

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

29 | to ownership interests, staffing ratios, and
 30 | bankruptcy; deleting an obsolete provision; amending
 31 | s. 400.142, F.S.; deleting the agency's authority to
 32 | adopt rules relating to orders not to resuscitate;
 33 | amending s. 400.147, F.S.; revising provisions
 34 | relating to incident reports; deleting certain
 35 | reporting requirements; repealing s. 400.148, F.S.,
 36 | relating to the Medicaid "Up-or-Out" Quality of Care
 37 | Contract Management Program; amending s. 400.19, F.S.;
 38 | revising provisions relating to agency inspections;
 39 | amending s. 400.191, F.S.; authorizing the facility to
 40 | charge a fee for copies of resident records; amending
 41 | s. 400.23, F.S.; specifying the content of rules
 42 | relating to staffing requirements for residents under
 43 | 21 years of age; amending s. 400.462, F.S.; revising
 44 | the definition of "remuneration" to exclude items
 45 | having a value of \$10 or less; amending ss. 430.80,
 46 | 430.81, and 651.118, F.S.; conforming cross-
 47 | references; amending s. 468.1695, F.S.; providing that
 48 | a health services administration or an equivalent
 49 | major shall satisfy the education requirements for
 50 | nursing home administrator applicants; providing an
 51 | effective date.

52 |
 53 | Be It Enacted by the Legislature of the State of Florida:
 54 |

55 | Section 1. Subsection (1) of section 83.42, Florida
 56 | Statutes, is amended to read:

57 83.42 Exclusions from application of part.—This part does
 58 not apply to:

59 (1) Residency or detention in a facility, whether public
 60 or private, where ~~when~~ residence or detention is incidental to
 61 the provision of medical, geriatric, educational, counseling,
 62 religious, or similar services. For residents of a facility
 63 licensed under part II of chapter 400, the procedures provided
 64 under s. 400.0255 govern all transfers or discharges from such
 65 facilities.

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

68 400.021 Definitions.—When used in this part, unless the
 69 context otherwise requires, the term:

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

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85 ~~agency or temporary registered nurse to satisfy the foregoing~~
 86 ~~requirement and must document the institutional responsibilities~~
 87 ~~that have been delegated to the registered nurse.~~

88 Section 3. Paragraph (g) of subsection (2) of section
 89 400.0239, Florida Statutes, is amended to read:

90 400.0239 Quality of Long-Term Care Facility Improvement
 91 Trust Fund.—

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

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

99 Section 4. Subsection (15) of section 400.0255, Florida
 100 Statutes, is amended to read:

101 400.0255 Resident transfer or discharge; requirements and
 102 procedures; hearings.—

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

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

107 (b) The department shall, by rule, establish procedures to
 108 be used for ~~fair~~ hearings requested by residents. The ~~These~~
 109 procedures must ~~shall~~ be equivalent to the procedures used for
 110 ~~fair~~ hearings for other Medicaid cases brought pursuant to s.
 111 409.285 and applicable rules, chapter 10-2, part VI, Florida
 112 ~~Administrative Code.~~ The burden of proof must be clear and

113 convincing evidence. A hearing decision must be rendered within
 114 90 days after receipt of the request for hearing.

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

118 (d) The decision of the hearing officer is ~~shall be~~ final.
 119 Any aggrieved party may appeal the decision to the district
 120 court of appeal in the appellate district where the facility is
 121 located. Review procedures shall be conducted in accordance with
 122 the Florida Rules of Appellate Procedure.

123 Section 5. Subsection (2) of section 400.063, Florida
 124 Statutes, is amended to read:

125 400.063 Resident protection.—

126 (2) The agency ~~is authorized to establish for each~~
 127 ~~facility,~~ subject to intervention by the agency, may establish a
 128 separate bank account for the deposit to the credit of the
 129 agency of any moneys received from the Health Care Trust Fund or
 130 any other moneys received for the maintenance and care of
 131 residents in the facility, and may ~~the agency is authorized to~~
 132 disburse moneys from such account to pay obligations incurred
 133 for the purposes of this section. The agency may ~~is authorized~~
 134 ~~to~~ requisition moneys from the Health Care Trust Fund in advance
 135 of an actual need for cash on the basis of an estimate by the
 136 agency of moneys to be spent under the authority of this
 137 section. A ~~Any~~ bank account established under this section need
 138 not be approved in advance of its creation as required by s.
 139 17.58, but must ~~shall~~ be secured by depository insurance equal
 140 to or greater than the balance of such account or by the pledge

141 of collateral security ~~in conformance with criteria established~~
 142 ~~in s. 18.11~~. The agency shall notify the Chief Financial Officer
 143 of an any such account so established and ~~shall~~ make a quarterly
 144 accounting to the Chief Financial Officer for all moneys
 145 deposited in such account.

