

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: July 27, 2011

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of June 22, 2011
Draft minutes of P&Z Board Meeting of July 13, 2011

ACTION OPTIONS:

Secretary requests approval of the minutes.

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
JUNE 22, 2011 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE CHAIR	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, LEAVE
SECRETARY:	DENINE SHEREAR
TOWN PLANNER	KEITH MILLS,excused
TOWN ENGINEER	MORRIS SMITH, P.E.,excused

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA :

1. Approval of Minute- Planning and Zoning Meeting- 05/11/2011

Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

Motion: Reilly/Krieger To Remove from the table minutes from 5/11/2011. All Vote: All Ayes

Motion: Reilly/ Ritter To Approve the Minutes from 5/11/2011 with corrections. All Vote: All Ayes.

Reilly on the Adjournment it was not Reilly, he was the chair, check tape.

Reilly under Old and New Business made a comment about Council giving the Board Land Development Code things that are immediate action items without being discussion first. Then us as a Board and then get flak from Council at the meetings about P & Z not doing their job. (listen to tape).

Ritter page 4 top line Art-9 =Article IX.

Next paragraph center sentence, this is what is questionable, take the or out.

Krieger Page 2 the top line "I have concerns of facility" should be concerns of this facility.

Krieger Page 6, Section 5, About Density (listen to tape) there was a Density issue and we kept trying to figure how to get Density involved in this Ordinance. The comment was made that we do not have legal advice here and we have no real way of implementing it.

Wilbur recommends that if we have another Ordinance to deal with the Attorney should be present, to assist the Board with any questions.

Krieger adds that in this case the we discussed about the Density issue being six (6) people per acre in a 1.5 acre.

Sherear comments that on page 5, half way down explains about the Density above Section 1.

Krieger, before we adjourned in "Old Business", Ms Zindel asked about the Fire Code that was brought up the beginning of the meeting and Reilly said it could be a discussion item at a future meeting.

Reilly, at this meeting or a future meeting the Fire Inspection was supposed to be brought up for discussion.

Board wants to add to minutes about adding to a future Agenda Fire Inspection and Defining the R/LC.

Ryan suggested about one parking space for four beds for assisted living facility.

Reilly make note that Wayne voted for Cindy at the last meeting 5/11/2011.

E. PUBLIC HEARING:

F. ACTION:

2. Internet Café about Zoning in the Town of Malabar

Exhibit: Agenda Report No. 2

Recommendation: Action

Reilly looked at this it would only fit in "CG" or "CL" and debate "CL" and just make it "CG", I compared to other towns commercial and industrial areas is where they are located. I suggest "CG" only or "CG" and "CL" and Conditional Use with every one of them and it gives us the opportunity to review.

Ryan reviewed three things under Commercial Activities: Adult Activities, Bars and Lounges, Closed Commercial Amusements, it is permitted in "CG" and make it conditional.

Krieger, it is an Adult Activity if it's a Café or an Internet; we don't have to define it.

Abare, adds that if you have a Café that is one thing but if you start "gaming" that is a whole different issue.

Wilbur asks is there is an age limit for "electronic gaming"? They believe 18 yrs old. Does this eliminate children in the establishments? Ritter adds the parents should be responsible for the kids and if they are in there with their parents.

Ryan, Electronic Gaming Establishments are defined and is a Florida Statues.

Wilbur says the Board feels this could be an abused issue and is being abused in other cities all we have to do it create a zoning, I think Industrial would be good.

Ryan discussing with the Board about a year or so ago Palm Bay decided to group Adult Entertainment in one area.

Wilbur these establishments relatively popular there was a big parking issue where the Internet Café shared parking with a shopping center or strip mall. They were taking up all the parking spaces. Parking could be an issue in certain circumstances.

Ryan, the percentage of space you occupy is the ratio of the space used for parking.

Motion: Reilly/Ritter Recommend to Council that P & Z Believes Internet Café falls under Present Land Use CG Adult Services that the only area that Internet Cafe will be allowed in our Town would be "CG" with Conditional Use. **All Vote: All Ayes**

3. **Proposed Maps of Land Use Changes for Review Revised (6/15/2011) - Babcock Street-Malabar Road-US1 Corridor**
Exhibit: Agenda Report No. 3
Recommendation: Discussion/Action

Motion: Reilly/Ryan Recommendation to Accept the maps with corrections All Vote: All Ayes

Reilly discussing about the Present Land Use Maps are correct, didn't want to do the Proposed Land Use Maps without this meeting.

Ritter this is where Bob needs to say about "RS" or "Conservation" will allow for funding.

Wilbur it determines the source of the funding that bought the Conservation Land to determine what we will call it as far as Conservation or Open Spaces, or Recreation Space.

Reilly wants to go through Maps and make necessary editing page by page.

Change "CG" to "CL". Present Land Use is now.

Page 10 Maps

Wilbur asks about Riverview Dr & "High Density" in yellow. Reilly says it is RS-10 with water and sewer.

Ritter does "CP" go all the way to the north end?

Krieger, from where Yellow Dog, south my proposal Future Land Use should all be "CP" for the whole coast of Malabar. It doesn't affect the north or the south doesn't affect Zoning.

Krieger is discussing the definitions Zoning vs Land Use this is a Future Land Use the understanding is the whole sets of changes we are doing all the borders is that if we change the Land Use and there is a Present Zoning until the zoning asks for change than that is when they look at the Land Use. If it is already zoned for building you cannot prevent the land owners from building. Future Land Use is a goal.

Reilly, CP starts by Yellow Dog at black line (will correct)

Reilly, Change "CG" west of RR to "CL" includes the see page 9 "CL" down by Railroad tracks it includes Garden St. and Pine St area.

The Board is discussing the area by Riverview Dr as being "High Density", RS -10 water/sewer.

Krieger if the area is presently "Medium Density" do we want to keep it or do we want to change it to a higher density?

Reilly says there is a cul-d -sac and could be a ROW there.

Reilly keep as it is.

Page 10 Maps

Reilly it is not "R/LC" it is "CG" where Danny Storage is located on US Highway 1 has outside storage. Do we want to change the "CG"? To R/LC leave as is.

Ryan is it ok for new owner to live there with the business entity. The Board agreed it was ok for new owner to live on property.

Page 11 Maps

Reilly change "CG" to "CL" (west side of RR), to Township Road = Glatter Rd, south is going to be RR-65 (by Oakmont Preserve).

Page 12 Maps

Reilly

Wilbur, not going to change "CG" to "CL" cause it is north of DATA Management. If you are going to change it suggestion would be "IND".

The Board is working with maps on overhead making corrections.

Wilbur is discussing about area near Jordan Blvd making "IND" and put in proper buffers, when EELS took a lot of that land and it was used for mitigation a lot of "IND" was taken away, an opportunity to get some of our "IND" back with Jordan Blvd as a road to take you to property.

Reilly adds that DATA Management is "OI". The west side of RR track is "CG".

Page 13 Maps

Wilbur says the Harris property is "IND".

Abare page 13 Harris has more land on the frontage on Jordan Blvd on west side RR tracks. Correct lines at bend of Jordan Blvd.

**Wilbur asks staff to look up what zoning is at DATA Mang.?

Reilly said Data Mang. Is presently "CG".

Krieger would consider the Jordan Blvd section as a major roadway, very well built up o curve. My concern is that as you go north the zoning should go down until you meet the Oakmont Preserve area.

Krieger adds that Land Use does not affect until you want to do something with your land.

Page 13 Maps

Reilly is working with overhead projector and pointing to map areas where "CP" ends on south end of Malabar. Showing where "Nelsons" property starts and "CP" ends.

Wilbur explaining that the reason the "CP" stopped by Nelsons property is because there was a "developers plan" in place.

**Wilbur wants to find out about the developers plan with Nelson property? Is there a time frame that you have to do something with the property?

Krieger suggest that you are not really negatively affecting anything all your doing is making common sense that the Future Land Use is "CP". The "CP" zoning was described to be the whole coast, anything that is coast is supposed to be "CP".

Ritter does not have to be all or nothing. Krieger you cannot build unless you get permits and permission.

Wilbur comments historically, that "CP" is to preserve the lagoon and our view of the river.

CP has no building specifications

Krieger comments that if you change areas in Future Land Use on north and south end of town to "CP" whatever rights the person have on the property they already have the rights to the property. However if the rights to the property change in the future , the Town can take the "CP" zoning and place what kind of building codes you can have on "CP" zoning. The "CP" zoning does not mean you cannot build we just have no building specifications. There is no imitation and no affect on property owners.

The Board is discussing about the CP Land Use.

**Wilbur, research on the history of CP Nelson in the south and north end of town

Page 4

Reilly explaining that the "X's" on the map are houses.

Ritter explains the "CG" went to "OI".

The Board is discussing maps.

Page 5

Reilly corrections for Malabar Park (by Weber Rd) is Conservation area.

Page 7
RS Park funding
Reilly will make

Page 8
Future land use

Reilly
Wilbur run line from south of church property
Correct page
The Board is discussing the areas on page 8

Page 10
Reilly what is the consensus of the Board to will leave it like this

Page 9
Good maps

4. Fence Ordinance 2011- Revision from 4/27/2011
Exhibit: Agenda Report No. 4

Recommendation: Action

Motion: Reilly/ Krieger To accept Fence Ordinance as corrected **All Vote: Ayes**

Corrections:
Ritter Page 1 of 3 Perimeter Multiple adjoining lots.cor

Corrections page 3 of 3 See changes in marked in red ink on page.

G. DISCUSSION:

H. PUBLIC:

Tom Eschenberg 2835 Beran Lane, discussing with Reilly about that Council in general will not criticize if an item will be discussed before an action is taken, It is up to the Boards and how complex the issue is. Tom explained you always have the option to change an item on the Agenda from action item to discussion.

Tom discussion the Fence Ord. and that he pledged to the people in 1995 that I would never vote for and Ordinance unless it gave more freedom to the people.
Last item I have to discuss that if you watch the Council meetings on "U stream.tv". The discussion that Council had about the Ordinance on assisted living. There was a motion but no second. Ryan asks the future of the Ordinance, Tom explains that the Council wants to send the Ordinance back to P & Z, Tom explained to Council if they want to make the change it is on the table and for Council to make the change. It is coming back to P & Z with direction from Council to make the change. Reilly discusses that they want to take "OI" and Residential out of Ordinance. Reilly discussion they also illuminated "group homes" and we need to put that back in Ordinance.

Tom added that according to our Attorney the Council with have to address the site plan and conditional use under the existing Ordinance because they made their application under this.
Krieger asks is there a time limit on this issue, when do you have to address this? When does it have to be addressed? I thought the whole process was tabled until the Ordinance could be done. Tom explained that the Town Attorney explained it has to be addressed and it has to be approved or not approved.

Wilbur asks what is coming back to the P&Z Board, Tom explains the whole Ordinance.

Abare asks if the Attorney went back and look at that the assisted living did not fit in the existing Ordinance. Tom said that there was a motion to table it until the Ordinance was done. Tom explains if the Council left this on the table while this Ordinance is floating around it could create a problem.

Krieger would like to add that he tried to present the history of this Board side's story. That never brought to us prior to having a finished site plan combined with CUP, normally in the past the staff would direct applicant to come to us for review and discussed. This did not happen this time. I think this Board has done its best to try and educate itself and figure out things.

If this applicant had come to us we could have discussed the intense of the project and density on 1.5 acres. If the Council is going to address this with the present zoning and description, the closest thing I see is a nursing home that is 178 parking spaces; people don't live in a nursing home they are being cared for. The density issue is 9 people on 1.5 acres (high density), how can you have 96 people on 1.5 acres.

Eschenberg explains that when you get the Ordinance back you have to take it real serious, what could happen when this site plan/condition use comes back to Council under the current code Council will turn it down. The developer was willing to wait it out for new Ordinance, so if they get turn down by Council under old code then they can re apply again under the new code.

Reilly explains that Council doesn't want residence in "OI" in that zoning.

Wilbur suggests why don't we do away with "OI" and go to Professional Office. Reilly explains it is Conditional Use and that is a personal feeling along with code.

Ryan suggests having the Town Attorney when it is considered again and comes before this Board.

I. OLD BUSINESS/NEW BUSINESS:

J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly/Abare to adjourn this meeting.

Vote: All Ayes. The meeting adjourned 10:15 P.M.

BY:

Bob Wilbur, Chair

Denine M. Sherear, Secretary

Date Approved

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
JULY 13, 2011 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
	WAYNE ABARE
ALTERNATE:	CINDY ZINDEL, leave
SECRETARY:	DENINE SHEREAR, excused
TOWN CLERK/TREASURER	DEBBY FRANKLIN
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E., excused

Franklin said Zindel is on leave approved by Board. Vice-Chair stated Ryan had called him and had asked to be excused from meeting. Chair asked Franklin to call Ryan and ask him to call Town Hall when he can't attend. Reilly said he called him late, after 6PM, said he had done a lot and was really tired and was going to bed and would like to be excused. Franklin asked and Chair stated he was excused. Vice-Chair stated that Alternate Wayne Abare would be voting in place of Ryan.

C. ADDITIONS/DELETIONS/CHANGES:

Minutes are not done. Reilly said that he would like to move F.2. to G.5. as the land use changes are related to the R/LC. Board's recommendation should not go forward to Council until they finalize what they want for R/LC. No objections.

D. CONSENT AGENDA: none

~~1. Approval of Minutes - Planning and Zoning Meeting - 06/22/11~~
~~Exhibit: Agenda Report No. 1~~
~~Recommendation: Motion to Approve~~

E. PUBLIC HEARING: none

F. ACTION:

Moved to G.5

~~2. Proposed Maps of Land Use Changes for Review Revised (7/08/2011) Babcock
Street Malabar Road US1 Corridor~~
~~Exhibit: Agenda Report No. 2~~
~~Recommendation: Discussion/Action~~

G. DISCUSSION:

3. **Adult Living Facility - Ordinance 2011-38**
Exhibit: Agenda Report No. 3
Recommendation: Discussion

Speaker card: Frank Plata. Some confusion – some people think that this use can be in residential. ALF under Sec 310.2 of Fla Building Code uses group homes interchangeably with ALF also drug and alcohol rehab center. This was never looked at. Under the State, there is Group I-1 part of 308-2 FBC, definition is broken down as group home with three sections, based on number of occupants:

1-5 persons – developer would pull a residential permit.

