the department within 12 months. At such time, the agency may renew or revoke the waiver or pursue any regulatory or statutory changes necessary to allow other facilities to adopt the same practices. The department may by rule clarify terms and establish waiver appli-

ation procedures, criteria for reviewing waiver proposals, and procedures for reporting findings, as necessary to implement this subsection.

(4) The agency may use an abbreviated biennial standard licensure inspection that consists of a review of key quality-of-care standards in lieu of a full inspection in facilities which have a good record of past performance. However, a full inspection shall be conducted in facilities which have had a history of class I or class II violations, uncorrected class III violations, confirmed ombudsman council complaints, or confirmed licensure complaints, within the previous licensure period immediately preceding the inspection or when a potentially serious problem is identified during the abbreviated inspection. The agency, in consultation with the department, shall develop the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules. The department, in consultation with the agency, shall report annually to the Legislature concerning its implementation of this subsection. The report shall include, at a minimum, the key quality-of-care standards which have been developed; the number of facilities identified as being eligible for the abbreviated inspection; the number of facilities which have received the abbreviated inspection and, of those, the number that were converted to full inspection; the number and type of subsequent complaints received by the agency or department on facilities which have had abbreviated inspections; any recommendations for modification to this subsection; any plans by the agency to modify its implementation of this subsection; and any other information which the department believes should be reported.

(5) A fee shall be charged by the department to any person requesting a copy of this part or rules promulgated under this part. Such fees shall not exceed the actual cost of duplication and postage.

Section 56. Section 400.442, Florida Statutes, is renumbered as section 429.42, Florida Statutes, and amended to read:

429.42 ~~400.442~~ Pharmacy and dietary services.—

(1) Any assisted living facility in which the agency has documented a class I or class II deficiency or uncorrected class III deficiencies regarding medicinal drugs or over-the-counter preparations, including their storage, use, delivery, or administration, or dietary services, or both, during a biennial survey or a monitoring visit or an investigation in response to a complaint, shall, in addition to or as an alternative to any penalties imposed under s. 429.19 ~~s. 400.419~~, be required to employ the consultant services of a licensed pharmacist, a licensed registered nurse, or a registered or licensed dietitian, as applicable. The consultant shall, at a minimum, provide onsite quarterly consultation until the inspection team from the agency determines that such consultation services are no longer required.

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

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

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

Section 57. Section 400.444, Florida Statutes, is renumbered as section 429.44, Florida Statutes, and amended to read:

429.44 ~~400.444~~ Construction and renovation; requirements.—

(1) The requirements for the construction and renovation of a facility shall comply with the provisions of chapter 553 which pertain to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for persons with disabilities, and the state minimum building code and with the provisions of s. 633.022, which pertain to uniform firesafety standards.

(2) Upon notification by the local authority having jurisdiction over life-threatening violations which seriously threaten the health, safety, or welfare of a resident of a facility, the agency shall take action as specified in s. 429.14 ~~s. 400.414~~.

(3) The department may adopt rules to establish procedures and specify the documentation necessary to implement this section.

Section 58. Section 400.447, Florida Statutes, is renumbered as section 429.47, Florida Statutes, and amended to read:

429.47 ~~400.447~~ Prohibited acts; penalties for violation.—

(1) It is unlawful for any person or public body to offer or advertise to the public, in any way by any medium whatever, personal services as defined in this act, without obtaining a valid current license. It is unlawful for any holder of a license issued pursuant to the provisions of this act to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

(2) It is unlawful for any holder of a license issued pursuant to the provisions of this act to withhold from the agency any evidence of financial instability, including, but not limited to, bad checks, delinquent accounts, nonpayment of withholding taxes, unpaid utility expenses, nonpayment for essential services, or adverse court action concerning the financial viability of the facility or any other facility licensed under part II of chapter 400 ~~under~~ part I ~~III~~ of this chapter which is owned by the licensee.

(3) Any person found guilty of violating subsection (1) or subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day of continuing violation shall be considered a separate offense.

(4) While a facility is under construction, the owner may advertise to the public prior to obtaining a license. Facilities that are certified under chapter 651 shall comply with the advertising provisions of s. 651.095 rather than those provided for in this subsection.

(5) A freestanding facility shall not advertise or imply that any part of it is a nursing home. For the purpose of this subsection, “freestanding facility” means a facility that is not operated in conjunction with a nursing home to which residents of the facility are given priority when nursing care is required. A person who violates this subsection is subject to fine as specified in s. 429.19 ~~s. 400.419~~.

(6) Any facility which is affiliated with any religious organization or which has a name implying religious affiliation shall include in its advertising whether or not it is affiliated with any religious organization and, if so, which organization.

(7) A facility licensed under this part which is not part of a facility authorized under chapter 651 shall include the facility’s license number as given by the agency in all advertising. A company or person owning more than one facility shall include at least one license number per advertisement. All advertising shall include the term “assisted living facility” before the license number.

Section 59. Section 400.452, Florida Statutes, is renumbered as section 429.52, Florida Statutes, and amended to read:

429.52 ~~400.452~~ Staff training and educational programs; core educational requirement.—

(1) Administrators and other assisted living facility staff must meet minimum training and education requirements established by the Department of Elderly Affairs by rule. This training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.