146 Section 6. Subsections (1) and (5) of section 400.071,
 147 Florida Statutes, are amended to read:

148 400.071 Application for license.—

149 (1) In addition to the requirements of part II of chapter
 150 408, the application for a license must ~~shall~~ be under oath and
 151 ~~must~~ contain the following:

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

155 ~~(b) A signed affidavit disclosing any financial or~~
 156 ~~ownership interest that a controlling interest as defined in~~
 157 ~~part II of chapter 408 has held in the last 5 years in any~~
 158 ~~entity licensed by this state or any other state to provide~~
 159 ~~health or residential care which has closed voluntarily or~~
 160 ~~involuntarily; has filed for bankruptcy; has had a receiver~~
 161 ~~appointed; has had a license denied, suspended, or revoked; or~~
 162 ~~has had an injunction issued against it which was initiated by a~~
 163 ~~regulatory agency. The affidavit must disclose the reason any~~
 164 ~~such entity was closed, whether voluntarily or involuntarily.~~

165 ~~(c) The total number of beds and the total number of~~
 166 ~~Medicare and Medicaid certified beds.~~

167 (b) ~~(d)~~ Information relating to the applicant and employees
 168 which the agency requires by rule. The applicant must

169 demonstrate that sufficient numbers of qualified staff, by
 170 training or experience, will be employed to properly care for
 171 the type and number of residents who will reside in the
 172 facility.

173 ~~(c) Copies of any civil verdict or judgment involving the~~
 174 ~~applicant rendered within the 10 years preceding the~~
 175 ~~application, relating to medical negligence, violation of~~
 176 ~~residents' rights, or wrongful death. As a condition of~~
 177 ~~licensure, the licensee agrees to provide to the agency copies~~
 178 ~~of any new verdict or judgment involving the applicant, relating~~
 179 ~~to such matters, within 30 days after filing with the clerk of~~
 180 ~~the court. The information required in this paragraph shall be~~
 181 ~~maintained in the facility's licensure file and in an agency~~
 182 ~~database which is available as a public record.~~

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

186 Section 7. Section 400.0712, Florida Statutes, is amended
 187 to read:

188 400.0712 Application for Inactive license.-

189 ~~(1) As specified in this section, the agency may issue an~~
 190 ~~inactive license to a nursing home facility for all or a portion~~
 191 ~~of its beds. Any request by a licensee that a nursing home or~~
 192 ~~portion of a nursing home become inactive must be submitted to~~
 193 ~~the agency in the approved format. The facility may not initiate~~
 194 ~~any suspension of services, notify residents, or initiate~~
 195 ~~inactivity before receiving approval from the agency; and a~~
 196 ~~licensee that violates this provision may not be issued an~~

197 ~~inactive license.~~

198 (1)(2) In addition to the powers granted under part II of
 199 chapter 408, the agency may issue an inactive license for a
 200 portion of the total beds of ~~to~~ a nursing home facility that
 201 chooses to use an unoccupied contiguous portion of the facility
 202 for an alternative use to meet the needs of elderly persons
 203 through the use of less restrictive, less institutional
 204 services.

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

209 (b) A request to extend the inactive license must be
 210 submitted to the agency in the approved format and approved by
 211 the agency in writing.

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

216 (2)(3) The agency shall adopt rules ~~pursuant to ss.~~
 217 ~~120.536(1) and 120.54~~ necessary to administer ~~implement~~ this
 218 section.

219 Section 8. Section 400.111, Florida Statutes, is amended
 220 to read:

221 400.111 Disclosure of controlling interest.—In addition to
 222 the requirements of part II of chapter 408, the nursing home
 223 facility, if requested by the agency, ~~licensee~~ shall submit a
 224 signed affidavit disclosing any financial or ownership interest

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225 that a controlling interest has held within the last 5 years in
 226 any entity licensed by the state or any other state to provide
 227 health or residential care which ~~entity~~ has closed voluntarily
 228 or involuntarily; has filed for bankruptcy; has had a receiver
 229 appointed; has had a license denied, suspended, or revoked; or
 230 has had an injunction issued against it which was initiated by a
 231 regulatory agency. The affidavit must disclose the reason such
 232 entity was closed, whether voluntarily or involuntarily.