6-16 persons – developer would still pull a residential permit but a R4 - still res license

They are going for 48 units with more than 16 persons and are under group I-1 – no doubt about where they are in code – not residential must be under institutional zoning. He also referenced County code. These occupancies – more than 16 persons, supervised care that doesn't require extensive medical; has to be more than 16 persons. He discussed the next level up in licensing requires a nursing person for every 3 occupants. Parking would be almost 1 per unit. Nobody likes this type of facility in residential. The confusion is tremendous; that is why you need to go to Mgmt Company. To have consistency, when you go to building dept you are going to institutional. Most people don't know the state rules. Where do you want seniors to go? If you become familiar with codes you can see the difference. He wished they had more input from the building dept explaining the institutional use vs. residential use. He doesn't want to steer anything... They want this cleared up. Doesn't want this use to get kicked out in institutional. If you look into code the questions are answered. He is here to clarify anything they need. Want to be sure the Town is happy. The owner has nothing to do with this. The other two investors want to make sure this is taken care of in a smooth fashion. Code only needs to substitute or add to group home.

Reilly asked about FS 419, Sec 20. It clearly defines the group homes. He will bring this up later. Plata was referring to I-1 in Florida Building Code. Analogy is warehouse for parts and another is warehouse for bikes but they are both warehouses.

Plata said the uses branch down to 11.2 under 3.8.2, the occupancies would be classified are R1, R2 or I-1. Bldg plans would be totally different. They go by zoning. Can't do this type of use in residential. Can't pull a permit for residential in OI. Plata sat down.

Reilly – agreed partly with Plata. Originally they took out group home and put in ALF. Group homes are good for up to 6 persons. This ordinance should address facilities with over 6 persons. FS 419 addresses these uses. He questioned the reference to FS 429. Franklin will check with Attorney.

He would like this ordinance to deal with this instead of a catch all for everything. They went through the ordinance and made changes and he doesn't think they got incorporated. He sees stuff that did not get incorporated. They did change things. This ordinance is a good starting point to add to the tables but should not delete group homes. He has spent many hours of researching assisted living facilities.

Ritter said originally it was an issue with density. She wants density included. Distinguish between units and people.

Wilbur read the motion from Council. They were asked to consider the Council direction to remove residential from OI Zoning; eliminate this type of facility from R/LC Zoning and consider more green space requirement.

Ritter said this application is to be looked at from current code. Wilbur said we are not discussing the project, just the ordinance. Whatever happens to that project is at Council and is not up to P&Z.

Reilly said we should keep group homes and then add other classifications. Do they want to eliminate group homes from OI and add Adult care facilities. He said the break in classification is the 6 persons – 6 and under is group home. You can't group it all together. That is why you need separate listings. We need to do research.

Abare said Council wants us to revisit this and do more on the ordinance. Ritter said we need to incorporate density as well. Wilbur said we should throw this ordinance out and start over.

Don Krieger – sees two situations – project going before Council is site plan without any ramifications on conditional use which has been stalled. If they are going forward with CUP under OI, he has concern with maximum density. Ritter said any ordinance we do needs to address density. Krieger said we didn't have a lawyer and we had two questions. Multiple uses on a parcel and density. Also parking. Density – should add a density statement such as maximum of six units per acre related to a multiple use parcel. If you are going to stick to high density, what are you talking about? Wilbur if you eliminate the residential component, he would propose going back to Professional Commercial. Krieger said if it is not residential it is less of a burden on the fire services. Most of those uses would also be less intensive.

Krieger said you still have a 48-unit with 96 residents on 5 acres. This seems to short circuit the requirement we have everywhere else. If there are not kitchen facilities then is it a residence?

Reilly referred to them to table – if you eliminated residential from OI and then you don't have to define. Krieger said OI now allows residential use for watchman.

Reilly said you can't talk about the site plan. Krieger said yes he can. He said they accepted the site plan and didn't address conditional uses.

Wilbur said we are to talk about the ordinance. We are looking at redoing the OI classification on what we want to allow in the OI classification. If you take out the residential component then you don't have the density issue.

Abare said to follow up with Krieger's point in OI at the end of the day, they go home. With Assisted living they are going to be living there. You have to decide what a good number is; if it is six units per acre and they talk about 48 units, you would have to have eight acres. These are multi-million dollar projects. Don't want too many people on too little of land.

Krieger said that Council did not hear about their concerns. Reilly said they did. Krieger said they didn't have the minutes. Abare said even Council had some concerns. Density is a big concern.

Krieger said on a multiple use parcel – 5 acres with other uses; what is the density they are going to allow?

Ritter said we have to define what a unit is – are 4 people a unit? Make it clear what you expect.

Abare said you have to go with something that is reasonable. The developers have to permit with the State. Abare said Krieger's point – 5 acres is whole site but they are not there 24/7. Krieger does not see children's center and this type of facility meshing together. These are questions we did ask. Krieger reviewed Usteam and the minutes and doesn't think their concerns were conveyed to Council. Ritter said it went to beds. Krieger said we should make recommendations for conditional use; under CUP, you can state the conditions. Abare said the concern is for the demands on the city. Old people will be calling an ambulance more often. Wilbur said if it is a non-profit then the town will foot the bill.

Krieger said they were given a directive or a suggestion from Council. Council could have done anything they wanted and made those changes; they didn't need to send this back, but they did. P&Z Board is an advisory Board. Take it out of OI and also take it out Institutional.

Abare said we could accept as a conditional use – instead of creating a whole new category. Does Board want to create an ordinance dealing with adult care facility? They specifically separate the two. They are not going to get an attorney here. So they need the 310 Build Code and get the FS 419. Discuss the difference of FS 429. Abare said they have adult day care centers in Palm Bay but they go home at night. An assisted living facility is under adult care facility but they are there 24/7. That is a different burden on the city.

Have on for next mtg. F.S. and Bldg Code for next mtg. Get other cities regulations. Reilly researched Melbourne. They are under general commercial and institutional. If we could get other towns. Do they talk about density? Reilly was only interested in zoning. Krieger said density is what shapes the town. It is about lifestyle. It is a major change. An apartment that is housing people. That is an apartment house. Reilly visited quite a few of them. There were 76 persons over 2 acres. That would be 36 per acre. Again that was in a PUD. The other one was on a CG zoning. One was 2-story and one was a 3 story. Abare said there is one that has a large retention pond and that is not considered in their acreage.

Krieger thinks it is a fundamental change if you want to say anything about density. Otherwise it is up to Council. These types of places can only be where there is water. So there is not that much of a rush for this. Abare said there are a lot of potential sites there.

Consider R/LC for the use of group homes also. Wilbur said there is a large track on US 1. Stated that 96 persons on 1.5 acres is not good design. Abare said the project is a big investment and it is not the land, it is the building. If you got more land you can make more parking spaces. His mom still has a car and drives. Krieger said in an urban setting they have more parking. Wilbur said the Mgmt Company after it is built is going to determine the resident type. It could be drug rehab or alcohol rehab. Those are expensive facilities and if they need to fill them. If they have someone with money and a car, they would accept the person with a car if they could write the check. Ritter said there are restrictions from the State.

Wilbur said 2 beds per room, a full kitchen providing two meals a days, cleaning staff, kitchen staff, deliveries, nurses, etc. would require many parking spaces. Abare said there were 49 persons on staff when they looked at Hibiscus Court. They did not even ask if she had a car.

Krieger said in six or seven years from now he doesn't want to be the one pointed to and said that he let something happen that shouldn't have or the other way around. Krieger said the site plan was presented to us in a very quick and unusual manner as far as he was concerned. Normally they get a conceptual look before they deal with site plan and he feels it is very intense use for a very small piece of property, but the engineers and planners told us it was correct.

4. Residential / Limited Commercial Zoning & Density Clarification

Exhibit: Agenda Report No. 4

Recommendation: Discussion

Krieger said R/LC was described as along US 1 and now we are proposing it throughout the town. You would allow group homes in R/LC. Yes. But density would be reduced to 4.

Franklin explained that Board would be recommending that the Code be amended, not the original ordinance be amended.

Wilbur proposed a scenario they had discussed. Duplex with artist studio below. They would require a minimum of one to one development, residential and commercial. Keep them in balance. Franklin explained that if one person wanted to have a bait shop on US 1 in R/LC they could not. She explained that in creating R/LC they were trying to allow homes along US1 to convert or expand their use to operate a business from their home so they did not have to give up one for the other. Council Member Beatty added that if a house in commercial general zoning burned down it could not get rebuilt. It was done to protect existing homes in CG.

Ritter referred to formula Engineer Morris Smith has drawn with residential and commercial developments; it showed the maximum use of each and coverage. Reilly said the maximum coverage of the land is 20% in Table in Art III and the maximum size is 4000sf.

Krieger said he will send Franklin document they are referring to; he thinks it is a memo from Franklin. Wilbur said what is density going to be? They discussed the mix between the res and commercial. We were talking about separate buildings.

Ritter said we needed to get definition down before we can go forward with land use changes as they have proposed more of this in town.

Krieger said what about multiple buildings; is it 4000sf per acre; what about multiple stories. He gave example of a residence upstairs that ceases can they then have a business.

Consensus:

- the density in R/LC would be changed from 6 to 4.
- add language to allow R/LC in other areas of the town besides US 1. Wilbur said don't worry about the formula. The percentage was to ensure you didn't have more of one than the other.
- Change minimum size for apartment to 900sf in Table. That will establish how many residences you can get on a property.

They discussed this. Four is the max for residences. What is the max for commercial? That is what Krieger will look up; he recalls memo from clerk.

G.5 (Moved from F.2.)

Proposed Maps of Land Use Changes for Review Revised (7/08/2011) Babcock Street-Malabar Road-US1 Corridor

Exhibit: Agenda Report No. 2

Recommendation: Discussion/Action

Vice-Chair went over the Power Point presentation. He stated he made changes were made to maps based on previous Board discussions. Some changes were made with staff assistance.

Summary:

Pg 5: changed 17 acres to Conservation.

Pg 6: Abare asked about EELs land - do they get financing from State annually. Unknown.

Pg 7: confirmed they wanted RLC on NW corner of Malabar and Corey; it is out parcel, not part of subdivision.

Pg 8: Discussed the jog down at the PO. Reilly stated the depth of OI is 1320 feet. Wilbur questioned the OI to east of Malabar Community Park. Reilly said it used to be CG. They also discussed the placement of the OI line going from the small OI parcel to the larger OI parcel. Consensus to provide OI in the parcel immediately east of Park. The rest of the area designated as OI will be changed to Conservation. It is all part of the Malabar Scrub Sanctuary. Reilly will change this map. Krieger asked about making Institutional if the Town would like to possibly use it in future. Franklin suggested that if the State designated it surplus at some point in future then the Institutional designation may allow something undesirable.

Pg 9 – discussed the new CL designation on west side of RR tracks. Franklin stated perhaps they intended something besides CL and asked them to read from Code on CL. Krieger read CL definition in Article III (page 115 of LDC) and Reilly read from Article II (pg 61 of LDC) on typical uses in CL. They do not seem to fit for the corridor along the railroad tracks. They were looking at a light industrial use and thought the planner had said the CL would work for this area. Wilbur said they have had numerous requests for a light industrial. They came up with a light industrial. Ritter said should reconsider for along Babcock and I-95 as well.

Franklin will get definition for next meeting of light industrial from other municipalities.

Abare referred to the north side of Malabar Road for the areas proposed for RLC. Did they intend to cut use absolute line or go around existing parcels? Franklin said that if their recommendation is approved, the description could be to go around the existing property lines.

Pg 10: OK

Pg 11: OK; Reilly said OI ended at Glatter. Wilbur referred to large piece that was CG and changed to RLC and maybe it should be changed back to CG. That would give a CG presence on US1. Continued discussion – maybe a Commercial PUD or another type of PUD. CG would allow hotel/motel development or a restaurant. Reilly will flag for further discussion at next meeting. Krieger is thinking it should remain R/LC.

Pg 12: Commented that property owner Skora was at P&Z and did not ask for higher density on his parcel.

Pg 13: No change

Pg 14: referred to part by Goat Creek.

Krieger wanted to know when property values change for tax purposes before they make their recommendation to Council. He spoke to someone at Property Appraiser Office and was told the use best and highest use. Franklin said they do use land use designation but when the FLUM changes and the zoning doesn't she is unsure what they use. Their land use designation on their website does not always reflect a municipality's designation. She will find out before next meeting when the property values would change. Franklin stated another recommendation P&Z needs to address with Council is whether the Town should only make the Land Use Changes to the FLUM and require each property owner to come in and ask for the corresponding zoning change. But there is a requirement that the zoning map can't conflict with the FLUM. If Town changes FLUM and creates conflicts with the Zoning map, how does that work? She will try and get answer from State before next meeting. Can Town create a conflict on a FLUM? Franklin will also get definition from other municipalities on Light Industrial – the intent was for repair shop and contractors.

H. PUBLIC:

I. OLD BUSINESS/NEW BUSINESS:

Krieger asked if anyone wanted to make a motion on density related to 96 bed site plan that will be reviewed by Council at next meeting. Wilbur and Reilly said no. Krieger hopes Council will listen to P&Z minutes on their concerns related to density.

J. ADJOURN:

There being no further business to discuss, **MOTION:** Reilly / Abare to adjourn this meeting. **Vote:** All Ayes. The meeting adjourned 9:55 P.M.

BY:

Bob Wilbur, Chair

Debby Franklin, Recording Secretary

Date Approved

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: July 27, 2011

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Internet Cafes Defined and Regulated (Ord 2011-45)

BACKGROUND/HISTORY:

Malabar Council considered the recommendation by P&Z at their meeting on July 18. The consensus of Council was to proceed with defining Internet Cafes in our Code and providing for it under Conditional Uses.

This ordinance was drafted by the Attorney to follow direction of Council to provide a clear definition of this use. They also wanted to further regulate these uses by requiring a Conditional Use Permit.

The Attorney has left a field in the Table 1-6.1(B) blank – he left it to the Town to decide the “access required to street”. I have indicated a “TBD” in that field.

Barring any objections after P&Z discussion at this meeting it will be advertised for a Public Hearing at the P&Z Board meeting of August 10, 2011.

ATTACHMENTS:

- Ordinance 2011-45
- Portion of DRAFT Minutes from RTCM 7/18/11
- Copies of the current Table 1-6.1(B) and “notes” page (pages 322 and 323)

ACTION OPTIONS:

Staff requests consensus regarding “access required to street” and staff will move forward with advertising for a Public Hearing on Ordinance 2011-45 at the P&Z meeting of August 20, 2011.