(2) The department shall establish a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test must be developed by the department in conjunction with the agency and providers. The required training and education must cover at least the following topics:

- (a) State law and rules relating to assisted living facilities.
- (b) Resident rights and identifying and reporting abuse, neglect, and exploitation.
- (c) Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs.
- (d) Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.

(e) Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication.

(f) Firesafety requirements, including fire evacuation drill procedures and other emergency procedures.

(g) Care of persons with Alzheimer's disease and related disorders.

(3) Effective January 1, 2004, a new facility administrator must complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator, as determined by the department. Failure to do so is a violation of this part and subjects the violator to an administrative fine as prescribed in s. 429.19 s. 400.419. Administrators licensed in accordance with chapter 468, part II, are exempt from this requirement. Other licensed professionals may be exempted, as determined by the department by rule.

(4) Administrators are required to participate in continuing education for a minimum of 12 contact hours every 2 years.

(5) Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256 s. 400.4256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training.

(6) Other facility staff shall participate in training relevant to their job duties as specified by rule of the department.

(7) If the department or the agency determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, the department or the agency may require, and provide, or cause to be provided, the training or education of any personal care staff in the facility.

(8) The department shall adopt rules related to these training requirements, the competency test, necessary procedures, and competency test fees.

Section 60. Subsections (1), (10), and (18) of section 400.462, Florida Statutes, are amended to read:

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

(1) “Administrator” means a direct employee, as defined in subsection (9). The administrator must be a licensed physician, physician assistant, or registered nurse licensed to practice in this state or an individual having at least 1 year of supervisory or administrative experience in home health care or in a facility licensed under chapter 395, ~~or~~ under part II ~~or part III~~ of this chapter, or under part I of chapter 429. An administrator may manage a maximum of five licensed home health agencies located within one agency service district or within an immediately contiguous county. If the home health agency is licensed under this chapter and is part of a retirement

community that provides multiple levels of care, an employee of the retirement community may administer the home health agency and up to a maximum of four entities licensed under this chapter or chapter 429 that are owned, operated, or managed by the same corporate entity. An administrator shall designate, in writing, for each licensed entity, a qualified alternate administrator to serve during absences.

(10) “Director of nursing” means a registered nurse who is a direct employee, as defined in subsection (9), of the agency and who is a graduate of an approved school of nursing and is licensed in this state; who has at least 1 year of supervisory experience as a registered nurse; and who is responsible for overseeing the professional nursing and home health aid delivery of services of the agency. A director of nursing may be the director of a maximum of five licensed home health agencies operated by a related business entity and located within one agency service district or within an immediately contiguous county. If the home health agency is licensed under this chapter and is part of a retirement community that provides multiple levels of care, an employee of the retirement community may serve as the director of nursing of the home health agency and of up to four entities licensed under this chapter or chapter 429 which are owned, operated, or managed by the same corporate entity.

(18) “Nurse registry” means any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chapter 395, ~~or this chapter,~~ or chapter 429 or other business entities.

Section 61. Paragraphs (h), (i), and (n) of subsection (5) of section 400.464, Florida Statutes, are amended to read:

400.464 Home health agencies to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

(5) The following are exempt from the licensure requirements of this part:

(h) The delivery of assisted living facility services for which the assisted living facility is licensed under part ~~I III~~ of ~~this~~ chapter 429, to serve its residents in its facility.

(i) The delivery of hospice services for which the hospice is licensed under part ~~IV VI~~ of this chapter, to serve hospice patients admitted to its service.

(n) The delivery of adult family care home services for which the adult family care home is licensed under part ~~II VII~~ of ~~this~~ chapter 429, to serve the residents in its facility.

Section 62. Subsection (2) of section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency shall adopt, publish, and enforce rules to implement this part, including, as applicable, ss. 400.506 and 400.509, which must provide reasonable and fair minimum standards relating to:

(2) Shared staffing. The agency shall allow shared staffing if the home health agency is part of a retirement community that provides multiple levels of care, is located on one campus, is licensed under this chapter or chapter 429, and otherwise meets the requirements of law and rule.

Section 63. Paragraph (c) of subsection (2) of section 400.556, Florida Statutes, is amended to read:

400.556 Denial, suspension, revocation of license; administrative fines; investigations and inspections.—

(2) Each of the following actions by the owner of an adult day care center or by its operator or employee is a ground for action by the agency against the owner of the center or its operator or employee:

(c) A failure of persons subject to level 2 background screening under s. 429.174(1) ~~s. 400.4174(1)~~ to meet the screening standards of s. 435.04, or the retention by the center of an employee subject to level 1 background screening standards under s. 429.174(2) ~~s. 400.4174(2)~~ who does not meet the screening standards of s. 435.03 and for whom exemptions from disqualification have not been provided by the agency.

Section 64. Paragraph (c) of subsection (2) of section 400.5572, Florida Statutes, is amended to read:

400.5572 Background screening.—

(2) The owner or administrator of an adult day care center must conduct level 1 background screening as set forth in chapter 435 on all employees hired on or after October 1, 1998, who provide basic services or supportive and optional services to the participants. Such persons satisfy this requirement if:

(c) The person required to be screened is employed by a corporation or business entity or related corporation or business entity that owns, operates, or manages more than one facility or agency licensed under this chapter or chapter 429, and for whom a level 1 screening was conducted by the corporation or business entity as a condition of initial or continued employment.