233 Section 9. Subsection (2) of section 400.1183, Florida
 234 Statutes, is amended to read:

235 400.1183 Resident grievance procedures.—

236 (2) Each nursing home facility shall maintain records of
 237 all grievances and a shall report, subject to agency inspection,
 238 of to the agency at the time of relicensure the total number of
 239 grievances handled ~~during the prior licensure period~~, a
 240 categorization of the cases underlying the grievances, and the
 241 final disposition of the grievances.

242 Section 10. Section 400.141, Florida Statutes, is amended
 243 to read:

244 400.141 Administration and management of nursing home
 245 facilities.—

246 (1) A nursing home facility must ~~Every licensed facility~~
 247 ~~shall~~ comply with all applicable standards and rules of the
 248 agency and must shall:

249 (a) Be under the administrative direction and charge of a
 250 licensed administrator.

251 (b) Appoint a medical director licensed pursuant to
 252 chapter 458 or chapter 459. The agency may establish by rule

253 more specific criteria for the appointment of a medical
 254 director.

255 (c) Have available the regular, consultative, and
 256 emergency services of state licensed physicians ~~licensed by the~~
 257 ~~state~~.

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

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

275 2. A pharmacist who correctly repackages and relabels the
 276 medication and the ~~nursing~~ facility that ~~which~~ correctly
 277 administers such repackaged medication ~~under this paragraph~~ may
 278 not be held liable in any civil or administrative action arising
 279 from the repackaging.

280 3. In order to be eligible for the repackaging, a ~~nursing~~

281 ~~facility~~ resident for whom the medication is to be repackaged
 282 must ~~shall~~ sign an informed consent form provided by the
 283 facility which includes an explanation of the repackaging
 284 process and ~~which~~ notifies the resident of the immunities from
 285 liability provided under ~~in~~ this paragraph.

286 4. A pharmacist who repackages and relabels the
 287 prescription medications, ~~as authorized under this paragraph,~~
 288 may charge a reasonable fee for costs resulting from the
 289 implementation of this provision.

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

302 (f) Be allowed and encouraged by the agency to provide
 303 other needed services under certain conditions. If the facility
 304 has a standard licensure status, ~~and has had no class I or class~~
 305 ~~II deficiencies during the past 2 years or has been awarded a~~
 306 ~~Gold Seal under the program established in s. 400.235,~~ it may be
 307 encouraged ~~by the agency~~ to provide services, including, but not
 308 limited to, respite and adult day services, which enable

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309 individuals to move in and out of the facility. A facility is
310 not subject to any additional licensure requirements for
311 providing these services, under the following conditions:-

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

315 a. Has a contract that, at a minimum, specifies the
316 services to be provided to the respite resident, and includes
317 the charges for services, activities, equipment, emergency
318 medical services, and the administration of medications. If
319 multiple respite admissions for a single individual are
320 anticipated, the original contract is valid for 1 year after the
321 date of execution;

322 b. Has a written abbreviated plan of care that, at a
323 minimum, includes nutritional requirements, medication orders,
324 physician assessments and orders, nursing assessments, and
325 dietary preferences. The physician or nursing assessments may
326 take the place of all other assessments required for full-time
327 residents; and

328 c. Ensures that each respite resident is released to his
329 or her caregiver or an individual designated in writing by the
330 caregiver.

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

332 a. Covered by the residents' rights set forth in s.
333 400.022(1)(a)-(o) and (r)-(t). Funds or property of the respite
334 resident are not considered trust funds subject to s.
335 400.022(1)(h) until the resident has been in the facility for
336 more than 14 consecutive days;

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337 b. Allowed to use his or her personal medications for the
338 respite stay if permitted by facility policy. The facility must
339 obtain a physician's order for the medications. The caregiver
340 may provide information regarding the medications as part of the
341 nursing assessment which must agree with the physician's order.
342 Medications shall be released with the respite resident upon
343 discharge in accordance with current physician's orders; and
344 c. Exempt from rule requirements related to discharge
345 planning.

346 3. A person receiving respite care is entitled to reside
347 in the facility for a total of 60 days within a contract year or
348 calendar year if the contract is for less than 12 months.
349 However, each single stay may not exceed 14 days. If a stay
350 exceeds 14 consecutive days, the facility must comply with all
351 assessment and care planning requirements applicable to nursing
352 home residents.

353 4. The respite resident provided medical information from
354 a physician, physician assistant, or nurse practitioner and
355 other information from the primary caregiver as may be required
356 by the facility before or at the time of admission. The medical
357 information must include a physician's order for respite care
358 and proof of a physical examination by a licensed physician,
359 physician assistant, or nurse practitioner. The physician's
360 order and physical examination may be used to provide
361 intermittent respite care for up to 12 months after the date the
362 order is written.