ORDINANCE NO. 2011-45

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; AMENDING THE TOWN'S LAND DEVELOPMENT CODE; AMENDING SECTION 1-2.6.C. 3, LAND USE CLASSIFICATIONS; PROVIDING FOR AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-3.2; ESTABLISHING AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS AS A CONDITIONAL USE IN THE CG (COMMERCIAL-GENERAL) ZONING DISTRICT; AMENDING TABLE 1-6.1 (B) MAKING PROVISIONS FOR AMUSEMENT ARCADE CENTERS AND ELECTRONIC GAMING ESTABLISHMENTS; AMENDING ARTICLE XX RELATING TO LANGUAGE AND DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows:

Section 1. Sections 1-2.6.C.3 is hereby amended to read as follows:

"3. Commercial Amusement, enclosed. Active or passive recreation facilities by profit oriented firms where all activities are conducted within fully enclosed facilities. Facilities as defined herein as Amusement Arcade Centers and/or Electronic Gaming Establishments are permitted as conditional uses as provided for in Table 1-3.2. For purposes herein the following definitions apply:

'Arcade Amusement Center' as used in this section means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. The provisions of Section 849.161, Florida Statutes shall apply to an Arcade Amusement Center.

'Electronic Gaming Establishment' means a business operation, where persons utilize electronic machines or devices, including but not limited to, computers and gaming terminals, to conduct games of chance and/or a game promotion pursuant to Section 849.094, F.S., including sweepstakes, and where cash, prizes, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such redeemed or distributed items are determined by the electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes cafes, and cybercafés or sweepstakes cafes. This definition is applicable to any Electronic Gaming Establishment, whether or not the electronic machine or device utilized:

- (a) is server based;
- (b) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;
- (c) uses software such that the simulated game influences or determines the winning or value of the prize;
- (d) selects prizes from a predetermined finite pool of entries;
- (e) uses a **mechanism** that reveals the content of a predetermined sweepstakes entry;

- (f) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;
 - (g) uses software to create a game result;
 - (h) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;
 - (i) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;
 - (j) requires purchase of a related product, regardless if the related product, if any, has legitimate value;
 - (k) reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded;
 - (l) determines and associates the prize with an entry or entries at the time the sweepstakes is entered; or
 - (m) a slot machine or other form of electrical, mechanical, or computer game. It is the intent of this definition to classify any mechanism utilized at any Electronic Gaming Establishment that seeks to avoid application of this definition through the use of any subterfuge or pretense whatsoever. Electronic Gaming Establishments do not include Arcade Amusement Centers, regulated pursuant to Section 849.161, Florida Statutes, or the official Florida Lottery.
- The term *Prize* as used herein shall mean any gift, award, gratuity, good, service, credit, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize."

Section 2. Table 1-3.2 of Section 1-3.2 of the Malabar Land Development Code is amended as follows:

	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	C P
COMMERCIAL ACTIVITIES														
ENCLOSED COMMERCIAL AMUSEMENT										P2				

2. Any Arcade Amusement Center and/or Electronic Gaming Establishment shall only be approved as a conditional use in accordance with Article VI of the Malabar Land Development Code.

Rest of page left intentionally blank

Section 3. Table 1-6.1(B) is hereby amended to provide for Amusement Arcade Centers and Electronic Gaming Establishments to read as follows:

Conditional Land Uses	Minimum Site	Minimum Width/Depth (feet)	Access Required to Street	Building Setback from Residential District/Nonresidential District (feet)	Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)	Perimeter Screening Residential District/Nonresidential District (5)	Curb Cut Controls
<u>Amusement Arcade Center/ Electronic Gaming Establishment</u>	<u>1 Acre</u>	<u>120</u>	<u>TBD</u>	<u>100/30</u>	<u>N/A</u>	<u>Type A/C</u>	<u>(7)</u>

Section 4. Article XX of the Malabar Land Development Code is amended to change the definition of “Commercial amusement, Enclosed” to read as follows:

“Commercial Amusement, Enclosed. A commercial amusement establishment, the operations of which are conducted entirely within the confines of an enclosed building or structure, excluding necessary off-street parking facilities. This definition includes, but is not limited to, the following: bowling alleys, billiard and pool establishments, skating rinks, video arcades, amusement arcade centers, electronic gaming establishments and indoor theaters.”

Section 5. Severability. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of this ordinance shall not be affected and it shall be presumed that the Town Council, of the Town of Malabar, did not intend to enact such invalid or unconstitutional provision. It shall be further assumed that the Town Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

Section 6. Repeal. All other ordinances or resolutions to the extent that conflict with this ordinance are hereby expressly repealed.

Section 7. Codification. The provisions of this ordinance shall become part of the land development code of the Town of Malabar.

Section 8. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council member _____ . The motion was seconded by Council member _____ and, upon being put to a vote, the vote was as follows:

Council Member, Carl Beatty _____
 Council Member, David White _____
 Council Member, Steven (Steve) Rivet _____
 Council Member, Jeffrey (Jeff) McKnight _____
 Council Member, Marisa Acquaviva _____

This ordinance was then declared to be duly passed and adopted this ____ day of _____, 2011.

Town Of Malabar
By Mayor Tom Eschenberg

First Reading _____
Second Reading _____

ATTEST: _____
Debby Franklin, Town Clerk/Treasurer
(Seal)

Approved as to form and content:

Karl W. Bohne, Jr., Town Attorney

L. DISCUSSION ITEMS:

6. Internet Café Zoning – Conditional Use in CG per P&Z Board

Exhibit: Agenda Report No. 6

Recommendation: Request Discussion and Direction

Mayor was at that P&Z meeting and they interpret the Code to say it fits in CG, but should have a conditional use permit restriction. Mayor thinks it is a permitted use in CG.

Council discussed directing the Attorney to draft an ordinance and send it back to P&Z for review. McKnight said a CUP would give us the protection we need for the gambling types of these uses. Mayor said this is the gambling type of use. Attorney said gambling is illegal in Florida and that Internet Cafes are legal under amusement - technically not gambling. Attorney said not a whole lot we can do from a CUP standpoint. Their machines will comply with State requirements. Do you want to create a different BTR category for them, if it can even be done to address the coin operated machine? Clerk Franklin stated our ordinance already provides for that. Clerk Franklin stated a CUP condition could be to not allow next to residential uses, etc. Mayor said then they would be imposing special exceptions. Mayor stated the conditions in Code for CUP refer to Code. Attorney suggested definitions could call it electronic gaming establishments and list the rules for operation. Bohne will work on it if Council directs. They ask the difference in cost to amend Code vs. Land Development Code. LDC ordinances have a public hearing at P&Z and then another at Council. Possible cost to run public hearing ad for P&Z and Council. Consensus of Council to have Attorney Bohne to add Electronic Gaming Establishments and list requirements to the Definitions section of LDC.

TABLE 1-6.1(B). CONDITIONAL LAND USE REQUIREMENTS

<i>Conditional Land Uses</i>	<i>Minimum Size Site</i>	<i>Minimum Width/Depth (feet)</i>	<i>Access Required to Street</i>	<i>Building Setback from Residential District/Nonresidential District (feet)</i>	<i>Parking Lot Setbacks from Adjacent Residential District/Nonresidential District (feet)</i>	<i>Perimeter Screening Residential District/Nonresidential District (5)</i>	<i>Curb Cut Controls</i>	<i>Other</i>
Child Care Facilities	1 Acre	145	Paved	50/30	15/10	Type A/B	(7)	
Places of Worship	5 Acres	250	Paved	70/45	25/20	Type A/C	(7)	
Educational Institution	(1)	500	Arterial	70/45	25/20	Type A/C	(7)	
Golf Courses	(2)	500	Paved	70/45	25/20	Type C/C	(7)	
Group Homes	(3)	(3)	N/A	N/A	N/A	N/A	(7)	
Hospital and Extensive Care Facilities	5 Acres	325	Arterial	100/75	25/20	Type A/C	(7)	
Nursing Homes	2 Acres	210	Paved	60/30	25/20	Type A/C	(7)	
Protective Services	(4)	120	Paved	50/30	25/20	Type A/C	(7)	
Public Parks and Recreation Areas	5 Acres	325	Paved	70/45	25/20	Type C/C	(7)	
Public and Private Utilities	N/A	120	N/A	70/30	25/20	Type A/C	(7)	
Commercial Stables	5 Acres	325	N/A	100/75	50/40	Type B/C		
Adult Entertainment	1 Acre (8, 9, 10)	120	US 1/Babcock	100/30	N/A	Type A/C	(7)	(6)
Bars and Lounges	1 Acre (8, 9)	120	US 1/Babcock	100/30	N/A	Type A/C	(7)	(6)
Marine Commercial Activities	1 Acre	120	US 1/Babcock/ Westland	100/30	N/A	N/A	(7)	
Service Stations, Including Gasoline Sales	1 Acre (8)	145	Arterial	100/30	N/A	N/A	(7)	
Trades and Skilled Services	1 Acre (8)	145	US 1/Babcock/ Westland	100/30	N/A	Type A/C	(7)	
Vehicular Services and Maintenance	1 Acre (8)	145	US 1/Babcock/ Westland	100/30	N/A	Type A/C	(7)	
Wholesale Trades and Services	1 Acre	145	US 1/Babcock/ Westland	50/30	15/10	Type A/C	(7)	
Kennels	1 Acre	145	N/A	100/30	15/10	Type A/C	(7)	
Vehicular and Other Mechanical Repair	1 Acre (8)	145	US 1/Babcock/ Westland	100/30	15/10	Type A/C	(7)	
Noncommercial Piers, Boat Slips and Docks	N/A	N/A	N/A	N/A	N/A	N/A	(7)	

Note: Arterial streets refer to transportation linkages on the Major Thoroughfare Plan within the Comprehensive Plan (i.e., Malabar Road, US 1, and Babcock Street).

- (1) Minimum spatial requirements for public and private, primary and secondary educational institutions shall comply with standards used by the Brevard County School Board and the State of Florida.
- (2) Minimum spatial requirements for golf courses shall comply with standards recommended by the U.S. Golf Association or the American Society of Golf Architects.
- (3) Minimum spatial requirements shall comply with standards established by the Florida Department of Health and Rehabilitative Services.
- (4) Minimum spatial requirements for the American Insurance Association and the National Fire Prevention and Control Administration.
- (5) The Type A, B, and C screening requirements reflect the standards cited in Section 1-4.1(G)(2)(a)—(c).
- (6) No parking lot or structure within 200' of residential or institutional district.
- (7) No more than two curb cuts shall be permitted to any one street frontage. The ingress-egress width shall be restricted to a maximum width of thirty (30) feet at the point of curvature at the property line; shall be located no closer than thirty (30) feet to a right-of-way intersection; and shall be at least ten (10) feet removed from property lines. A minimum fifty (50) feet separation shall be maintained between curb cuts. The Town may require controlled access, including dedication of cross easements and joint use of drive. The Town Council may grant a waiver to these requirements after considering the recommendations of the Planning and Zoning Board and the Town staff.
- (8) Shall not be located adjacent to a residential district, including the RR district.
- (9) Shall not be located within 1000 feet of a religious institution, educational institution, or public park.
- (10) Reference Town of Malabar Ordinance Regulating Adult Entertainment.
(Ord. No. 94-4, § 9, 4-3-95)
Cross reference—Adult entertainment establishments, regulations, § 10-26 et seq.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: July 27, 2011

Prepared By: Debby Franklin, Town Clerk/Treasurer

SUBJECT: Material for P&Z Research into Requirements for Assisted Living

BACKGROUND/HISTORY:

At the last P&Z meeting the Board asked that staff provide the Florida Statutes that deal with groups homes and assisted living. I explained to the Town Attorney the direction you are taking in drafting an ordinance to cover all types of these uses and he suggested I provide you with the Florida Statutes listed below. Statutes are also referred to as Chapters.

F.S. 400, Parts I, II, V, VIII

F.S. 408.032(8)

F.S. 419

F.S. 429, Parts I, II, and III

I also printed from the 2007 Florida Building Code the following Sections:

Section 308, Institutional Group I

Section 310, Residential Group R

Section 313, Daycare, Group D

Section 433, Adult Day Care

Section 434, Assisted Living Facilities

Section 436, Day Care Occupancies

I have also contacted the cities of Rockledge, Cocoa and Satellite Beach and asked for their City Code requirements. These will be forwarded to you as soon as we receive them. Denine has contact Brevard county and Cocoa Beach. Cocoa Beach provides for this use as a Special Exception in their Commercial Neighborhood (CN) and their Commercial General (CG) Zoning. Their information is attached Information from Melbourne has already been sent out to Board.

I did ask Attorney Bohne if he could attend one of your meetings and answer questions. He represents Grant Valkaria and they meet on one Wednesday a month. If Councils approves the expense, he could be available in August. If there is someone else you would like to attend to provide reference information, please let staff know.

ATTACHMENTS:

- As stated above
- Memo 2011-TC/T-086
- Brevard County Code (1 page)
- Cocoa Beach Code (8 pages)

ACTION OPTIONS:

Board research on F.S. requirements and Florida Building Code requirements.

TOWN OF MALABAR

MEMORANDUM

Date: July 19, 2011 2011-TC/T-085
To: Planning & Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: F.S. Question from P&Z on 7/13/2011

At the P&Z Board meeting of July 13, 2011, Vice-Chair Pat Reilly asked about F.S. 429 as he had researched F.S. 419 in preparation of the P&Z Board meeting. I checked with the Town Attorney and verified that based on the direction he was given to draft Ordinance 2011-38, he utilized only F.S. 429 and F.S. 400 as F.S. 419 dealt with residential zoning. It was his direction to provide an ordinance covering institutional facilities in institutional zoning, not residential.

cc: Town Council

Sec. 62-1826. - Assisted living facilities and treatment and recovery facilities.

1 page

Assisted living facilities and treatment and recovery facilities. Assisted living facilities and treatment and recovery facilities shall comply with the following requirements, where applicable:

(1)

Dispersal of facilities. The minimum distance between facilities, measured from the property line, shall be 1,000 feet.

(2)

Neighborhood compatibility. In the institutional zoning classification, the external appearance of the assisted living facility's or treatment and recovery facility's structures and building sites shall maintain the general character of the area. Exterior building materials, bulk, landscaping, fences and walls and general design shall be compatible with those of surrounding dwellings.

(3)

Facility standards.

a.

Prior to the granting of any permit for assisted living facilities or treatment and recovery facilities, the state department of health and rehabilitative services shall verify compliance with the following standards:

1.

There shall be not less than 250 square feet of floor space per assigned resident.

2.

There shall be one bathroom per two bedrooms. The bedroom square footage shall be not less than 75 square feet per assigned resident.

3.