Section 65. Subsection (5) of section 400.601, Florida Statutes, is amended to read:

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

(5) “Hospice residential unit” means a homelike living facility, other than a facility licensed under other parts of this chapter, ~~or~~ or under chapter 429, that is operated by a hospice for the benefit of its patients and is considered by a patient who lives there to be his or her primary residence.

Section 66. Paragraph (c) of subsection (2) of section 400.618, Florida Statutes, is amended to read:

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

(2) “Adult family-care home” means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives. The following family-type living arrangements are not required to be licensed as an adult family-care home:

(c) An establishment that is licensed as an assisted living facility under chapter 429 ~~part III~~.

Section 67. Paragraph (f) of subsection (1) of section 400.628, Florida Statutes, is amended to read:

400.628 Residents’ bill of rights.—

(1) A resident of an adult family-care home may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of the home. Each resident has the right to:

(f) Manage the resident’s own financial affairs unless the resident or the resident’s guardian authorizes the provider to provide safekeeping for funds in accordance with procedures equivalent to those provided in s. 429.27 ~~s. 400.427~~.

Section 68. Paragraphs (c), (d), (e), and (f) of subsection (5) of section 400.93, Florida Statutes, are amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(c) Assisted living facilities licensed under chapter 429 ~~part III~~, when serving their residents.

(d) Home health agencies licensed under part III ~~IV~~.

(e) Hospices licensed under part IV ~~VI~~.

(f) Intermediate care facilities, homes for special services, and transitional living facilities licensed under part V ~~VIII~~.

Section 69. Paragraph (c) of subsection (10) of section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(10)

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other licensure requirements under this chapter or chapter 429 satisfies the requirements of paragraph (a). Proof of compliance with background screening which has been submitted within the previous 5 years to fulfill the requirements of the Financial Services Commission and the Office of Insurance Regulation under chapter 651 as part of an application for a certificate of authority to operate a continuing care retirement community satisfies the requirements for the Department of Law Enforcement and Federal Bureau of Investigation background checks.

Section 70. Paragraph (b) of subsection (1) of section 400.980, Florida Statutes, is amended to read:

400.980 Health care services pools.—

(1) As used in this section, the term:

(b) “Health care services pool” means any person, firm, corporation, partnership, or association engaged for hire in the business of providing temporary employment in health care facilities, residential facilities, and agencies for licensed, certified, or trained health care personnel including, without limitation, nursing assistants, nurses’ aides, and orderlies. However, the term does not include nursing registries, a facility licensed under this chapter or chapter 429 400, a health care services pool established within a health care facility to provide services only within the confines of such facility, or any individual contractor directly providing temporary services to a health care facility without use or benefit of a contracting agent.

Section 71. Paragraphs (a), (b), (c), and (d) of subsection (4) of section 400.9905, Florida Statutes, are amended to read:

400.9905 Definitions.—

(4) “Clinic” means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. For purposes of this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; or entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses granted under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X XIII, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based

health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; or entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part ~~X XIII~~, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; or entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part ~~X XIII~~, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; or entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part ~~X XIII~~, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

Section 72. Subsection (12) of section 401.23, Florida Statutes, is amended to read:

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

(12) “Interfacility transfer” means the transportation by ambulance of a patient between two facilities licensed under chapter 393, chapter 395, ~~or~~ chapter 400, or chapter 429, pursuant to this part.

Section 73. Paragraph (b) of subsection (2) of section 402.164, Florida Statutes, is amended to read:

402.164 Legislative intent; definitions.—

(2) As used in ss. 402.164-402.167, the term:

(b) “Client” means a client as defined in s. 393.063, s. 394.67, s. 397.311, or s. 400.960, a forensic client or client as defined in s. 916.106, a child or youth as defined in s. 39.01, a child as defined in s. 827.01, a family as defined in s. 414.0252, a participant as defined in s. 400.551, a resident as defined in s. 429.02 ~~s. 400.402~~, a Medicaid recipient or recipient as defined in s. 409.901, a child receiving child care as defined in s. 402.302, a disabled adult as defined in s. 410.032 or s. 410.603, or a victim as defined in s. 39.01 or s. 415.102 as each definition applies within its respective chapter.

Section 74. Subsection (10) of section 408.032, Florida Statutes, is amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(10) “Hospice” or “hospice program” means a hospice as defined in part IV ~~VI~~ of chapter 400.

Section 75. Paragraph (b) of subsection (2) of section 408.033, Florida Statutes, is amended to read:

408.033 Local and state health planning.—

(2) FUNDING.—

(b)1. A hospital licensed under chapter 395, a nursing home licensed under chapter 400, and an assisted living facility licensed under chapter 429 ~~400~~ shall be assessed an annual fee based on number of beds.

2. All other facilities and organizations listed in paragraph (a) shall each be assessed an annual fee of \$150.

3. Facilities operated by the Department of Children and Family Services, the Department of Health, or the Department of Corrections and any hospital which meets the definition of rural hospital pursuant to s. 395.602 are exempt from the assessment required in this subsection.