363 5. A person receiving respite care resides in a licensed
364 nursing home bed.

365 6. The facility assumes the duties of the primary
 366 caregiver. To ensure continuity of care and services, the
 367 respite resident is entitled to retain his or her personal
 368 physician and must have access to medically necessary services
 369 such as physical therapy, occupational therapy, or speech
 370 therapy, as needed. The facility must arrange for transportation
 371 to these services if necessary. Respite care must be provided in
 372 ~~accordance with this part and rules adopted by the agency.~~
 373 ~~However, the agency shall, by rule, adopt modified requirements~~
 374 ~~for resident assessment, resident care plans, resident~~
 375 ~~contracts, physician orders, and other provisions, as~~
 376 ~~appropriate, for short-term or temporary nursing home services.~~

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

392 (g) If the facility has a standard license ~~or is a Gold~~

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393 ~~Seal facility,~~ exceeds the minimum required hours of licensed
394 nursing and certified nursing assistant direct care per resident
395 per day, and is part of a continuing care facility licensed
396 under chapter 651 or a retirement community that offers other
397 services pursuant to part III of this chapter or part I or part
398 III of chapter 429 on a single campus, be allowed to share
399 programming and staff. At the time of inspection ~~and in the~~
400 ~~semiannual report required pursuant to paragraph (e),~~ a
401 continuing care facility or retirement community that uses this
402 option must demonstrate through staffing records that minimum
403 staffing requirements for the facility were met. Licensed nurses
404 and certified nursing assistants who work in the ~~nursing home~~
405 facility may be used to provide services elsewhere on campus if
406 the facility exceeds the minimum number of direct care hours
407 required per resident per day and the total number of residents
408 receiving direct care services from a licensed nurse or a
409 certified nursing assistant does not cause the facility to
410 violate the staffing ratios required under s. 400.23(3)(a).
411 Compliance with the minimum staffing ratios must ~~shall~~ be based
412 on the total number of residents receiving direct care services,
413 regardless of where they reside on campus. If the facility
414 receives a conditional license, it may not share staff until the
415 conditional license status ends. This paragraph does not
416 restrict the agency's authority under federal or state law to
417 require additional staff if a facility is cited for deficiencies
418 in care which are caused by an insufficient number of certified
419 nursing assistants or licensed nurses. The agency may adopt
420 rules for the documentation necessary to determine compliance

421 with this provision.

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

424 (i) If the licensee furnishes food service, provide a
 425 wholesome and nourishing diet sufficient to meet generally
 426 accepted standards of proper nutrition for its residents and
 427 provide such therapeutic diets as may be prescribed by attending
 428 physicians. In adopting ~~making~~ rules to implement this
 429 paragraph, the agency shall be guided by standards recommended
 430 by nationally recognized professional groups and associations
 431 with knowledge of dietetics.

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

444 (k) Keep such fiscal records of its operations and
 445 conditions as may be necessary to provide information pursuant
 446 to this part.

447 (l) Furnish copies of personnel records for employees
 448 affiliated with such facility, ~~to any other facility licensed by~~

449 | this state requesting this information pursuant to this part.
 450 | Such information contained in the records may include, but is
 451 | not limited to, disciplinary matters and reasons ~~any reason~~ for
 452 | termination. A ~~Any~~ facility releasing such records pursuant to
 453 | this part is ~~shall be~~ considered to be acting in good faith and
 454 | may not be held liable for information contained in such
 455 | records, absent a showing that the facility maliciously
 456 | falsified such records.

457 | (m) Publicly display a poster provided by the agency
 458 | containing the names, addresses, and telephone numbers for the
 459 | state's abuse hotline, the State Long-Term Care Ombudsman, the
 460 | Agency for Health Care Administration consumer hotline, the
 461 | Advocacy Center for Persons with Disabilities, the Florida
 462 | Statewide Advocacy Council, and the Medicaid Fraud Control Unit,
 463 | with a clear description of the assistance to be expected from
 464 | each.