Centralized cooking and dining facilities shall equal 30 square feet per assigned resident.

b.

If the request for a permit for assisted living facilities or treatment and recovery facilities is for a structure to be built, floor plans of the structure shall be submitted and approved prior to issuance of the permit.

(4)

Reserved.

(5)

Off-street parking. There shall be two parking spaces, plus two additional parking spaces for every five occupants for which the facility is permitted.

(6)

Compliance with state regulations. Violations of applicable statutes and regulations of the state shall be deemed violations of this division.

(Ord. No. 04-29, § 38, 8-5-04)

Editor's note— Ord. No. 04-29, § 38, adopted August 5, 2004, amended § 62-1903 in its entirety, and redesignated the provisions as § 62-1826. Formerly, § 62-1903 pertained to adult congregate living facilities and treatment and recovery facilities, and derived from the Code of 1979, § 14-20.16.2(B)(2); Ord. No. 97-49, § 12, adopted December 9, 1997, and Ord. No. 2003-03, § 32, adopted January 14, 2003.

COCOA BEACH (CB)

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I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Transient lodging facilities: Twenty-eight (28) units per acre.
2. Multifamily dwellings: Ten (10) dwelling units per acre.
3. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential, transient lodging facility occupancy and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.
4. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non-residential uses that are accessory to residential uses must meet the accessory use requirements set forth above. A reduction in residential density may be credited to non-residential uses as follows: One (1) residential dwelling unit per acre may be converted to an equivalent non-residential FAR of 0.15.

K. *Pervious surface.* See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 3, 4-15-2004; Ord. No. 1395, §§ 2--4, 4-21-2005; Ord. No. 1500, § 7, 8-20-2009)

Section 3-10. CN neighborhood commercial district.

A. *Scope.* The regulations contained within this section shall apply in the CN district.

B. *Purpose.* To meet the wide spectrum of retail and service needs of the total community, this district allows certain office business, retail and personal services, while specifically prohibiting any transient lodging facility and time-share related uses. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city. This zoning district shall only be allowed within a commercial land use classification as identified on the city's future land use map.

C. *Permitted principal uses and structures.* This shall be:

1. Retail (excluding retail fish markets).
2. Personal service shops and stores, such as beauty and barbershops, laundry/dry-cleaning.
3. Commercial recreational facilities within a soundproof building.
4. Professional offices and clinics.
5. Financial institutions.
6. Business offices.
7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
8. Nightclubs and bar and lounges within a soundproof building which are located

C.B.

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greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

9. Pet shops within a soundproof, air-conditioned building.
10. Communication media facilities and offices.
11. Commercial parking lots or parking garages.
12. Enclosed car wash.
13. Art studios and galleries.
14. Animal hospitals and kennels within a soundproof, air conditioned building.
15. Each principal use in a phased development must be allocated to an individual site which meets all of the requirements set forth in these regulations.
16. Major and minor public utility structures owned, operated, franchised or supervised by the city.
17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. *Permitted accessory uses and structures.*

1. This shall be the uses and structures which:
 - a. Are customarily accessory and clearly incidental and subordinate to permitted or permissible uses and structures (i.e., sheds, docks, and garages).
 - b. Are located on the same lot as the permitted or permissible use of structure, or on a contiguous lot in the same ownership.
 - c. Do not involve operations or structures not in keeping with the character of the district.
2. Any freestanding accessory structure will be included in the calculation of maximum lot coverage, intensity of uses, and other zoning regulations related to structures in this district.
3. Yard requirements for accessory structures shall be the same as for principal structures. Side setbacks for accessory structures shall be the same as for the tallest principal structure on the parcel.

E. *Special exceptions.* If determined to be appropriate and compatible with adjacent land uses, and after public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

1. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.
2. Existing residential units, hotels, motels, or transient lodging establishments and uses, including all customary accessory buildings in existence as of May 4, 2000, which would otherwise be considered a nonconforming use shall be deemed a special exception following validation of same by resolution of city commission. If such use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three-year period, the special exception shall be deemed to have expired and such use shall not thereafter be allowed to exist.

C.B.

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3. Mini warehouses and storage facilities provided that:
 - a. No single compartment shall have a floor area exceeding one thousand five hundred (1,500) square feet.
 - b. Each compartment shall have an exterior independent entrance under exclusive control of the tenant thereof.
 - c. Use of compartment shall be limited to storage of personal property.
 - d. There shall be no outside storage of goods or materials of any type on the site of facility the storage area is located in a side or rear yards and fenced as authorized by section 4-67, Chapter IV of these regulations and the fence shall be constructed of opaque material.
4. Indoor auction sales.
5. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.
6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.
7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.
8. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:
 - a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
 - b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
 - c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
 - d. Whether or not additional parking must be provided.
 - e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
 - f. Any other issue that is reasonably related to the nature of the request.
10. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family

C.B.

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oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

11. Public and private schools offering a general education curriculum.
12. Free-standing retail fish markets.
13. Major public utility structures owned, operated, franchised or supervised by the city.
14. All residential uses in existence at the date of adoption of these regulations.
15. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.
16. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:
 - a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
 - b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.
 - c. Any other issue that is reasonably related to the nature of the request.
 - d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Single, duplex, triplex and multifamily structures, except those in existence on the date (May 4, 2000) and considered and regulated as specified above.
2. Hotels, motels, or transient lodging establishments and uses, including time shares, except those in existence of the date of adoption of this ordinance (May 4, 2000) and considered and regulated as a special exception as specified above.
3. Storage and transfer facilities.
4. Industrial activities.
5. Commercial activities in dwelling units of apartments, motels and hotels.
6. Outside automobile sales.

C.B.

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7. Junkyards.
8. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.
9. Parking or display of any vehicle for sale.
10. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.
11. Wholesale and retail sale of fireworks.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Existing residential or transient lodging units and corresponding calculated density in existence as of May 4, 2000. Once a lot, tract, parcel of land, or portion thereof has been utilized for the purposes of computing density for residential (ten (10) dwelling units per acre), transient lodging facility occupancy (twenty-eight (28) rooms per acre) and said residential, transient lodging facility project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no subdivision or use of that land or construction of any type will be permitted thereon, except the permitted accessory uses for the residential or transient lodging development on said land.

2. Non-residential uses: Building coverage not to exceed thirty-five (35) percent and floor area ratio (FAR) not to exceed 2.5. Non residential uses that are accessory to existing residential uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.

K. *Pervious surface.* See Table 4-01 of these regulations for design standards.

(Ord. No. 1349, § 2, 2-20-2003; Ord. No. 1381, § 4, 4-15-2004; Ord. No. 1388, § 3, 7-1-2004; Ord. No. 1397, §§ 2, 3, 6-16-2005; Ord. No. 1500, § 8, 8-20-2009)



Section 3-11. CG general commercial district.

A. *Scope.* The regulations contained within this section shall apply in the CG district and may be permitted in the future land use designation of general commercial.

B. *Purpose.* This district is intended for general business and services to meet the wide spectrum of retail and service needs of the total community. These districts are located near the transportation hubs of the city to make them easily accessible to the resident and traveling population of the city.

C. *Permitted principal uses and structures.* This shall be:

1. Retail (excluding retail fish markets).
2. Commercial recreational facilities within a soundproof building.

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3. Professional offices and clinics.
4. Financial institutions.
5. Business offices.
6. Transient lodging facilities.
7. Restaurants which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
8. Nightclubs and bar and lounges within a soundproof building which are located greater than one hundred (100) feet from any residentially zoned property (RS-1, RM-1, and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.
9. Pet shops within a soundproof, air-conditioned building.
10. Communication media facilities and offices.
11. Commercial parking lots or parking garages.
12. Personal service shops and stores including but not limited to beauty and health salons, astrology and palm readers, tattoo parlors, clothing, gifts, small appliances, and art studios.
13. Enclosed car wash.
14. Animal hospitals and kennels within a soundproof, air conditioned building.
15. Public utility structures owned, operated, franchised or supervised by the city.
16. Health clubs and gyms.
17. Adult entertainment establishments located in accordance with provisions of section 4-80 of these regulations, and operated in accordance with the City of Cocoa Beach Sexually Oriented Business and Adult Entertainment Establishment Ordinance (the Code of Ordinances of the City of Cocoa Beach, Florida Chapter 2.5).

D. *Permitted accessory structures and uses.* This shall be those uses and structures which:

1. Are customarily accessory and clearly incidental and subordinate to permitted principal uses and structures (i.e., sheds, docks and garages). To be considered accessory use which does not count towards lot coverage, the proposed use must be located within the primary structure.
2. Nonresidential uses that are accessory to residential or transient lodging uses shall not exceed twenty (20) percent of the gross floor area of the residential structure. A reduction in residential or transient lodging density may be credited to non-residential uses at an equivalent of one (1) residential dwelling unit per acre equals a non-residential FAR of 0.15, or one (1) transient lodging unit per acre equals a non-residential FAR of 0.05.
3. Are located on the same parcel as the principal use or structure.

E. *Special exceptions.* After public notice and hearing and subject to appropriate conditions and safeguards, the board of adjustment may permit the following as special exceptions:

1. Indoor auction sales.
2. Filling (service) station without major vehicle repairs, providing it shall not be located within a fifteen hundred (1,500) foot radius of an existing station. Vehicles stored on the

premises longer than forty-eight (48) hours shall be placed within a suitably screened storage area.

3. Churches and similar places of worship with their attendant educational buildings and recreational facilities, if located on a major street or thoroughfare.

4. Nightclubs and cocktail lounges within a soundproof building and restaurants which are within one hundred (100) feet of any residentially zoned property (RS-1, RM-1 and RM-2 districts) as measured in a straight line from the nearest point of the structure of the establishment to the nearest point of the residential property line.

5. Outdoor seating that is in conjunction with and clearly accessory to any permitted or special exception restaurant, nightclub, or cocktail lounge use. When considering an application for outdoor seating, the board must consider the special exception criteria listed below, in addition to that criteria listed in section 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

- a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- b. Whether or not outdoor lighting will create additional nuisance impacts to existing or planned adjacent land uses.
- c. Whether or not outdoor entertainment will create additional nuisance impacts, including but not limited to noise impacts, to existing or planned adjacent land uses.
- d. Whether or not additional parking must be provided.
- e. Whether or not it is necessary to restrict the hours of operation for the outdoor seating.
- f. Any other issue that is reasonably related to the nature of the request.

6. Commercial marinas, provided all structures are located within the bulkhead lines and not adjacent to a residential district.

7. Mechanical garage with all activities conducted within fully enclosed buildings. Vehicles stored on the premises longer than forty-eight (48) hours shall be placed within a suitable screened storage area.

8. Mini-storage with suitable screening compatible with the architecture of the project. On-site parking shall be provided on the basis of one (1) space per five hundred sixty (560) square feet of gross floor area. One-half (1/2) of the parking sites may be sodded or landscaped. The individual mini-storage; however, it shall not preclude the use of the facility as a depot for such purposes as franchised distribution. If motor vehicles or vessels are stored in an individual facility, there shall be not mechanical work performed on the premises.

9. Any legitimate commercial use not prohibited in this zone but not falling within the specific permitted uses and which, by a preponderance of evidence, is shown to further the interests of the citizens of Cocoa Beach in the establishment of a low-density family oriented residential and resort community with paramount consideration given to the health, comfort, well being, and quality of life for the citizens.

10. Public and private schools offering a general education curriculum.

11. Free-standing retail fish markets.

12. Major public utility structures owned, operated, franchised or supervised by the city.

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13. Hospice, assisted living facility, short-term respite care center, geriatric care center, or adult day care center.

14. *Tattoo studios and body-piercing salons.* When considering an application for tattoo studios and body-piercing salons, the board must consider the special exception criteria listed below, in addition to that criteria listed in subsection 5-57C. The board may deny the request, approve the request, or approve with conditions the request, based upon a review of these considerations. The board may assign additional conditions and safeguards as deemed necessary:

a. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

b. No new or relocated tattoo studio or body-piercing salon should be placed within two thousand (2,000) feet of any lawfully existing tattoo studio or body-piercing salon establishment. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line of the existing establishment. The board may consider establishments be located closer than the two thousand-foot standard, if by the preponderance of evidence such new or relocated establishment promotes the welfare of the community and serves to promote the preamble to the city charter.

c. Any other issue that is reasonably related to the nature of the request.

d. If the owner of a currently existing tattoo studio or body-piercing salon, as of August 20, 2009, loses his lease or use of his building or building location through no fault of his own and is unable to find a comparable replacement site two thousand (2,000) feet from another tattoo studio or body-piercing salon, then, in such circumstances if properly established, the board shall allow such an owner to relocate to another site that may be within two thousand (2,000) feet of an existing tattoo studio or body-piercing salon. This provision is not applicable to owners subsequent to August 20, 2009 to include those who may acquire a corporately owned tattoo studio or body-piercing salon.

F. *Prohibited uses and structures.* This shall be any uses not listed as permitted or allowed by special exception and specifically:

1. Industrial uses and structures.

2. Facilities and services which create through objectionable noise, air pollution, obnoxious odors, or other annoyances are considered incompatible and not in keeping with the residential and family-oriented tourist-amenity intent of the district.