Section 76. Subsection (2) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393 ~~and~~, 395, and parts II and IV ~~VI~~ of chapter 400, the agency may not issue a license to any health care facility or health service provider that fails to receive a certificate of need or an exemption for the licensed facility or service.

Section 77. Subsections (28) and (29) of section 408.07, Florida Statutes, are amended to read:

408.07 Definitions.—As used in this chapter, with the exception of ss. 408.031-408.045, the term:

(28) “Home health agency” means an organization licensed under part III IV of chapter 400.

(29) “Hospice” means an organization licensed under part IV VI of chapter 400.

Section 78. Subsection (3) of section 408.831, Florida Statutes, is amended to read:

408.831 Denial, suspension, or revocation of a license, registration, certificate, or application.—

(3) This section provides standards of enforcement applicable to all entities licensed or regulated by the Agency for Health Care Administration. This section controls over any conflicting provisions of chapters 39, 381, 383, 390, 391, 393, 394, 395, 400, 408, 429, 468, 483, and 641 or rules adopted pursuant to those chapters.

Section 79. Subsection (2) of section 409.212, Florida Statutes, is amended to read:

409.212 Optional supplementation.—

(2) The base rate of payment for optional state supplementation shall be established by the department within funds appropriated. Additional amounts may be provided for mental health residents in facilities designed to provide limited mental health services as provided for in s. 429.075 s. 400.4075. The base rate of payment does not include the personal needs allowance.

Section 80. Subsection (4) of section 409.905, Florida Statutes, is amended to read:

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(4) HOME HEALTH CARE SERVICES.—The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medi-

cal equipment, necessary to assist a recipient living at home. An entity that provides services pursuant to this subsection shall be licensed under part ~~III~~ IV of chapter 400. These services, equipment, and supplies, or reimbursement therefor, may be limited as provided in the General Appropriations Act and do not include services, equipment, or supplies provided to a person residing in a hospital or nursing facility.

(a) In providing home health care services, the agency may require prior authorization of care based on diagnosis.

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents. When implemented, the private duty nursing utilization management program shall replace the current authorization program used by the Agency for Health Care Administration and the Children's Medical Services program of the Department of Health. The agency may competitively bid on a contract to select a qualified organization to provide utilization management of private duty nursing services. The agency is authorized to seek federal waivers to implement this initiative.

Section 81. Subsection (14) of section 409.906, Florida Statutes, is amended to read:

409.906 Optional Medicaid services.—Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any optional service that is provided shall be provided only when medically necessary and in accordance with state and federal law. Optional services rendered by providers in mobile units to Medicaid recipients may be restricted or prohibited by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. If necessary to safeguard the state's systems of providing services to elderly and disabled persons and subject to the notice and review provisions of s. 216.177, the Governor may direct the Agency for Health Care Administration to amend the Medicaid state plan to delete the optional Medicaid service known as "Intermediate Care Facilities for the Developmentally Disabled." Optional services may include:

(14) HOSPICE CARE SERVICES.—The agency may pay for all reasonable and necessary services for the palliation or management of a recipient's

terminal illness, if the services are provided by a hospice that is licensed under part ~~IV~~ VI of chapter 400 and meets Medicare certification requirements.

Section 82. Subsection (7) and paragraph (a) of subsection (8) of section 409.907, Florida Statutes, are amended to read:

409.907 Medicaid provider agreements.—The agency may make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency, who is performing services or supplying goods in accordance with federal, state, and local law, and who agrees that no person shall, on the grounds of handicap, race, color, or national origin, or for any other reason, be subjected to discrimination under any program or activity for which the provider receives payment from the agency.

(7) The agency may require, as a condition of participating in the Medicaid program and before entering into the provider agreement, that the provider submit information, in an initial and any required renewal applications, concerning the professional, business, and personal background of the provider and permit an onsite inspection of the provider's service location by agency staff or other personnel designated by the agency to perform this function. The agency shall perform a random onsite inspection, within 60 days after receipt of a fully complete new provider's application, of the provider's service location prior to making its first payment to the provider for Medicaid services to determine the applicant's ability to provide the services that the applicant is proposing to provide for Medicaid reimbursement. The agency is not required to perform an onsite inspection of a provider or program that is licensed by the agency, that provides services under waiver programs for home and community-based services, or that is licensed as a medical foster home by the Department of Children and Family Services. As a continuing condition of participation in the Medicaid program, a provider shall immediately notify the agency of any current or pending bankruptcy filing. Before entering into the provider agreement, or as a condition of continuing participation in the Medicaid program, the agency may also require that Medicaid providers reimbursed on a fee-for-services basis or fee schedule basis which is not cost-based, post a surety bond not to exceed \$50,000 or the total amount billed by the provider to the program during the current or most recent calendar year, whichever is greater. For new providers, the amount of the surety bond shall be determined by the agency based on the provider's estimate of its first year's billing. If the provider's billing during the first year exceeds the bond amount, the agency may require the provider to acquire an additional bond equal to the actual billing level of the provider. A provider's bond shall not exceed \$50,000 if a physician or group of physicians licensed under chapter 458, chapter 459, or chapter 460 has a 50 percent or greater ownership interest in the provider or if the provider is an assisted living facility licensed under ~~part III of~~ chapter 429 400. The bonds permitted by this section are in addition to the bonds referenced in s. 400.179(5)(d). If the provider is a corporation, partnership, association, or other entity, the agency may require the provider to submit information concerning the background of that entity and of any principal of the entity, including any partner or shareholder having an

ownership interest in the entity equal to 5 percent or greater, and any treating provider who participates in or intends to participate in Medicaid through the entity. The information must include:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