465 | ~~(n) Submit to the agency the information specified in s.~~
 466 | ~~400.071(1)(b) for a management company within 30 days after the~~
 467 | ~~effective date of the management agreement.~~

468 | ~~(o)1. Submit semiannually to the agency, or more~~
 469 | ~~frequently if requested by the agency, information regarding~~
 470 | ~~facility staff-to-resident ratios, staff turnover, and staff~~
 471 | ~~stability, including information regarding certified nursing~~
 472 | ~~assistants, licensed nurses, the director of nursing, and the~~
 473 | ~~facility administrator. For purposes of this reporting:~~

474 | ~~a. Staff-to-resident ratios must be reported in the~~
 475 | ~~categories specified in s. 400.23(3)(a) and applicable rules.~~
 476 | ~~The ratio must be reported as an average for the most recent~~

477 ~~calendar quarter.~~

478 ~~b. Staff turnover must be reported for the most recent 12-~~
479 ~~month period ending on the last workday of the most recent~~
480 ~~calendar quarter prior to the date the information is submitted.~~
481 ~~The turnover rate must be computed quarterly, with the annual~~
482 ~~rate being the cumulative sum of the quarterly rates. The~~
483 ~~turnover rate is the total number of terminations or separations~~
484 ~~experienced during the quarter, excluding any employee~~
485 ~~terminated during a probationary period of 3 months or less,~~
486 ~~divided by the total number of staff employed at the end of the~~
487 ~~period for which the rate is computed, and expressed as a~~
488 ~~percentage.~~

489 ~~e. The formula for determining staff stability is the~~
490 ~~total number of employees that have been employed for more than~~
491 ~~12 months, divided by the total number of employees employed at~~
492 ~~the end of the most recent calendar quarter, and expressed as a~~
493 ~~percentage.~~

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

495 1.d. A ~~nursing~~ facility that has failed to comply with
496 state minimum-staffing requirements for 2 consecutive days is
497 prohibited from accepting new admissions until the facility has
498 achieved the minimum-staffing requirements for ~~a period of 6~~
499 consecutive days. For the purposes of this subparagraph ~~sub-~~
500 ~~subparagraph~~, any person who was a resident of the facility and
501 was absent from the facility for the purpose of receiving
502 medical care at a separate location or was on a leave of absence
503 is not considered a new admission. Failure by the facility to
504 impose such an admissions moratorium is subject to a \$1,000 fine

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505 ~~constitutes a class II deficiency.~~

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

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

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

517 ~~(o)-(p)~~ Notify a licensed physician when a resident
518 exhibits signs of dementia or cognitive impairment or has a
519 change of condition in order to rule out the presence of an
520 underlying physiological condition that may be contributing to
521 such dementia or impairment. The notification must occur within
522 30 days after the acknowledgment of such signs by facility
523 staff. If an underlying condition is determined to exist, the
524 facility shall arrange, with the appropriate health care
525 provider, arrange for the necessary care and services to treat
526 the condition.

527 ~~(p)-(q)~~ If the facility implements a dining and hospitality
528 attendant program, ensure that the program is developed and
529 implemented under the supervision of the facility director of
530 nursing. A licensed nurse, licensed speech or occupational
531 therapist, or a registered dietitian must conduct training of
532 dining and hospitality attendants. A person employed by a

533 facility as a dining and hospitality attendant must perform
 534 tasks under the direct supervision of a licensed nurse.

535 ~~(r) Report to the agency any filing for bankruptcy~~
 536 ~~protection by the facility or its parent corporation,~~
 537 ~~divestiture or spin-off of its assets, or corporate~~
 538 ~~reorganization within 30 days after the completion of such~~
 539 ~~activity.~~

540 (q)~~(s)~~ Maintain general and professional liability
 541 insurance coverage that is in force at all times. In lieu of
 542 such ~~general and professional liability insurance~~ coverage, a
 543 state-designated teaching nursing home and its affiliated
 544 assisted living facilities created under s. 430.80 may
 545 demonstrate proof of financial responsibility as provided in s.
 546 430.80(3)(g).

547 (r)~~(t)~~ Maintain in the medical record for each resident a
 548 daily chart of certified nursing assistant services provided to
 549 the resident. The certified nursing assistant who is caring for
 550 the resident must complete this record by the end of his or her
 551 shift. The ~~This~~ record must indicate assistance with activities
 552 of daily living, assistance with eating, and assistance with
 553 drinking, and must record each offering of nutrition and
 554 hydration for those residents whose plan of care or assessment
 555 indicates a risk for malnutrition or dehydration.