3. Wholesale and retail sale of fireworks.

4. Any other use incompatible with the exclusive commercial character of the district and its permitted uses.

G. *Minimum off-street parking requirements.* See Chapter IV, Article III of these regulations.

H. *Limitations on signs.* See Chapter VI of these regulations.

I. *Sidewalks.* This shall be installed in accordance with the provisions of section 4-32 of these regulations.

J. *Density.*

1. Transient lodging facility: Twenty-eight (28) units per acre.

2. Once a lot, tract or parcel of land, has been used to compute density for transient lodging occupancy and said transient lodging project has been approved for and/or constructed with the maximum number of units permitted under density allowances, no

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The 2010 Florida Statutes(including Special Session A)

Title XXIX
PUBLIC
HEALTH

Chapter 400
NURSING HOMES AND RELATED HEALTH CARE
FACILITIES
CHAPTER 400
NURSING HOMES AND RELATED HEALTH CARE FACILITIES

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LONG-TERM CARE FACILITIES: OMBUDSMAN PROGRAM
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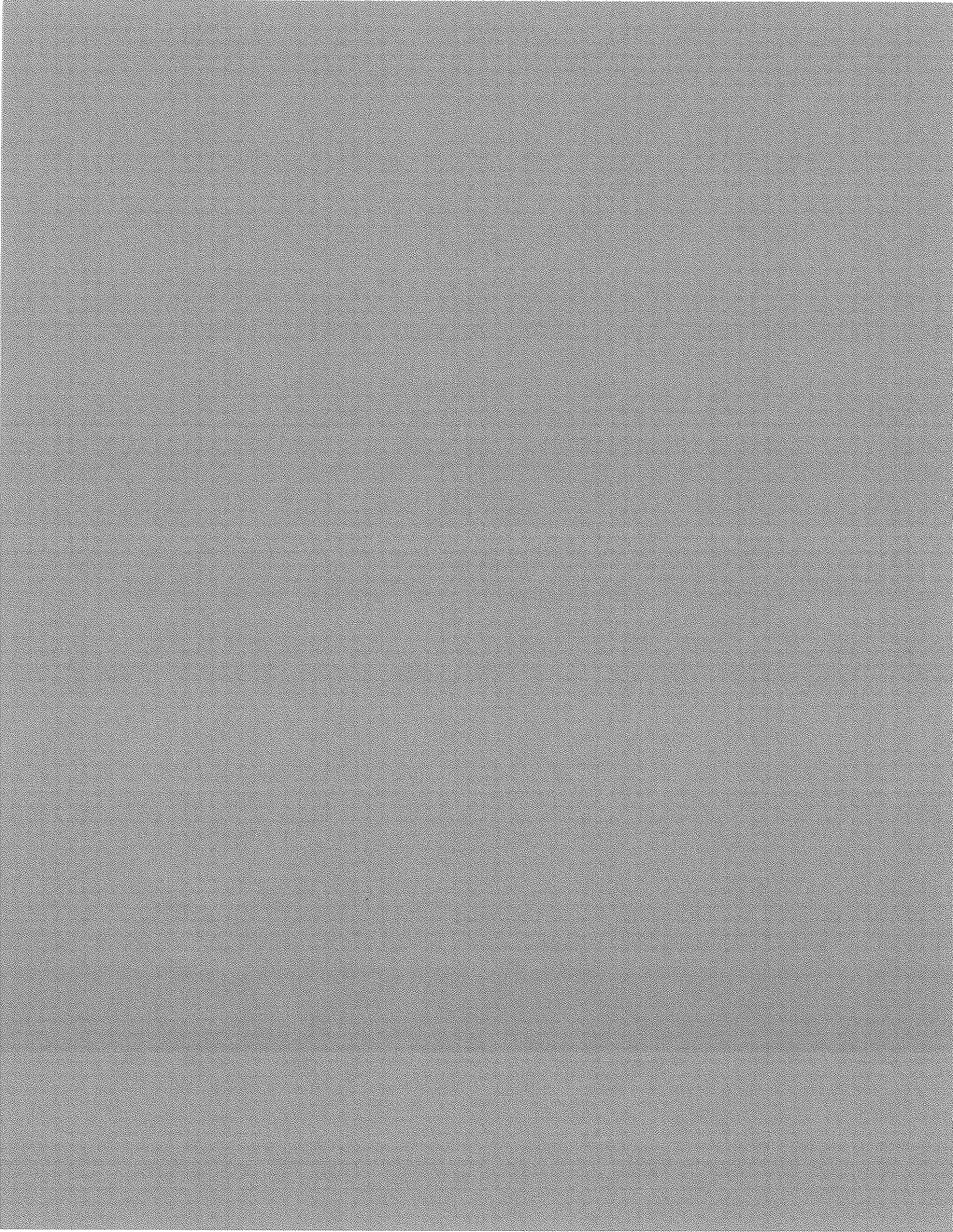
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PART I
LONG-TERM CARE FACILITIES:
OMBUDSMAN PROGRAM

- 400.0060 Definitions.
- 400.0061 Legislative findings and intent; long-term care facilities.
- 400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.
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- 400.0081 Access to facilities, residents, and records.
- 400.0083 Interference; retaliation; penalties.
- 400.0087 Department oversight; funding.
- 400.0089 Complaint data reports.
- 400.0091 Training.

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

- (1) “Administrative assessment” means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.
- (2) “Agency” means the Agency for Health Care Administration.
- (3) “Department” means the Department of Elderly Affairs.
- (4) “Local council” means a local long-term care ombudsman council designated by the ombudsman pursuant to s. 400.0069. Local councils are also known as district long-term care ombudsman councils or district councils.
- (5) “Long-term care facility” means a nursing home facility, assisted living facility, adult family-care home, board and care facility, or any other similar residential adult care facility.
- (6) “Office” means the Office of State Long-Term Care Ombudsman created by s. 400.0063.
- (7) “Ombudsman” means the individual appointed by the Secretary of Elderly Affairs to head the

Office of State Long-Term Care Ombudsman.

(8) "Resident" means an individual 60 years of age or older who resides in a long-term care facility.

(9) "Secretary" means the Secretary of Elderly Affairs.

(10) "State council" means the State Long-Term Care Ombudsman Council created by s. 400.0067.

History.—ss. 1, 30, ch. 93-177; s. 4, ch. 95-210; s. 1, ch. 2006-121.

400.0061 Legislative findings and intent; long-term care facilities.—

(1) The Legislature finds that conditions in long-term care facilities in this state are such that the rights, health, safety, and welfare of residents are not fully ensured by rules of the Department of Elderly Affairs or the Agency for Health Care Administration or by the good faith of owners or operators of long-term care facilities. Furthermore, there is a need for a formal mechanism whereby a long-term care facility resident, a representative of a long-term care facility resident, or any other concerned citizen may make a complaint against the facility or its employees, or against other persons who are in a position to restrict, interfere with, or threaten the rights, health, safety, or welfare of a long-term care facility resident. The Legislature finds that concerned citizens are often more effective advocates for the rights of others than governmental agencies. The Legislature further finds that in order to be eligible to receive an allotment of funds authorized and appropriated under the federal Older Americans Act, the state must establish and operate an Office of State Long-Term Care Ombudsman, to be headed by the State Long-Term Care Ombudsman, and carry out a long-term care ombudsman program.

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into or conduct investigations or onsite administrative assessments of long-term care facilities. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

History.—ss. 2, 30, ch. 93-177; s. 758, ch. 95-148; s. 111, ch. 99-8; s. 2, ch. 2006-121.

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

(1) There is created an Office of State Long-Term Care Ombudsman in the Department of Elderly Affairs.

(2)(a) The Office of State Long-Term Care Ombudsman shall be headed by the State Long-Term Care Ombudsman, who shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the office in accordance with state and federal law.

(b) The ombudsman shall be appointed by and shall serve at the pleasure of the Secretary of Elderly Affairs. The secretary shall appoint a person who has expertise and experience in the fields of long-term care and advocacy to serve as ombudsman.

(3)(a) There is created in the office the position of legal advocate, who shall be selected by and serve at the pleasure of the ombudsman and shall be a member in good standing of The Florida Bar.

(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 councils in carrying out their responsibilities under this part.
3. Pursuing administrative, legal, and other appropriate remedies on behalf of residents.
4. Serving as legal counsel to the state and local 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.

History.—ss. 3, 30, ch. 93-177; s. 41, ch. 95-196; s. 121, ch. 2000-349; s. 41, ch. 2000-367; s. 20, ch. 2002-223; s. 3, ch. 2006-121; s. 20, ch. 2006-197.

400.0065 State Long-Term Care Ombudsman; duties and responsibilities.—

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, or rights of the residents.

(b) Provide services that assist in protecting the health, safety, welfare, and rights of residents.

(c) Inform residents, their representatives, and other citizens about obtaining the services of the State Long-Term Care Ombudsman Program and its representatives.

(d) Ensure that residents have regular and timely access to the services provided through the office and that residents and complainants receive timely responses from representatives of the office to their complaints.

(e) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(f) Administer the state and local councils.

(g) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, rules, and regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the state, and recommend any changes in such laws, rules, regulations, policies, and actions as the office determines to be appropriate and necessary.

(h) Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(a) Establish and coordinate local councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of appropriated federal and state funding, employ such personnel as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local councils in the performance of their duties. Staff positions established for the purpose of coordinating the activities of each local council and assisting its members may be filled by the ombudsman after approval by the secretary. Notwithstanding any other provision of this part, upon certification by the ombudsman that the staff member hired to fill any such position has completed the initial training required under s. 400.0091, such person shall be considered a representative of the State Long-Term Care Ombudsman Program for purposes of this part.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Coordinate, to the greatest extent possible, state and local ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(g) Enter into a cooperative agreement with the Statewide Advocacy Council for the purpose of coordinating and avoiding duplication of advocacy services provided to residents.

(h) Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of the Older Americans Act.

(i) Prepare an annual report describing the activities carried out by the office, the state council, and the local councils in the year for which the report is prepared. The ombudsman shall submit the report to the secretary at least 30 days before the convening of the regular session of the Legislature. The secretary shall in turn submit the report to the United States Assistant Secretary for Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Secretary of Children and Family Services, and the Secretary of Health Care Administration. The report shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities and the disposition of such complaints.

2. Evaluate the problems experienced by residents.

3. Analyze the successes of the ombudsman program during the preceding year, including an assessment of how successfully the program has carried out its responsibilities under the Older Americans Act.

4. Provide recommendations for policy, regulatory, and statutory changes designed to solve identified problems; resolve residents' complaints; improve residents' lives and quality of care; protect residents' rights, health, safety, and welfare; and remove any barriers to the optimal operation of the State Long-Term Care Ombudsman Program.

5. Contain recommendations from the State Long-Term Care Ombudsman Council regarding program functions and activities and recommendations for policy, regulatory, and statutory changes designed to protect residents' rights, health, safety, and welfare.

6. Contain any relevant recommendations from the local councils regarding program functions and activities.

History.—ss. 4, 30, ch. 93-177; s. 112, ch. 99-8; s. 122, ch. 2000-349; s. 42, ch. 2000-367; s. 21, ch. 2002-223; s. 4, ch. 2006-121.

400.0067 State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

- (a) Serve as an advisory body to assist the ombudsman in reaching a consensus among local councils on issues affecting residents and impacting the optimal operation of the program.

- (b) Serve as an appellate body in receiving from the local councils complaints not resolved at the local level. Any individual member or members of the state council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0074(2).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility, and work with the adult protective services program as required in ss. 415.101-415.113.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of residents.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents.

(f) Assist the ombudsman in preparing the annual report described in s. 400.0065.

(3) The State Long-Term Care Ombudsman Council shall be composed of one active local council member elected by each local council plus three at-large members appointed by the Governor.

(a) Each local council shall elect by majority vote a representative from among the council members to represent the interests of the local council on the state council. A local council chair may not serve as the representative of the local council on the state council.

(b)1. The secretary, after consulting with the ombudsman, shall submit to the Governor a list of persons recommended for appointment to the at-large positions on the state council. The list shall not include the name of any person who is currently serving on a local council.

2. The Governor shall appoint three at-large members chosen from the list.

3. If the Governor does not appoint an at-large member to fill a vacant position within 60 days after the list is submitted, the secretary, after consulting with the ombudsman, shall appoint an at-large member to fill that vacant position.

(c)1. All state council members shall serve 3-year terms.

2. A member of the state council may not serve more than two consecutive terms.

3. A local council may recommend removal of its elected representative from the state council by a majority vote. If the council votes to remove its representative, the local council chair shall immediately notify the ombudsman. The secretary shall advise the Governor of the local council's vote upon receiving notice from the ombudsman.

4. The position of any member missing three state council meetings within a 1-year period without cause may be declared vacant by the ombudsman. The findings of the ombudsman regarding cause shall be final and binding.

5. Any vacancy on the state council shall be filled in the same manner as the original appointment.

(d)1. The state council shall elect a chair to serve for a term of 1 year. A chair may not serve more than two consecutive terms.

2. The chair shall select a vice chair from among the members. The vice chair shall preside over the state council in the absence of the chair.

3. The chair may create additional executive positions as necessary to carry out the duties of the state council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

4. A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of all state council members present at any meeting at which a quorum is present. If a chair is removed from office prior to the expiration of his or her term, a replacement chair shall be chosen during the same meeting in the same manner as described in this paragraph, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term and is eligible to serve two subsequent consecutive terms.

(e)1. The state council shall meet upon the call of the chair or upon the call of the ombudsman. The

council shall meet at least quarterly but may meet more frequently as needed.

2. A quorum shall be considered present if more than 50 percent of all active state council members are in attendance at the same meeting.

3. The state council may not vote on or otherwise make any decisions resulting in a recommendation that will directly impact the state council or any local council, outside of a publicly noticed meeting at which a quorum is present.

(f) Members shall receive no compensation but shall, with approval from the ombudsman, be reimbursed for per diem and travel expenses as provided in s. 112.061.

History.—ss. 5, 30, 31, ch. 93-177; s. 759, ch. 95-148; s. 113, ch. 99-8; s. 209, ch. 99-13; s. 15, ch. 2000-263; s. 11, ch. 2000-305; s. 124, ch. 2000-349; s. 44, ch. 2000-367; s. 22, ch. 2002-223; s. 6, ch. 2006-121.

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

(1)(a) The ombudsman shall designate local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program within local communities. Each local council shall function under the direction of the ombudsman.

(b) The ombudsman shall ensure that there is at least one local council operating in each of the department's planning and service areas. The ombudsman may create additional local councils as necessary to ensure that residents throughout the state have adequate access to State Long-Term Care Ombudsman Program services. The ombudsman, after approval from the secretary, shall designate the jurisdictional boundaries of each local council.

(2) The duties of the local councils are to:

(a) Serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents.

(b) Discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable.

(c) Elicit, receive, investigate, respond to, and resolve complaints made by or on behalf of residents.

(d) Review and, if necessary, comment on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents.

(e) Review personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) Recommend that the ombudsman and the legal advocate seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) Carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), a member of a local council is authorized to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0074(2).

(4) Each local council shall be composed of members whose primary residence is located within the boundaries of the local council's jurisdiction.

(a) The ombudsman shall strive to ensure that each local council include the following persons as members:

1. At least one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may practice in a long-term care facility;

2. At least one registered nurse who has geriatric experience;
3. At least one licensed pharmacist;
4. At least one registered dietitian;
5. At least six nursing home residents or representative consumer advocates for nursing home residents;
6. At least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for alternative long-term care facility residents;
7. At least one attorney; and
8. At least one professional social worker.

(b) In no case shall the medical director of a long-term care facility or an employee of the agency, the department, the Department of Children and Family Services, or the Agency for Persons with Disabilities serve as a member or as an ex officio member of a council.

(5)(a) Individuals wishing to join a local council shall submit an application to the ombudsman. The ombudsman shall review the individual's application and advise the secretary of his or her recommendation for approval or disapproval of the candidate's membership on the local council. If the secretary approves of the individual's membership, the individual shall be appointed as a member of the local council.