(b) Information concerning any prior violation, fine, suspension, termination, or other administrative action taken under the Medicaid laws, rules, or regulations of this state or of any other state or the Federal Government; any prior violation of the laws, rules, or regulations relating to the Medicare program; any prior violation of the rules or regulations of any other public or private insurer; and any prior violation of the laws, rules, or regulations of any regulatory body of this or any other state.

(c) Full and accurate disclosure of any financial or ownership interest that the provider, or any principal, partner, or major shareholder thereof, may hold in any other Medicaid provider or health care related entity or any other entity that is licensed by the state to provide health or residential care and treatment to persons.

(d) If a group provider, identification of all members of the group and attestation that all members of the group are enrolled in or have applied to enroll in the Medicaid program.

(8)(a) Each provider, or each principal of the provider if the provider is a corporation, partnership, association, or other entity, seeking to participate in the Medicaid program must submit a complete set of his or her fingerprints to the agency for the purpose of conducting a criminal history record check. Principals of the provider include any officer, director, billing agent, managing employee, or affiliated person, or any partner or shareholder who has an ownership interest equal to 5 percent or more in the provider. However, a director of a not-for-profit corporation or organization is not a principal for purposes of a background investigation as required by this section if the director: serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration from the not-for-profit corporation or organization for his or her service on the board of directors, has no financial interest in the not-for-profit corporation or organization, and has no family members with a financial interest in the not-for-profit corporation or organization; and if the director submits an affidavit, under penalty of perjury, to this effect to the agency and the not-for-profit corporation or organization submits an affidavit, under penalty of perjury, to this effect to the agency as part of the corporation's or organization's Medicaid provider agreement application. Notwithstanding the above, the agency may require a background check for any person reasonably suspected by the agency to have been convicted of a crime. This subsection shall not apply to:

1. A hospital licensed under chapter 395;

2. A nursing home licensed under chapter 400;
3. A hospice licensed under chapter 400;
4. An assisted living facility licensed under chapter 429; 400.
5. A unit of local government, except that requirements of this subsection apply to nongovernmental providers and entities when contracting with the local government to provide Medicaid services. The actual cost of the state and national criminal history record checks must be borne by the nongovernmental provider or entity; or
6. Any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer, and the business or its controlling parent either is required to file a form 10-K or other similar statement with the Securities and Exchange Commission or has a net worth of \$50 million or more.

Section 83. Paragraph (c) of subsection (5) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. part 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a

provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers shall not be entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(5) By December 1, 2005, the Agency for Health Care Administration, in partnership with the Department of Elderly Affairs, shall create an integrated, fixed-payment delivery system for Medicaid recipients who are 60 years of age or older. The Agency for Health Care Administration shall implement the integrated system initially on a pilot basis in two areas of the state. In one of the areas enrollment shall be on a voluntary basis. The program must transfer all Medicaid services for eligible elderly individuals who choose to participate into an integrated-care management model designed to serve Medicaid recipients in the community. The program must combine all funding for Medicaid services provided to individuals 60 years of age or older into the integrated system, including funds for Medicaid home and community-based waiver services; all Medicaid services authorized in ss. 409.905 and 409.906, excluding funds for Medicaid nursing home services unless the agency is able to demonstrate how the integration of the funds will improve coordinated care for these services in a less costly manner; and Medicare coinsurance and deductibles for persons dually eligible for Medicaid and Medicare as prescribed in s. 409.908(13).

(c) The agency must ensure that the capitation-rate-setting methodology for the integrated system is actuarially sound and reflects the intent to provide quality care in the least restrictive setting. The agency must also require integrated-system providers to develop a credentialing system for service providers and to contract with all Gold Seal nursing homes, where feasible, and exclude, where feasible, chronically poor-performing facilities and providers as defined by the agency. The integrated system must provide that if the recipient resides in a noncontracted residential facility licensed under chapter 400 or chapter 429 at the time the integrated system is initiated, the recipient must be permitted to continue to reside in the noncontracted facility as long as the recipient desires. The integrated system must also provide that, in the absence of a contract between the integrated-system provider and the residential facility licensed under chapter 400 or

chapter 429, current Medicaid rates must prevail. The agency and the Department of Elderly Affairs must jointly develop procedures to manage the services provided through the integrated system in order to ensure quality and recipient choice.

Section 84. Section 410.031, Florida Statutes, is amended to read:

410.031 Legislative intent.—It is the intent of the Legislature to encourage the provision of care for disabled adults in family-type living arrangements in private homes as an alternative to institutional or nursing home care for such persons. The provisions of ss. 410.031-410.036 are intended to be supplemental to the provisions of ~~chapters 400 and 429~~, relating to the licensing and regulation of nursing homes and assisted living facilities, and do not exempt any person who is otherwise subject to regulation under chapter 400 or chapter 429.