556 (s)~~(u)~~ Before November 30 of each year, subject to the
 557 availability of an adequate supply of the necessary vaccine,
 558 provide for immunizations against influenza viruses to all its
 559 consenting residents in accordance with the recommendations of
 560 the United States Centers for Disease Control and Prevention,

561 subject to exemptions for medical contraindications and
 562 religious or personal beliefs. Subject to these exemptions, any
 563 consenting person who becomes a resident of the facility after
 564 November 30 but before March 31 of the following year must be
 565 immunized within 5 working days after becoming a resident.
 566 Immunization may ~~shall~~ not be provided to any resident who
 567 provides documentation that he or she has been immunized as
 568 required by this paragraph. This paragraph does not prohibit a
 569 resident from receiving the immunization from his or her
 570 personal physician if he or she so chooses. A resident who
 571 chooses to receive the immunization from his or her personal
 572 physician shall provide proof of immunization to the facility.
 573 The agency may adopt and enforce any rules necessary to
 574 administer ~~comply with or implement~~ this paragraph.

575 (t) ~~(v)~~ Assess all residents for eligibility for
 576 pneumococcal ~~polysaccharide~~ vaccination or revaccination (PPV)
 577 ~~and vaccinate residents when indicated within 60 days after the~~
 578 ~~effective date of this act in accordance with the~~
 579 ~~recommendations of the United States Centers for Disease Control~~
 580 ~~and Prevention, subject to exemptions for medical~~
 581 ~~contraindications and religious or personal beliefs. Residents~~
 582 ~~admitted after the effective date of this act shall be assessed~~
 583 ~~within 5 working days after~~ of admission and, if ~~when~~ indicated,
 584 vaccinate such residents ~~vaccinated~~ within 60 days in accordance
 585 with the recommendations of the United States Centers for
 586 Disease Control and Prevention, subject to exemptions for
 587 medical contraindications and religious or personal beliefs.
 588 Immunization may ~~shall~~ not be provided to any resident who

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589 provides documentation that he or she has been immunized as
 590 required by this paragraph. This paragraph does not prohibit a
 591 resident from receiving the immunization from his or her
 592 personal physician if he or she so chooses. A resident who
 593 chooses to receive the immunization from his or her personal
 594 physician shall provide proof of immunization to the facility.
 595 The agency may adopt and enforce any rules necessary to
 596 administer ~~comply with or implement~~ this paragraph.

597 (u) ~~(w)~~ Annually encourage and promote to its employees the
 598 benefits associated with immunizations against influenza viruses
 599 in accordance with the recommendations of the United States
 600 Centers for Disease Control and Prevention. The agency may adopt
 601 and enforce any rules necessary to administer ~~comply with or~~
 602 ~~implement~~ this paragraph.

603
 604 This subsection does not limit the agency's ability to impose a
 605 deficiency or take other actions if a facility does not have
 606 enough staff to meet residents' needs.

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

612 Section 11. Subsection (3) of section 400.142, Florida
 613 Statutes, is amended to read:

614 400.142 Emergency medication kits; orders not to
 615 resuscitate.—

616 (3) Facility staff may withhold or withdraw

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617 cardiopulmonary resuscitation if presented with an order not to
618 resuscitate executed pursuant to s. 401.45. ~~The agency shall~~
619 ~~adopt rules providing for the implementation of such orders.~~
620 Facility staff and facilities are ~~shall~~ not ~~be~~ subject to
621 criminal prosecution or civil liability, or ~~nor~~ be considered to
622 have engaged in negligent or unprofessional conduct, for
623 withholding or withdrawing cardiopulmonary resuscitation
624 pursuant to such ~~an order and rules adopted by the agency.~~ The
625 absence of an order not to resuscitate executed pursuant to s.
626 401.45 does not preclude a physician from withholding or
627 withdrawing cardiopulmonary resuscitation as otherwise permitted
628 by law.

629 Section 12. Subsections (7) through (10) of section
630 400.147, Florida Statutes, are amended, and present subsections
631 (11) through (15) of that section are redesignated as
632 subsections (9) through (13), respectively, to read:

633 400.147 Internal risk management and quality assurance
634 program.—

635 (7) The nursing home facility shall initiate an
636 investigation ~~and shall notify the agency~~ within 1 business day
637 after the risk manager or his or her designee has received a
638 report pursuant to paragraph (1)(d). The facility must complete
639 the investigation and submit a report to the agency within 15
640 calendar days after the adverse incident occurred. ~~The~~
641 ~~notification must be made in writing and be provided~~
642 ~~electronically, by facsimile device or overnight mail delivery.~~
643 The agency shall develop a form for the report which
644 ~~notification~~ must include the name of the risk manager,

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645 information regarding the identity of the affected resident, the
646 type of adverse incident, the initiation of an investigation by
647 the facility, and whether the events causing or resulting in the
648 adverse incident represent a potential risk to any other
649 resident. The report ~~notification~~ is confidential as provided by
650 law and is not discoverable or admissible in any civil or
651 administrative action, except in disciplinary proceedings by the
652 agency or the appropriate regulatory board. The agency may
653 investigate, as it deems appropriate, any such incident and
654 prescribe measures that must or may be taken in response to the
655 incident. The agency shall review each report ~~incident~~ and
656 determine whether it potentially involved conduct by the health
657 care professional who is subject to disciplinary action, in
658 which case the provisions of s. 456.073 shall apply.