(b) The secretary may rescind the ombudsman's approval of a member on a local council at any time. If the secretary rescinds the approval of a member on a local council, the ombudsman shall ensure that the individual is immediately removed from the local council on which he or she serves and the individual may no longer represent the State Long-Term Care Ombudsman Program until the secretary provides his or her approval.

(c) A local council may recommend the removal of one or more of its members by submitting to the ombudsman a resolution adopted by a two-thirds vote of the members of the council stating the name of the member or members recommended for removal and the reasons for the recommendation. If such a recommendation is adopted by a local council, the local council chair or district coordinator shall immediately report the council's recommendation to the ombudsman. The ombudsman shall review the recommendation of the local council and advise the secretary of his or her recommendation regarding removal of the council member or members.

(6)(a) Each local council shall elect a chair for a term of 1 year. There shall be no limitation on the number of terms that an approved member of a local council may serve as chair.

(b) The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(c) The chair may create additional executive positions as necessary to carry out the duties of the local council. Any person appointed to an executive position shall serve at the pleasure of the chair, and his or her term shall expire on the same day as the term of the chair.

(d) A chair may be immediately removed from office prior to the expiration of his or her term by a vote of two-thirds of the members of the local council. If any chair is removed from office prior to the expiration of his or her term, a replacement chair shall be elected during the same meeting, and the term of the replacement chair shall begin immediately. The replacement chair shall serve for the remainder of the term of the person he or she replaced.

(7) Each local council shall meet upon the call of its chair or upon the call of the ombudsman. Each local council shall meet at least once a month but may meet more frequently if necessary.

(8) A member of a local council shall receive no compensation but shall, with approval from the

ombudsman, be reimbursed for travel expenses both within and outside the jurisdiction of the local council in accordance with the provisions of s. 112.061.

(9) The local councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the local councils in providing requested information and agency representation at council meetings.

History.—s. 27, ch. 75-233; s. 3, ch. 76-168; s. 136, ch. 77-104; s. 8, ch. 77-401; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 2, ch. 78-393; ss. 6, 12, ch. 80-198; ss. 2, 3, 5, ch. 81-184; ss. 2, 3, ch. 81-318; ss. 1, 4, ch. 82-46; ss. 15, 19, ch. 82-148; ss. 35, 79, 80, 83, 84, ch. 83-181; s. 39, ch. 86-220; s. 2, ch. 87-396; s. 7, ch. 89-294; s. 3, ch. 91-115; s. 27, ch. 92-33; ss. 6, 29, 30, 31, ch. 93-177; s. 49, ch. 93-217; s. 760, ch. 95-148; s. 5, ch. 95-210; s. 114, ch. 99-8; s. 125, ch. 2000-349; s. 45, ch. 2000-367; s. 23, ch. 2002-223; s. 7, ch. 2006-121; s. 21, ch. 2006-197.

Note.—Former s. 400.307.

400.0070 Conflicts of interest.—

(1) The ombudsman shall not:

- (a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.
- (b) Be employed by, or participate in the management of, a long-term care facility.
- (c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

(2) Each employee of the office, each state council member, and each local council member shall certify that he or she has no conflict of interest.

(3) The department shall define by rule:

(a) Situations that constitute a person having a conflict of interest that could materially affect the objectivity or capacity of a person to serve on an ombudsman council, or as an employee of the office, while carrying out the purposes of the State Long-Term Care Ombudsman Program as specified in this part.

(b) The procedure by which a person listed in subsection (2) shall certify that he or she has no conflict of interest.

History.—s. 8, ch. 2006-121.

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—The department shall adopt rules implementing state and local complaint procedures. The rules must include procedures for:

- (1) Receiving complaints against a long-term care facility or an employee of a long-term care facility.
- (2) Conducting investigations of a long-term care facility or an employee of a long-term care facility subsequent to receiving a complaint.
- (3) Conducting onsite administrative assessments of long-term care facilities.

History.—s. 28, ch. 75-233; s. 3, ch. 76-168; s. 9, ch. 77-401; s. 1, ch. 77-457; ss. 7, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 36, 79, 83, ch. 83-181; ss. 16, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 126, ch. 2000-349; s. 46, ch. 2000-367; s. 24, ch. 2002-223; s. 9, ch. 2006-121.

Note.—Former s. 400.311.

400.0073 State and local ombudsman council investigations.—

(1) A local council shall investigate, within a reasonable time after a complaint is made, any complaint of a resident, a representative of a resident, or any other credible source based on an action

or omission by an administrator, an employee, or a representative of a long-term care facility which might be:

- (a) Contrary to law;
 - (b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
 - (c) Based on a mistake of fact;
 - (d) Based on improper or irrelevant grounds;
 - (e) Unaccompanied by an adequate statement of reasons;
 - (f) Performed in an inefficient manner; or
 - (g) Otherwise adversely affecting the health, safety, welfare, or rights of a resident.
- (2) In an investigation, both the state and local councils have the authority to hold public hearings.
- (3) Subsequent to an appeal from a local council, the state council may investigate any complaint received by the local council involving a long-term care facility or a resident.

(4) If the ombudsman or any state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report a facility's refusal to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

History.—s. 29, ch. 75-233; s. 3, ch. 76-168; s. 10, ch. 77-401; s. 1, ch. 77-457; ss. 8, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 16, 19, ch. 82-148; ss. 37, 79, 83, ch. 83-181; ss. 7, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 761, ch. 95-148; s. 127, ch. 2000-349; s. 47, ch. 2000-367; s. 1, ch. 2001-45; s. 10, ch. 2006-121; s. 22, ch. 2006-197; s. 76, ch. 2007-5; s. 53, ch. 2007-230.

Note.—Former s. 400.314.

400.0074 Local ombudsman council onsite administrative assessments.—

(1) In addition to any specific investigation conducted pursuant to a complaint, the local council shall conduct, at least annually, an onsite administrative assessment of each nursing home, assisted living facility, and adult family-care home within its jurisdiction. This administrative assessment shall focus on factors affecting the rights, health, safety, and welfare of the residents. Each local council is encouraged to conduct a similar onsite administrative assessment of each additional long-term care facility within its jurisdiction.

(2) An onsite administrative assessment conducted by a local council shall be subject to the following conditions:

- (a) To the extent possible and reasonable, the administrative assessments shall not duplicate the efforts of the agency surveys and inspections conducted under part II of this chapter and parts I and II of chapter 429.
- (b) An administrative assessment shall be conducted at a time and for a duration necessary to produce the information required to carry out the duties of the local council.
- (c) Advance notice of an administrative assessment may not be provided to a long-term care facility, except that notice of followup assessments on specific problems may be provided.
- (d) A local council member physically present for the administrative assessment shall identify himself or herself and cite the specific statutory authority for his or her assessment of the facility.
- (e) An administrative assessment may not unreasonably interfere with the programs and activities of

residents.

(f) A local council member may not enter a single-family residential unit within a long-term care facility during an administrative assessment without the permission of the resident or the representative of the resident.

(g) An administrative assessment must be conducted in a manner that will impose no unreasonable burden on a long-term care facility.

(3) Regardless of jurisdiction, the ombudsman may authorize a state or local council member to assist another local council to perform the administrative assessments described in this section.

(4) An onsite administrative assessment may not be accomplished by forcible entry. However, if the ombudsman or a state or local council member is not allowed to enter a long-term care facility, the administrator of the facility shall be considered to have interfered with a representative of the office, the state council, or the local council in the performance of official duties as described in s. 400.0083(1) and to have committed a violation of this part. The ombudsman shall report the refusal by a facility to allow entry to the agency, and the agency shall record the report and take it into consideration when determining actions allowable under s. 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s. 429.71.

History.—s. 11, ch. 2006-121; s. 77, ch. 2007-5; s. 54, ch. 2007-230.

400.0075 Complaint notification and resolution procedures.—

(1)(a) Any complaint or problem verified by an ombudsman council as a result of an investigation or onsite administrative assessment, which complaint or problem is determined to require remedial action by the local council, shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such document, the administrator, with the concurrence of the local council chair, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the local council chair may, after obtaining approval from the ombudsman and a majority of the members of the local council:

1. Extend the target date if the chair has reason to believe such action would facilitate the resolution of the complaint.

2. In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.

3. Refer the complaint to the state council.

(b) If the local council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide the local law enforcement agency with the relevant information to initiate an investigation of the case.

(2)(a) Upon referral from a local council, the state council shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action on a complaint by the state council, the state council may, after obtaining approval from the ombudsman and a majority of the state council members:

1. In accordance with s. 400.0077, publicize the complaint, the recommendations of the local or state council, and the response of the long-term care facility.

2. Recommend to the department and the agency a series of facility reviews pursuant to s. 400.19, s. 429.34, or s. 429.67 to ensure correction and nonrecurrence of conditions that give rise to complaints

against a long-term care facility.

3. Recommend to the department and the agency that the long-term care facility no longer receive payments under any state assistance program, including Medicaid.

4. Recommend to the department and the agency that procedures be initiated for revocation of the long-term care facility's license in accordance with chapter 120.

(b) If the state council chair believes that the health, safety, welfare, or rights of the resident are in imminent danger, the chair shall notify the ombudsman or legal advocate, who, after verifying that such imminent danger exists, shall seek immediate legal or administrative remedies to protect the resident.

(c) If the ombudsman has reason to believe that the long-term care facility or an employee of the facility has committed a criminal act, the ombudsman shall provide local law enforcement with the relevant information to initiate an investigation of the case.

History.—s. 30, ch. 75-233; s. 3, ch. 76-168; s. 244, ch. 77-147; s. 11, ch. 77-401; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 14, 18, ch. 80-186; ss. 9, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 17, 19, ch. 82-148; ss. 38, 79, 83, ch. 83-181; s. 17, ch. 90-347; ss. 8, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 762, ch. 95-148; s. 42, ch. 95-196; s. 115, ch. 99-8; s. 128, ch. 2000-349; s. 48, ch. 2000-367; s. 44, ch. 2004-5; s. 12, ch. 2006-121; s. 78, ch. 2007-5.

Note.—Former s. 400.317.

400.0077 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) Resident records held by the ombudsman or by the state or a local ombudsman council.

(b) The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless:

1. The complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing;

2. The complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or

3. The disclosure is required by court order.

(c) Any other information about a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless an ombudsman council determines that the information does not meet any of the criteria specified in 's. 119.14(4)(b); or unless the information is to collect data for submission to those entities specified in s. 712(c) of the federal Older Americans Act for the purpose of identifying and resolving significant problems.

(2) That portion of an ombudsman council meeting in which an ombudsman council discusses information that is confidential and exempt from the provisions of s. 119.07(1) is closed to the public and exempt from the provisions of s. 286.011.

(3) All other matters before the council shall be open to the public and subject to chapter 119 and s. 286.011.

(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 except as may be necessary to enforce the provisions of this act.

(5) Subject to the provisions of this section, the Office of State Long-Term Care Ombudsman shall adopt rules for the disclosure by the ombudsman or local ombudsman councils of files maintained by the program.

(6) This section does not limit the subpoena power of the Attorney General pursuant to s. 409.920 (10)(b).

History.—ss. 31, 32, ch. 75-233; s. 3, ch. 76-168; s. 12, ch. 77-401; s. 1, ch. 77-457; ss. 10, 12, ch. 80-198; ss. 4, 6, ch. 81-184; ss. 2, 3, ch. 81-318; s. 4, ch. 82-46; ss. 39, 79, 83, ch. 83-181; s. 18, ch. 90-347; ss. 9, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 225, ch. 96-406; s. 3, ch. 2000-163; s. 129, ch. 2000-349; s. 49, ch. 2000-367; s. 18, ch. 2004-344; s. 23, ch. 2006-197; s. 33, ch. 2009-223.

¹**Note.**—Repealed by s. 1, ch. 95-217.

Note.—Former s. 400.321.

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(1) The office shall establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents.

(2) Every resident or representative of a resident shall receive, upon admission to a long-term care facility, information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

History.—s. 4, ch. 99-394; s. 13, ch. 2006-121.

400.0079 Immunity.—

(1) Any person making a complaint pursuant to this part who does so in good faith shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed as a direct or indirect result of making the complaint.

(2) The ombudsman or any person authorized by the ombudsman to act on behalf of the office, as well as all members of the state and local councils, shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed during the good faith performance of official duties.

History.—s. 33, ch. 75-233; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 10, 29, 30, ch. 93-177; s. 49, ch. 93-217; s. 130, ch. 2000-349; s. 50, ch. 2000-367; s. 14, ch. 2006-121.

Note.—Former s. 400.324.

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide the office, the state council and its members, and the local councils and their members access to:

(a) Any portion of the long-term care facility and any resident as necessary to investigate or resolve a complaint.

(b) Medical and social records of a resident for review as necessary to investigate or resolve a complaint, if:

1. The office has the permission of the resident or the legal representative of the resident; or
2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate or resolve a complaint, if:

1. A legal representative or guardian of the resident refuses to give permission;
2. The office has reasonable cause to believe that the representative or guardian is not acting in the best interests of the resident; and

3. The state or local council member obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which residents or the general public have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) The department, in consultation with the ombudsman and the state council, may adopt rules to establish procedures to ensure access to facilities, residents, and records as described in this section.

History.—ss. 11, 30, ch. 93-177; s. 131, ch. 2000-349; s. 51, ch. 2000-367; s. 15, ch. 2006-121.

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the office, the state council, or a local council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to knowingly or willfully take action or retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the office, the state council, or a local council.

(3) Any person, long-term care facility, or other entity that violates this section:

(a) Shall be liable for damages and equitable relief as determined by law.

(b) Commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—ss. 12, 30, ch. 93-177; s. 132, ch. 2000-349; s. 52, ch. 2000-367; s. 16, ch. 2006-121.

400.0087 Department oversight; funding.—

(1) The department shall meet the costs associated with the State Long-Term Care Ombudsman Program from funds appropriated to it.

(a) The department shall include the costs associated with support of the State Long-Term Care Ombudsman Program when developing its budget requests for consideration by the Governor and submittal to the Legislature.

(b) The department may divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio to cover the costs associated with administering the program. The remaining allotment from the Older Americans Act program shall be expended on direct ombudsman activities.

(2) The department shall monitor the office, the state council, and the local councils to ensure that each is carrying out the duties delegated to it by state and federal law.

(3) The department is responsible for ensuring that the office:

(a) Has the objectivity and independence required to qualify it for funding under the federal Older Americans Act.