Section 85. Section 410.034, Florida Statutes, is amended to read:

410.034 Department determination of fitness to provide home care.—In accordance with s. 429.02 ~~s. 400.402~~, a person caring for an adult who is related to such person by blood or marriage is not subject to the Assisted Living Facilities Act. If, however, the person who plans to provide home care under this act is found by the department to be unable to provide this care, the department shall notify the person wishing to provide home care of this determination, and the person shall not be eligible for subsidy payments under ss. 410.031-410.036.

Section 86. Section 415.1111, Florida Statutes, is amended to read:

415.1111 Civil actions.—A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against any perpetrator and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. Notwithstanding the foregoing, any civil action for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023, or against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part I ~~III~~ of chapter 429 ~~400~~ relating to its operation of the licensed facility shall be brought pursuant to s. 429.29 ~~s. 400.429~~. Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

Section 87. Section 430.601, Florida Statutes, is amended to read:

430.601 Home care for the elderly; legislative intent.—It is the intent of the Legislature to encourage the provision of care for the elderly in family-type living arrangements in private homes as an alternative to institutional or nursing home care for such persons. The provisions of ss. 430.601-430.606 are intended to be supplemental to the provisions of chapters chapter 400 and 429, relating to the licensing and regulation of nursing homes and assisted living facilities, and do not exempt any person who is otherwise subject to regulation under those chapters ~~the provisions of that chapter~~.

Section 88. Subsection (7) of section 430.703, Florida Statutes, is amended to read:

430.703 Definitions.—As used in this act, the term:

(7) “Other qualified provider” means an entity licensed under chapter 400 or chapter 429 that demonstrates a long-term care continuum and meets all requirements pursuant to an interagency agreement between the agency and the department.

Section 89. Paragraph (a) of subsection (3) of section 435.03, Florida Statutes, is amended to read:

435.03 Level 1 screening standards.—

(3) Standards must also ensure that the person:

(a) For employees and employers licensed or registered pursuant to chapter 400 or chapter 429, and for employees and employers of developmental services institutions as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 393.063, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.

Section 90. Paragraph (a) of subsection (4) of section 435.04, Florida Statutes, is amended to read:

435.04 Level 2 screening standards.—

(4) Standards must also ensure that the person:

(a) For employees or employers licensed or registered pursuant to chapter 400 or chapter 429, does not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(6), which has been uncontested or upheld under s. 415.103.

Section 91. Paragraph (g) of subsection (1) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(1) DEFINITIONS.—As used in this section, the term:

(g) “Health care facility” means any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429.

Section 92. Subsection (1) of section 465.0235, Florida Statutes, is amended to read:

465.0235 Automated pharmacy systems used by long-term care facilities, hospices, or state correctional institutions.—

(1) A pharmacy may provide pharmacy services to a long-term care facility or hospice licensed under chapter 400 or chapter 429 or a state correctional institution operated under chapter 944 through the use of an automated pharmacy system that need not be located at the same location as the pharmacy.

Section 93. Subsection (8) of section 468.1685, Florida Statutes, is amended to read:

468.1685 Powers and duties of board and department.—It is the function and duty of the board, together with the department, to:

(8) Set up procedures by rule for advising and acting together with the Department of Health and other boards of other health professions in matters affecting procedures and methods for effectively enforcing the purpose of this part and the administration of chapters chapter 400 and 429.

Section 94. Paragraph (k) of subsection (1) of section 468.505, Florida Statutes, is amended to read:

468.505 Exemptions; exceptions.—

(1) Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of:

(k) A person employed by a hospital licensed under chapter 395, ~~or by a nursing home or assisted living facility licensed under part II or part III of chapter 400, by an assisted living facility licensed under chapter 429,~~ or by a continuing care facility certified under chapter 651, if the person is employed in compliance with the laws and rules adopted thereunder regarding the operation of its dietetic department.

Section 95. Subsection (11) of section 477.025, Florida Statutes, is amended to read:

477.025 Cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons.—

(11) Facilities licensed under part II ~~or part III~~ of chapter 400 or under part I of chapter 429 ~~are shall be exempt from the provisions of this section,~~ and a cosmetologist licensed pursuant to s. 477.019 may provide salon services exclusively for facility residents.

Section 96. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as resort condominiums or resort dwellings are not subject to this requirement, but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II ~~or part III~~ of chapter 400 or under chapter 429.

Section 97. Subsection (1) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14 ~~s. 400.414~~. Licenses shall be renewed annually, and the division shall adopt a rule establishing a staggered schedule for license renewals. If any license expires while administrative charges are pending against the license, the proceed-

ings against the license shall continue to conclusion as if the license were still in effect.