659 ~~(8)(a) Each facility shall complete the investigation and~~
660 ~~submit an adverse incident report to the agency for each adverse~~
661 ~~incident within 15 calendar days after its occurrence. If, after~~
662 ~~a complete investigation, the risk manager determines that the~~
663 ~~incident was not an adverse incident as defined in subsection~~
664 ~~(5), the facility shall include this information in the report.~~
665 ~~The agency shall develop a form for reporting this information.~~

666 ~~(b) The information reported to the agency pursuant to~~
667 ~~paragraph (a) which relates to persons licensed under chapter~~
668 ~~458, chapter 459, chapter 461, or chapter 466 shall be reviewed~~
669 ~~by the agency. The agency shall determine whether any of the~~
670 ~~incidents potentially involved conduct by a health care~~
671 ~~professional who is subject to disciplinary action, in which~~
672 ~~case the provisions of s. 456.073 shall apply.~~

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

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

679 (8)~~(9)~~ Abuse, neglect, or exploitation must be reported to
680 the agency as required by 42 C.F.R. s. 483.13(c) and to the
681 department as required by chapters 39 and 415.

682 ~~(10) By the 10th of each month, each facility subject to~~
683 ~~this section shall report any notice received pursuant to s.~~
684 ~~400.0233(2) and each initial complaint that was filed with the~~
685 ~~clerk of the court and served on the facility during the~~
686 ~~previous month by a resident or a resident's family member,~~
687 ~~guardian, conservator, or personal legal representative. The~~
688 ~~report must include the name of the resident, the resident's~~
689 ~~date of birth and social security number, the Medicaid~~
690 ~~identification number for Medicaid-eligible persons, the date or~~
691 ~~dates of the incident leading to the claim or dates of~~
692 ~~residency, if applicable, and the type of injury or violation of~~
693 ~~rights alleged to have occurred. Each facility shall also submit~~
694 ~~a copy of the notices received pursuant to s. 400.0233(2) and~~
695 ~~complaints filed with the clerk of the court. This report is~~
696 ~~confidential as provided by law and is not discoverable or~~
697 ~~admissible in any civil or administrative action, except in such~~
698 ~~actions brought by the agency to enforce the provisions of this~~
699 ~~part.~~

700 Section 13. Section 400.148, Florida Statutes, is

701 repealed.

702 Section 14. Subsection (3) of section 400.19, Florida
703 Statutes, is amended to read:

704 400.19 Right of entry and inspection.—

705 (3) The agency shall ~~every 15 months~~ conduct at least one
706 unannounced inspection every 15 months to determine the
707 licensee's compliance ~~by the licensee~~ with statutes, and related
708 ~~with rules promulgated under the provisions of those statutes,~~
709 governing minimum standards of construction, quality and
710 adequacy of care, and rights of residents. The survey must ~~shall~~
711 be conducted every 6 months for the next 2-year period if the
712 nursing home facility has been cited for a class I deficiency,
713 has been cited for two or more class II deficiencies arising
714 from separate surveys or investigations within a 60-day period,
715 or has had three or more substantiated complaints within a 6-
716 month period, each resulting in at least one class I or class II
717 deficiency. In addition to any other fees or fines under ~~in~~ this
718 part, the agency shall assess a fine for each facility that is
719 subject to the 6-month survey cycle. The fine for the 2-year
720 period is ~~shall be~~ \$6,000, one-half to be paid at the completion
721 of each survey. The agency may adjust this fine by the change in
722 the Consumer Price Index, based on the 12 months immediately
723 preceding the increase, to cover the cost of the additional
724 surveys. The agency shall verify through subsequent inspection
725 that any deficiency identified during inspection is corrected.
726 However, the agency may verify the correction of a class III or
727 class IV deficiency ~~unrelated to resident rights or resident~~
728 ~~care~~ without reinspecting the facility if adequate written

729 documentation has been received from the facility, which
 730 provides assurance that the deficiency has been corrected. The
 731 giving or causing to be given of advance notice of such
 732 unannounced inspections by an employee of the agency to any
 733 unauthorized person shall constitute cause for suspension of at
 734 least not fewer than 5 working days according to the provisions
 735 of chapter 110.