(b) Provides information to public and private agencies, legislators, and others.

(c) Provides appropriate training to representatives of the office or of the state or local councils.

(d) Coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

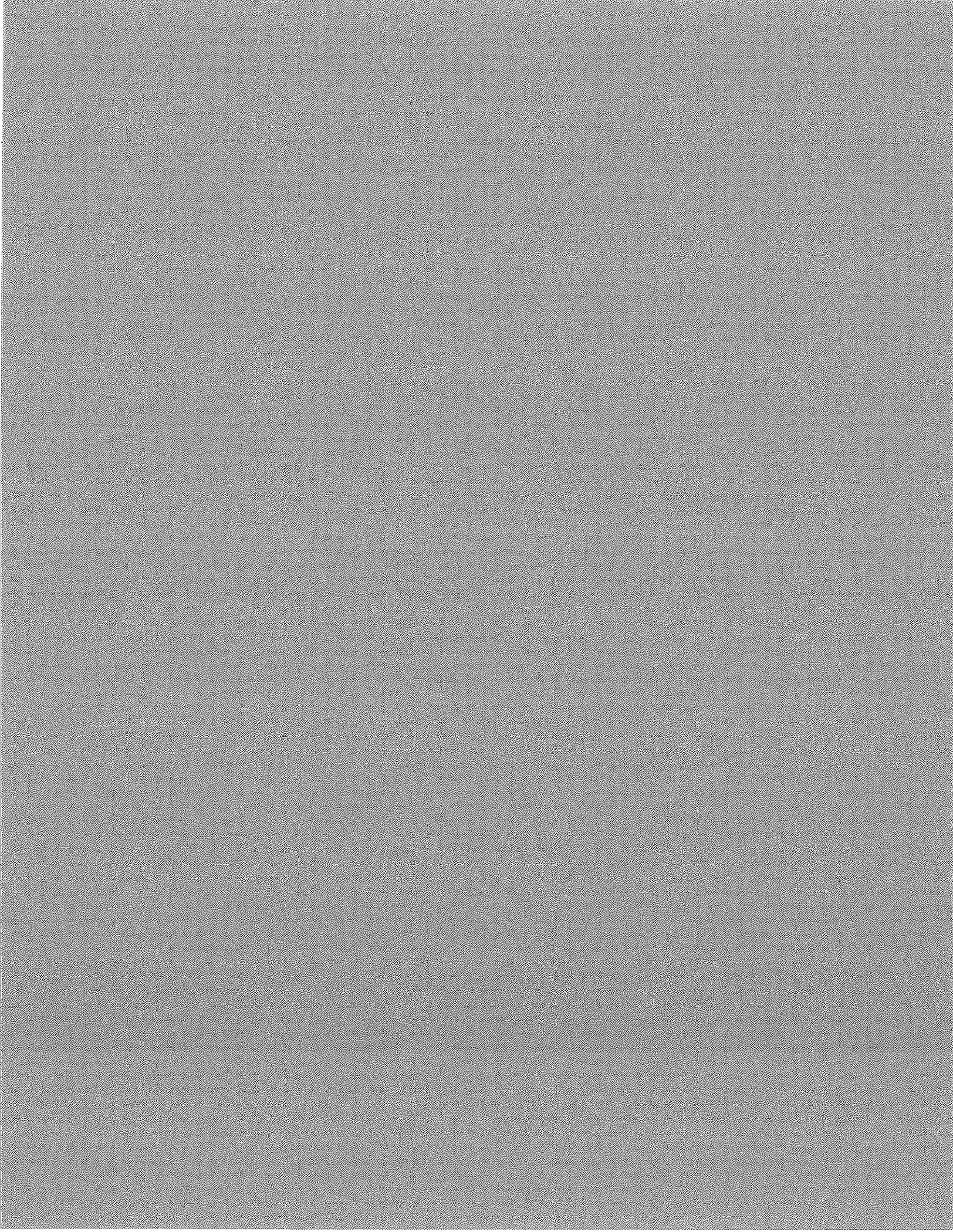
(4) The department shall also:

(a) Receive and disburse state and federal funds for purposes that the ombudsman has formulated in accordance with the Older Americans Act.

(b) Whenever necessary, act as liaison between agencies and branches of the federal and state governments and the State Long-Term Care Ombudsman Program.

History.—ss. 13, 30, ch. 93-177; s. 43, ch. 95-196; s. 133, ch. 2000-349; s. 53, ch. 2000-367; s. 25, ch. 2002-223; s. 18, ch. 2006-121.

400.0089 Complaint data reports.—The office shall maintain a statewide uniform reporting



system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems. The office shall publish quarterly and make readily available information pertaining to the number and types of complaints received by the State Long-Term Care Ombudsman Program and shall include such information in the annual report required under s. 400.0065.

History.—ss. 14, 30, ch. 93-177; s. 44, ch. 95-196; s. 116, ch. 99-8; s. 16, ch. 2000-263; s. 134, ch. 2000-349; s. 54, ch. 2000-367; s. 26, ch. 2002-223; s. 37, ch. 2003-1; s. 19, ch. 2006-121.

400.0091 Training.—The ombudsman shall ensure that appropriate training is provided to all employees of the office and to the members of the state and local councils.

(1) All state and local council members and employees of the office shall be given a minimum of 20 hours of training upon employment with the office or approval as a state or local council member and 10 hours of continuing education annually thereafter.

(2) The ombudsman shall approve the curriculum for the initial and continuing education training, which must, at a minimum, address:

- (a) Resident confidentiality.
- (b) Guardianships and powers of attorney.
- (c) Medication administration.
- (d) Care and medication of residents with dementia and Alzheimer's disease.
- (e) Accounting for residents' funds.
- (f) Discharge rights and responsibilities.
- (g) Cultural sensitivity.
- (h) Any other topic recommended by the secretary.

(3) No employee, officer, or representative of the office or of the state or local councils, other than the ombudsman, may hold himself or herself out as a representative of the State Long-Term Care Ombudsman Program or conduct any authorized program duty described in this part unless the person has received the training required by this section and has been certified by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local councils.

History.—ss. 15, 30, ch. 93-177; s. 135, ch. 2000-349; s. 55, ch. 2000-367; s. 32, ch. 2001-62; s. 27, ch. 2002-223; s. 20, ch. 2006-121.

PART II NURSING HOMES

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- 400.211 Persons employed as nursing assistants; certification requirement.
- 400.215 Personnel screening requirement.
- 400.23 Rules; evaluation and deficiencies; licensure status.
- 400.232 Review and approval of plans; fees and costs.
- 400.235 Nursing home quality and licensure status; Gold Seal Program.
- 400.241 Prohibited acts; penalties for violations.
- 400.25 Educational program authorized.
- 400.275 Agency duties.

- 400.33 Legislative intent; community-based care for the elderly.
- 400.332 Funds received not revenues for purpose of Medicaid program.
- 400.334 Activity relating to unions by nursing home employees.

400.011 Purpose.—The purpose of this part is to provide for the development, establishment, and enforcement of basic standards for:

- (1) The health, care, and treatment of persons in nursing homes and related health care facilities; and
- (2) The maintenance and operation of such institutions that will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.

History.—s. 1, ch. 69-309; s. 1, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 3, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 1, 49, ch. 93-217; s. 28, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

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

- (1) “Administrator” means the licensed individual who has the general administrative charge of a facility.
- (2) “Agency” means the Agency for Health Care Administration, which is the licensing agency under this part.
- (3) “Bed reservation policy” means the number of consecutive days and the number of days per year that a resident may leave the nursing home facility for overnight therapeutic visits with family or friends or for hospitalization for an acute condition before the licensee may discharge the resident due to his or her absence from the facility.
- (4) “Board” means the Board of Nursing Home Administrators.
- (5) “Custodial service” means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the aged or infirm.
- (6) “Department” means the Department of Children and Family Services.
- (7) “Facility” means any institution, building, residence, private home, or other place, whether operated for profit or not, including a place operated by a county or municipality, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reason of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.
- (8) “Geriatric outpatient clinic” means a site for providing outpatient health care to persons 60 years of age or older, which is staffed by a registered nurse or a physician assistant.
- (9) “Geriatric patient” means any patient who is 60 years of age or older.
- (10) “Local ombudsman council” means a local long-term care ombudsman council established pursuant to s. 400.0069, located within the Older Americans Act planning and service areas.
- (11) “Nursing home bed” means an accommodation which is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding provision of staffing; and which conforms to minimum space requirements, including the availability of appropriate equipment and furnishings within the 48 hours, as specified by rule of the agency, for the provision of services specified in this part to a single resident.

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

(13) "Nursing service" means such services or acts as may be rendered, directly or indirectly, to and in behalf of a person by individuals as defined in s. 464.003.

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

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

(16) "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals. The resident care plan must be signed by the director of nursing or another registered nurse employed by the facility to whom institutional responsibilities have been delegated and by the resident, the resident's designee, or the resident's legal representative. The facility may not use an agency or temporary registered nurse to satisfy the foregoing requirement and must document the institutional responsibilities that have been delegated to the registered nurse.

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

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

History.—s. 2, ch. 69-309; ss. 19, 35, ch. 69-106; s. 2, ch. 70-361; s. 1, ch. 70-439; ss. 21, 25, ch. 75-233; s. 3, ch. 76-168; s. 234, ch. 77-147; s. 1, ch. 77-457; ss. 1, 18, ch. 80-186; ss. 1, 12, ch. 80-198; s. 249, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 4, 79, 83, ch. 83-181; s. 1, ch. 90-330; ss. 20, 30, ch. 93-177; ss. 2, 49, ch. 93-217; s. 763, ch. 95-148; s. 117, ch. 99-8; s. 94, ch. 2000-318; s. 136, ch. 2000-349; s. 1, ch. 2000-350; s. 56, ch. 2000-367; s. 2, ch. 2001-45; s. 3, ch. 2004-298; s. 55, ch. 2007-230.

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the

licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local ombudsman council; and the resident's individual physician.

2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(g) The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(h) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

2. The accounting system established and maintained by the facility must preclude any commingling

of resident funds with facility funds or with the funds of any person other than another resident.

3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.

4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in s. 400.162(6).

5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(i) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(j) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(k) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(m) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. 119.07(1).

(n) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(o) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing

the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(s) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(t) The right to receive notice before the room of the resident in the facility is changed.

(u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the

agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.

(v) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. part 483.13.

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102, s. 400.121, or part II of chapter 408. In order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local planning and service area of the Department of Elderly Affairs in which the nursing home is located.

(4) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

History.—s. 8, ch. 76-201; s. 1, ch. 77-174; ss. 1, 9, ch. 79-268; ss. 2, 18, ch. 80-186; s. 2, ch. 81-318; ss. 11, 19, ch. 82-148; ss. 5, 79, 83, ch. 83-181; s. 1, ch. 84-144; s. 15, ch. 90-347; s. 30, ch. 93-177; ss. 3, 49, ch. 93-217; s. 764, ch. 95-148; s. 226, ch. 96-406; s. 118, ch. 99-8; s. 5, ch. 99-394; ss. 70, 137, ch. 2000-349; s. 57, ch. 2000-367; s. 33, ch. 2001-62; s. 56, ch. 2007-230.

400.023 Civil enforcement.—

(1) Any 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, 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 and punitive damages for any violation of the rights of a resident or for 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 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022. This section does not preclude theories of recovery not arising out of negligence or s. 400.022 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. 400.023-400.0238.

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

(6) 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.

(7) An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—ss. 3, 18, ch. 80-186; s. 2, ch. 81-318; ss. 6, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 1, ch. 86-79; s. 30, ch. 93-177; ss. 4, 49, ch. 93-217; s. 765, ch. 95-148; s. 30, ch. 99-225; s. 4, ch. 2001-45; s. 34, ch. 2001-62.

400.0233 Presuit notice; investigation; notification of violation of resident's rights or alleged

negligence; claims evaluation procedure; informal discovery; review; settlement offer; mediation.—

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

(a) “Claim for resident’s 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. 400.022 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. 400.022 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 unsworn 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 the 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.

History.—s. 5, ch. 2001-45.

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

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

(2) No facility shall be held liable for any civil damages as a result of complying with this section.
History.—s. 6, ch. 2001-45.

400.0235 Certain provisions not applicable to actions under this part.—An action under this part for a violation of rights or negligence recognized under this part is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—s. 7, ch. 2001-45.

400.0236 Statute of limitations.—

(1) Any action for damages brought under this part shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued.

(2) In those actions covered by this subsection in which it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event for more than 6 years from the date the incident giving rise to the injury occurred.

(3) This section shall apply to causes of action that have accrued prior to the effective date of this section; however, any such cause of action that would not have been barred under prior law may be brought within the time allowed by prior law or within 2 years after the effective date of this section, whichever is earlier, and will be barred thereafter. In actions where it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event more than 4 years from the effective date of this section.

History.—s. 8, ch. 2001-45.

400.0237 Punitive damages; pleading; burden of proof.—

(1) In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and

convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The "greater weight of the evidence" burden of proof applies to a determination of the amount of damages.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 9, ch. 2001-45.

400.0238 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$1 million.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$4 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(e) In any case in which the findings of fact support an award of punitive damages pursuant to paragraph (b) or paragraph (c), the clerk of the court shall refer the case to the appropriate law enforcement agencies, to the state attorney in the circuit where the long-term care facility that is the subject of the underlying civil cause of action is located, and, for multijurisdictional facility owners, to the Office of the Statewide Prosecutor; and such agencies, state attorney, or Office of the Statewide Prosecutor shall initiate a criminal investigation into the conduct giving rise to the award of punitive damages. All findings by the trier of fact which support an award of punitive damages under this paragraph shall be admissible as evidence in any subsequent civil or criminal proceeding relating to the acts giving rise to the award of punitive damages under this paragraph.

(2) The claimant's attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(3) The jury may neither be instructed nor informed as to the provisions of this section.

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

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

(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

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

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 10, ch. 2001-45; s. 415, ch. 2003-261.

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, 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.

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

(a) Development and operation of a mentoring program, in consultation with the Department of Health and the Department of Elderly Affairs, for increasing the competence, professionalism, and career preparation of long-term care facility direct care staff, including nurses, nursing assistants, and social service and dietary personnel.

(b) Development and implementation of specialized training programs for long-term care facility personnel who provide direct care for residents with Alzheimer's disease and other dementias, residents at risk of developing pressure sores, and residents with special nutrition and hydration needs.

(c) Addressing areas of deficient practice identified through regulation or state monitoring.