Section 98. Subsection (1) of section 627.732, Florida Statutes, is amended to read:

627.732 Definitions.—As used in ss. 627.730-627.7405, the term:

(1) “Broker” means any person not possessing a license under chapter 395, chapter 400, chapter 429, chapter 458, chapter 459, chapter 460, chapter 461, or chapter 641 who charges or receives compensation for any use of medical equipment and is not the 100-percent owner or the 100-percent lessee of such equipment. For purposes of this section, such owner or lessee may be an individual, a corporation, a partnership, or any other entity and any of its 100-percent-owned affiliates and subsidiaries. For purposes of this subsection, the term “lessee” means a long-term lessee under a capital or operating lease, but does not include a part-time lessee. The term “broker” does not include a hospital or physician management company whose medical equipment is ancillary to the practices managed, a debt collection agency, or an entity that has contracted with the insurer to obtain a discounted rate for such services; nor does the term include a management company that has contracted to provide general management services for a licensed physician or health care facility and whose compensation is not materially affected by the usage or frequency of usage of medical equipment or an entity that is 100-percent owned by one or more hospitals or physicians. The term “broker” does not include a person or entity that certifies, upon request of an insurer, that:

- (a) It is a clinic licensed under ss. 400.990-400.995;
- (b) It is a 100-percent owner of medical equipment; and

(c) The owner’s only part-time lease of medical equipment for personal injury protection patients is on a temporary basis not to exceed 30 days in a 12-month period, and such lease is solely for the purposes of necessary repair or maintenance of the 100-percent-owned medical equipment or pending the arrival and installation of the newly purchased or a replacement for the 100-percent-owned medical equipment, or for patients for whom, because of physical size or claustrophobia, it is determined by the medical director or clinical director to be medically necessary that the test be performed in medical equipment that is open-style. The leased medical equipment cannot be used by patients who are not patients of the registered clinic for medical treatment of services. Any person or entity making a false certification under this subsection commits insurance fraud as defined in s. 817.234. However, the 30-day period provided in this paragraph may be extended for an additional 60 days as applicable to magnetic resonance imaging equipment if the owner certifies that the extension otherwise complies with this paragraph.

Section 99. Subsection (2) of section 651.011, Florida Statutes, is amended to read:

651.011 Definitions.—For the purposes of this chapter, the term:

(2) “Continuing care” or “care” means furnishing pursuant to a contract shelter and either nursing care or personal services as defined in s. 429.02 ~~s. 400.402~~, whether such nursing care or personal services are provided in the facility or in another setting designated by the contract for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided shall be designated in the continuing care contract. Contracts to provide continuing care include agreements to provide care for any duration, including contracts that are terminable by either party.

Section 100. Paragraph (c) of subsection (2) of section 651.022, Florida Statutes, is amended to read:

651.022 Provisional certificate of authority; application.—

(2) The application for a provisional certificate of authority shall be on a form prescribed by the commission and shall contain the following information:

(c)1. Evidence that the applicant is reputable and of responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, the form shall require evidence that the members or shareholders are reputable and of responsible character, and the person in charge of providing care under a certificate of authority shall likewise be required to produce evidence of being reputable and of responsible character.

2. Evidence satisfactory to the office of the ability of the applicant to comply with the provisions of this chapter and with rules adopted by the commission pursuant to this chapter.

3. A statement of whether a person identified in the application for a provisional certificate of authority or the administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

a. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or has been enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

b. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400 or chapter 429.

The statement shall set forth the court or agency, the date of conviction or judgment, and the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Before determining whether a provisional certificate of authority is to be issued, the office may make an inquiry to

determine the accuracy of the information submitted pursuant to subparagraphs 1. and 2.

Section 101. Subsection (6) of section 651.023, Florida Statutes, is amended to read:

651.023 Certificate of authority; application.—

(6) The timeframes provided under s. 651.022(5) and (6) apply to applications submitted under s. 651.021(2). The office may not issue a certificate of authority under this chapter to any facility which does not have a component which is to be licensed pursuant to ~~part II or part III~~ of chapter 400 or to part I of chapter 429 or which will not offer personal services or nursing services through written contractual agreement. Any written contractual agreement must be disclosed in the continuing care contract and is subject to the provisions of s. 651.1151, relating to administrative, vendor, and management contracts.

Section 102. Subsection (8) of section 651.055, Florida Statutes, is amended to read:

651.055 Contracts; right to rescind.—

(8) The provisions of this section shall control over any conflicting provisions contained in ~~part II or part III~~ of chapter 400 or in part I of chapter 429.

Section 103. Subsection (5) of section 651.095, Florida Statutes, is amended to read:

651.095 Advertisements; requirements; penalties.—

(5) The provisions of this section shall control over any conflicting provisions contained in ~~part II or part III~~ of chapter 400 or in part I of chapter 429.

Section 104. Subsections (1), (4), (6), (7), and (8) of section 651.118, Florida Statutes, are amended to read:

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

(1) The provisions of this section shall control in the case of conflict with the provisions of the Health Facility and Services Development Act, ss. 408.031-408.045; the provisions of chapter 395; ~~or the provisions of part II parts II and III~~ of chapter 400; or the provisions of part I of chapter 429.

(4) The Agency for Health Care Administration shall approve one sheltered nursing home bed for every four proposed residential units, including those that are licensed under part I of chapter 429 ~~part III of chapter 400~~, in the continuing care facility unless the provider demonstrates the need for a lesser number of sheltered nursing home beds based on proposed utilization by prospective residents or demonstrates the need for additional shel-

tered nursing home beds based on actual utilization and demand by current residents.