736 Section 15. Present subsection (6) of section 400.191,
 737 Florida Statutes, is renumbered as subsection (7), and a new
 738 subsection (6) is added to that section, to read:

739 400.191 Availability, distribution, and posting of reports
 740 and records.—

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

745 Section 16. Subsection (5) of section 400.23, Florida
 746 Statutes, is amended to read:

747 400.23 Rules; evaluation and deficiencies; licensure
 748 status.—

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

752 (a) Minimum standards of care for persons under 21 years
 753 of age who reside in nursing home facilities. The rules must
 754 include a methodology for reviewing a nursing home facility
 755 under ss. 408.031-408.045 which serves only persons under 21
 756 years of age. A facility may be exempted ~~exempt~~ from these

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757 standards for specific persons between 18 and 21 years of age,
758 if the person's physician agrees that minimum standards of care
759 based on age are not necessary.

760 (b) Minimum staffing requirements for persons under 21
761 years of age who reside in nursing home facilities, which apply
762 in lieu of the requirements contained in subsection (3).

763 1. For persons under 21 years of age who require skilled
764 care:

765 a. A minimum combined average of 3.9 hours of direct care
766 per resident per day must be provided by licensed nurses,
767 respiratory therapists, respiratory care practitioners, and
768 certified nursing assistants.

769 b. A minimum licensed nursing staffing of 1.0 hour of
770 direct care per resident per day must be provided.

771 c. No more than 1.5 hours of certified nursing assistant
772 care per resident per day may be counted in determining the
773 minimum direct care hours required.

774 d. There must be one registered nurse on duty, on the site
775 24 hours per day on the unit where children reside.

776 2. For persons under 21 years of age who are medically
777 fragile:

778 a. A minimum combined average of 5.0 hours of direct care
779 per resident per day must be provided by licensed nurses,
780 respiratory therapists, respiratory care practitioners, and
781 certified nursing assistants.

782 b. A minimum licensed nursing staffing of 1.7 hours of
783 direct care per resident per day must be provided.

784 c. No more than 1.5 hours of certified nursing assistant

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785 care per resident per day may be counted in determining the
 786 minimum direct care hours required.

787 d. There must be one registered nurse on duty, on the site
 788 24 hours per day on the unit where children reside.

789 Section 17. Subsection (27) of section 400.462, Florida
 790 Statutes, is amended to read:

791 400.462 Definitions.—As used in this part, the term:

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

801 Section 18. Paragraph (g) of subsection (3) of section
 802 430.80, Florida Statutes, is amended to read:

803 430.80 Implementation of a teaching nursing home pilot
 804 project.—

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

807 (g) Maintain insurance coverage pursuant to s.
 808 400.141(1)(g) ~~400.141(1)(s)~~ or proof of financial responsibility
 809 in a minimum amount of \$750,000. Such proof of financial
 810 responsibility may include:

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

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

827 Section 19. Paragraph (h) of subsection (2) of section
 828 430.81, Florida Statutes, is amended to read:

829 430.81 Implementation of a teaching agency for home and
 830 community-based care.—

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

834 (h) Maintains insurance coverage pursuant to s.
 835 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility
 836 in a minimum amount of \$750,000. Such proof of financial
 837 responsibility may include:

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

840 2. Obtaining and maintaining, pursuant to chapter 675, an

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

850 Section 20. Paragraph (a) of subsection (2) of section
 851 468.1695, Florida Statutes, is amended to read:

852 468.1695 Licensure by examination.—

853 (2) The department shall examine each applicant who the
 854 board certifies has completed the application form and remitted
 855 an examination fee set by the board not to exceed \$250 and who:

856 (a)1. Holds a baccalaureate degree from an accredited
 857 college or university and majored in health care administration,
 858 health services administration, or an equivalent major or has
 859 credit for at least 60 semester hours in subjects, as prescribed
 860 by rule of the board, which prepare the applicant for total
 861 management of a nursing home; and

862 2. Has fulfilled the requirements of a college-affiliated
 863 or university-affiliated internship in nursing home
 864 administration or of a 1,000-hour nursing home administrator-in-
 865 training program prescribed by the board; or

866 Section 21. Subsection (13) of section 651.118, Florida
 867 Statutes, is amended to read:

868 651.118 Agency for Health Care Administration;

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869 certificates of need; sheltered beds; community beds.—

870 (13) Residents, as defined in this chapter, are not
871 considered new admissions for the purpose of s. 400.141(1)(n)
872 ~~400.141(1)(e)~~1.d.

873 Section 22. This act shall take effect July 1, 2012.