(6) Unless the provider already has a component that is to be a part of the continuing care facility and that is licensed under chapter 395, ~~or part II or part III of chapter 400, or part I of chapter 429~~ at the time of construction of the continuing care facility, the provider must construct the nonnursing home portion of the facility and the nursing home portion of the facility at the same time. If a provider constructs less than the number of residential units approved in the certificate of authority, the number of licensed sheltered nursing home beds shall be reduced by a proportionate share.

(7) Notwithstanding the provisions of subsection (2), at the discretion of the continuing care provider, sheltered nursing home beds may be used for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for a period of up to 5 years after the date of issuance of the initial nursing home license. A provider whose 5-year period has expired or is expiring may request the Agency for Health Care Administration for an extension, not to exceed 30 percent of the total sheltered nursing home beds, if the utilization by residents of the nursing home facility in the sheltered beds will not generate sufficient income to cover nursing home facility expenses, as evidenced by one of the following:

(a) The nursing home facility has a net loss for the most recent fiscal year as determined under generally accepted accounting principles, excluding the effects of extraordinary or unusual items, as demonstrated in the most recently audited financial statement; or

(b) The nursing home facility would have had a pro forma loss for the most recent fiscal year, excluding the effects of extraordinary or unusual items, if revenues were reduced by the amount of revenues from persons in sheltered beds who were not residents, as reported on by a certified public accountant.

The agency shall be authorized to grant an extension to the provider based on the evidence required in this subsection. The agency may request a continuing care facility to use up to 25 percent of the patient days generated by new admissions of nonresidents during the extension period to serve Medicaid recipients for those beds authorized for extended use if there is a demonstrated need in the respective service area and if funds are available. A provider who obtains an extension is prohibited from applying for additional sheltered beds under the provision of subsection (2), unless additional residential units are built or the provider can demonstrate need by continuing care facility residents to the Agency for Health Care Administration. The 5-year limit does not apply to up to five sheltered beds designated for inpatient hospice care as part of a contractual arrangement with a hospice licensed under part ~~IV~~ VI of chapter 400. A continuing care facility that uses such beds after the 5-year period shall report such use to the Agency for Health Care Administration. For purposes of this subsection, "resident" means a person who, upon admission to the continuing care facility, initially resides in a part of the continuing care facility not licensed under part II of chapter 400.

(8) A provider may petition the Agency for Health Care Administration to use a designated number of sheltered nursing home beds to provide extended congregate care as defined in s. 429.02 ~~s. 400.402~~ if the beds are in a distinct area of the nursing home which can be adapted to meet the requirements for extended congregate care. The provider may subsequently use such beds as sheltered beds after notifying the agency of the intended change. Any sheltered beds used to provide extended congregate care pursuant to this subsection may not qualify for funding under the Medicaid waiver. Any sheltered beds used to provide extended congregate care pursuant to this subsection may share common areas, services, and staff with beds designated for nursing home care, provided that all of the beds are under common ownership. For the purposes of this subsection, fire and life safety codes applicable to nursing home facilities shall apply.

Section 105. Subsection (2) of section 765.1103, Florida Statutes, is amended to read:

765.1103 Pain management and palliative care.—

(2) Health care providers and practitioners regulated under chapter 458, chapter 459, or chapter 464 must, as appropriate, comply with a request for pain management or palliative care from a patient under their care or, for an incapacitated patient under their care, from a surrogate, proxy, guardian, or other representative permitted to make health care decisions for the incapacitated patient. Facilities regulated under chapter 395, ~~or chapter 400, or chapter 429~~ must comply with the pain management or palliative care measures ordered by the patient's physician.

Section 106. Subsection (2) of section 765.205, Florida Statutes, is amended to read:

765.205 Responsibility of the surrogate.—

(2) The surrogate may authorize the release of information and medical records to appropriate persons to ensure the continuity of the principal's health care and may authorize the admission, discharge, or transfer of the principal to or from a health care facility or other facility or program licensed under chapter 400 or chapter 429.

Section 107. Subsection (1) of section 768.735, Florida Statutes, is amended to read:

768.735 Punitive damages; exceptions; limitation.—

(1) Sections 768.72(2)-(4), 768.725, and 768.73 do not apply to any civil action based upon child abuse, abuse of the elderly under chapter 415, or abuse of the developmentally disabled. Such actions are governed by applicable statutes and controlling judicial precedent. This section does not apply to claims brought pursuant to s. 400.023 or s. 429.29 ~~s. 400.429~~.

Section 108. Paragraph (h) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429 400. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 109. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a

criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) **EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.**—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s. 985.407, ~~or chapter 400, or chapter 429;~~ or
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 110. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures,

including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400, or chapter 429; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

Section 111. The Division of Statutory Revision of the Office of Legislative Services is requested to prepare a reviser's bill for introduction at a subsequent session of the Legislature to conform the Florida Statutes to changes made by this act.

Section 112. This act shall take effect July 1, 2006.

Approved by the Governor June 13, 2006.

Filed in Office Secretary of State June 13, 2006.