(d) Provision of economic and other incentives to enhance the stability and career development of the nursing home direct care workforce, including paid sabbaticals for exemplary direct care career staff to visit facilities throughout the state to train and motivate younger workers to commit to careers in long-term care.

(e) Promotion and support for the formation and active involvement of resident and family councils in the improvement of nursing home care.

(f) Evaluation of special residents' needs in long-term care facilities, including challenges in meeting special residents' needs, appropriateness of placement and setting, and cited deficiencies related to caring for special needs.

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

(3) The agency shall carry out through the trust fund the priorities and directives specified in legislative appropriations.

(4) Notwithstanding the provisions of s. 216.301, and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

History.—s. 1, ch. 2001-205; s. 22, ch. 2003-57; s. 2, ch. 2004-229; s. 24, ch. 2006-197.

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

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

(a) "Discharge" means to move a resident to a noninstitutional setting when the releasing facility ceases to be responsible for the resident's care.

(b) "Transfer" means to move a resident from the facility to another legally responsible institutional setting.

(2) Each facility licensed under this part must comply with subsection (9) and s. 400.022(1)(p) when deciding to discharge or transfer a resident.

(3) When a discharge or transfer is initiated by the nursing home, the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.

(4)(a) Each facility must notify the agency of any proposed discharge or transfer of a resident when

such discharge or transfer is necessitated by changes in the physical plant of the facility that make the facility unsafe for the resident.

(b) Upon receipt of such a notice, the agency shall conduct an onsite inspection of the facility to verify the necessity of the discharge or transfer.

(5) A resident of any Medicaid or Medicare certified facility may challenge a decision by the facility to discharge or transfer the resident.

(6) A facility that has been reimbursed for reserving a bed and, for reasons other than those permitted under this section, refuses to readmit a resident within the prescribed timeframe shall refund the bed reservation payment.

(7) At least 30 days prior to any proposed transfer or discharge, a facility must provide advance notice of the proposed transfer or discharge to the resident and, if known, to a family member or the resident's legal guardian or representative, except, in the following circumstances, the facility shall give notice as soon as practicable before the transfer or discharge:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility, and the circumstances are documented in the resident's medical records by the resident's physician; or

(b) The health or safety of other residents or facility employees would be endangered, and the circumstances are documented in the resident's medical records by the resident's physician or the medical director if the resident's physician is not available.

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ombudsman council within 5 business days after signature by the resident or resident designee.

(9) A resident may request that the local ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator's designee, must forward the request for review contained in the notice to the local ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(10)(a) A resident is entitled to a fair hearing to challenge a facility's proposed transfer or discharge. The resident, or the resident's legal representative or designee, may request a hearing at any time within 90 days after the resident's receipt of the facility's notice of the proposed discharge or

transfer.

(b) If a resident requests a hearing within 10 days after receiving the notice from the facility, the request shall stay the proposed transfer or discharge pending a hearing decision. The facility may not take action, and the resident may remain in the facility, until the outcome of the initial fair hearing, which must be completed within 90 days after receipt of a request for a fair hearing.

(c) If the resident fails to request a hearing within 10 days after receipt of the facility notice of the proposed discharge or transfer, the facility may transfer or discharge the resident after 30 days from the date the resident received the notice.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer to the resident, the resident's legal guardian or representative, and the local ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. A local ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the local ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with the requirements of this section. If requested, the local ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

- (a) The resident, or the resident's legal representative or designee.
- (b) The facility administrator, or the facility's legal representative or designee.

A representative of the local long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from the provisions of s. 119.07(1):

- (a) Names and addresses.
- (b) Medical services provided.
- (c) Social and economic conditions or circumstances.
- (d) Evaluation of personal information.
- (e) Medical data, including diagnosis and past history of disease or disability.
- (f) Any information received verifying income eligibility and amount of medical assistance payments.

Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by a local long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

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

office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for fair hearings requested by residents. These procedures shall be equivalent to the procedures used for fair hearings for other Medicaid cases, chapter 10-2, part VI, Florida Administrative Code. The burden of proof must be clear and convincing evidence. A hearing decision must be rendered within 90 days after receipt of the request for hearing.

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

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

(16) The department may adopt rules necessary to administer this section.

(17) The provisions of this section apply to transfers or discharges that are initiated by the nursing home facility, and not by the resident or by the resident's physician or legal guardian or representative.

History.—s. 6, ch. 93-217; s. 4, ch. 95-407; s. 34, ch. 96-169; s. 227, ch. 96-406; s. 8, ch. 99-394; s. 138, ch. 2000-349; s. 3, ch. 2000-350; s. 58, ch. 2000-367; ss. 13, 53, ch. 2001-45.

400.051 Homes or institutions exempt from the provisions of this part.—

(1) The following shall be exempt from the provisions of this part:

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

(b) Any hospital, as defined in s. 395.002, that is licensed under chapter 395.

(c) Any facility, together with improvements or additions thereto, which has existed and operated continuously in this state for at least 60 years on or before July 1, 1989, and 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.

(2) Any facility or institution operated by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, shall be exempt from the provisions of this part. However, such facility or institution shall comply with all applicable laws and rules relating to sanitation and safety.

History.—s. 4, ch. 69-309; s. 4, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 8, 79, 83, ch. 83-181; s. 1, ch. 88-411; s. 30, ch. 93-177; ss. 7, 49, ch. 93-217; s. 5, ch. 94-206; s. 2, ch. 94-317; s. 34, ch. 98-89; s. 40, ch. 98-171; s. 210, ch. 99-13; s. 57, ch. 2007-230.

400.062 License required; fee; disposition.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required for the operation of a nursing home in this state.

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

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The license fee shall be comprised of two parts. Part I of the license fee shall be the basic license fee. The rate per bed for the basic license fee shall be established biennially and shall be \$100 per bed unless modified by rule.

Part II of the license fee shall be the resident protection fee, which shall be at the rate of not less than 50 cents per bed. The rate per bed shall be the minimum rate per bed, and such rate shall remain in effect until the effective date of a rate per bed adopted by rule by the agency pursuant to this part. At such time as the amount on deposit in the Health Care Trust Fund for resident protection is less than \$1 million, the agency may adopt rules to establish a rate which may not exceed \$20 per bed. The rate per bed shall revert back to the minimum rate per bed when the amount on deposit in the Health Care Trust Fund for resident protection reaches \$1 million, except that any rate established by rule shall remain in effect until such time as the rate has been equally required for each license issued under this part. Any amount in the fund in excess of \$2 million may not be expended without prior approval of the Legislature. The agency may prorate the biennial license fee for those licenses which it issues under this part for less than 2 years. The resident protection fee collected shall be deposited in the Health Care Trust Fund for the sole purpose of paying, in accordance with the provisions of s. 400.063, for the appropriate alternate placement, care, and treatment of a resident removed from a nursing home facility on a temporary, emergency basis or for the maintenance and care of residents in a nursing home facility pending removal and alternate placement.

(4) Counties or municipalities applying for licenses under this part are exempt from license fees authorized under this section.

History.—s. 5, ch. 70-361; s. 3, ch. 76-168; s. 235, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 79-268; ss. 2, 3, ch. 81-318; ss. 1, 19, ch. 82-148; ss. 9, 79, 83, ch. 83-181; s. 8, ch. 91-282; s. 30, ch. 93-177; ss. 8, 49, ch. 93-217; s. 14, ch. 2001-45; s. 58, ch. 2007-230; s. 11, ch. 2008-9.

400.0625 Minimum standards for clinical laboratory test results and diagnostic X-ray results.—

(1) Each nursing home, as a requirement for issuance or renewal of its license, shall require that all clinical laboratory tests performed for the nursing home be performed by a clinical laboratory licensed under the provisions of chapter 483, except for such self-testing procedures as are approved by the agency by rule. Results of clinical laboratory tests performed prior to admission which meet the minimum standards provided in s. 483.181(3) shall be accepted in lieu of routine examinations required upon admission and clinical laboratory tests which may be ordered by a physician for residents of the nursing home.

(2) Each nursing home, as a requirement for issuance or renewal of its license, shall establish minimum standards for acceptance of results of diagnostic X rays performed by or for the nursing home. Such minimum standards shall require licensure or registration of the source of ionizing radiation under the provisions of chapter 404. Diagnostic X-ray results which meet the minimum standards shall be accepted in lieu of routine examinations required upon admission and in lieu of diagnostic X rays which may be ordered by a physician for residents of the nursing home.

History.—ss. 22, 28, ch. 82-182; ss. 10, 79, 81, 83, ch. 83-181; s. 26, ch. 83-215; s. 30, ch. 93-177; ss. 9, 49, ch. 93-217.

Note.—Former s. 400.4175.

400.063 Resident protection.—

(1) The Health Care Trust Fund shall be used for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673(4), 400.062(3), 400.121(2), and 400.23(8). Such funds shall be for the sole purpose of paying for the appropriate alternate placement, care, and treatment of residents who are removed from a facility licensed under this part or a facility specified in s. 393.0678(1) in which the agency determines that existing conditions or practices constitute an immediate danger to the health, safety, or security of the residents. If the

agency determines that it is in the best interest of the health, safety, or security of the residents to provide for an orderly removal of the residents from the facility, the agency may utilize such funds to maintain and care for the residents in the facility pending removal and alternative placement. The maintenance and care of the residents shall be under the direction and control of a receiver appointed pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may be expended in an emergency upon a filing of a petition for a receiver, upon the declaration of a state of local emergency pursuant to s. 252.38(3)(a)5., or upon a duly authorized local order of evacuation of a facility by emergency personnel to protect the health and safety of the residents.

(2) The agency is authorized to establish for each facility, subject to intervention by the agency, a separate bank account for the deposit to the credit of the agency of any moneys received from the Health Care Trust Fund or any other moneys received for the maintenance and care of residents in the facility, and the agency is authorized to disburse moneys from such account to pay obligations incurred for the purposes of this section. The agency is authorized to requisition moneys from the Health Care Trust Fund in advance of an actual need for cash on the basis of an estimate by the agency of moneys to be spent under the authority of this section. Any bank account established under this section need not be approved in advance of its creation as required by s. 17.58, but shall be secured by depository insurance equal to or greater than the balance of such account or by the pledge of collateral security in conformance with criteria established in 's. 18.11. The agency shall notify the Chief Financial Officer of any such account so established and shall make a quarterly accounting to the Chief Financial Officer for all moneys deposited in such account.

(3) Funds authorized under this section shall be expended on behalf of all residents transferred to an alternate placement, at the usual and customary charges of the facility used for the alternate placement, provided no other source of private or public funding is available. However, such funds may not be expended on behalf of a resident who is eligible for Title XIX of the Social Security Act, if the alternate placement accepts Title XIX of the Social Security Act. Funds shall be utilized for maintenance and care of residents in a facility in receivership only to the extent private or public funds, including funds available under Title XIX of the Social Security Act, are not available or are not sufficient to adequately manage and operate the facility, as determined by the agency. The existence of the Health Care Trust Fund shall not make the agency liable for the maintenance of any resident in any facility. The state shall be liable for the cost of alternate placement of residents removed from a deficient facility, or for the maintenance of residents in a facility in receivership, only to the extent that funds are available in the Health Care Trust Fund.

(4) The agency is authorized to adopt rules necessary to implement this section.

History.—ss. 3, 9, ch. 79-268; ss. 4, 18, ch. 80-186; s. 2, ch. 81-318; ss. 11, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 14, ch. 83-230; s. 1, ch. 87-371; s. 30, ch. 93-177; ss. 10, 49, ch. 93-217; s. 211, ch. 99-13; s. 23, ch. 99-394; s. 416, ch. 2003-261; s. 59, ch. 2007-230; s. 101, ch. 2008-4; s. 12, ch. 2008-9; s. 12, ch. 2008-244.

¹*Note.*—Repealed by s. 11, ch. 81-285; confirmed by s. 1, ch. 83-85.

400.071 Application for license.—

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

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

(b) A signed affidavit disclosing any financial or ownership interest that a controlling interest as defined in part II of chapter 408 has held in the last 5 years in any entity licensed by this state or any

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

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

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

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

(2) As a condition of licensure, each licensee, except one offering continuing care agreements as defined in chapter 651, must agree to accept recipients of Title XIX of the Social Security Act on a temporary, emergency basis. The persons whom the agency may require such licensees to accept are those recipients of Title XIX of the Social Security Act who are residing in a facility in which existing conditions constitute an immediate danger to the health, safety, or security of the residents of the facility.

(3) It is the intent of the Legislature that, in reviewing a certificate-of-need application to add beds to an existing nursing home facility, preference be given to the application of a licensee who has been awarded a Gold Seal as provided for in s. 400.235, if the applicant otherwise meets the review criteria specified in s. 408.035.

(4) The agency may develop an abbreviated survey for licensure renewal applicable to a licensee that has continuously operated as a nursing facility since 1991 or earlier, has operated under the same management for at least the preceding 30 months, and has had during the preceding 30 months no class I or class II deficiencies.

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

History.—s. 6, ch. 69-309; ss. 19, 35, ch. 69-106; ss. 5, 6, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 2, ch. 76-201; s. 236, ch. 77-147; s. 2, ch. 77-323; s. 1, ch. 77-457; ss. 4, 9, ch. 79-268; ss. 5, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 12, 79, 83, ch. 83-181; s. 44, ch. 87-92; s. 30, ch. 93-177; ss. 11, 49, ch. 93-217; s. 11, ch. 97-87; s. 1, ch. 98-85; ss. 41, 71, ch. 98-171; s. 9, ch. 99-394; s. 71, ch. 2000-349; s. 15, ch. 2001-45; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 18, ch. 2001-377; s. 18, ch. 2003-57; s. 417, ch. 2003-261; s. 46, ch. 2004-267; s. 2, ch. 2004-298; s. 60, ch. 2007-230.

400.0712 Application for inactive license.—

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

(2) The agency may issue an inactive license to a nursing home that chooses to use an unoccupied contiguous portion of the facility for an alternative use to meet the needs of elderly persons through the use of less restrictive, less institutional services.

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

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

(c) Nursing homes that receive an inactive license to provide alternative services shall not receive preference for participation in the Assisted Living for the Elderly Medicaid waiver.

(3) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

History.—s. 1, ch. 2004-298; s. 61, ch. 2007-230; s. 102, ch. 2008-4; s. 37, ch. 2009-223.

400.102 Action by agency against licensee; grounds.—In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee:

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

(2) Misappropriation or conversion of the property of a resident of the facility;

(3) 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 nursing home resident; or

(4) Fraudulent altering, defacing, or falsifying any medical or nursing home records, or causing or procuring any of these offenses to be committed.

History.—s. 8, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 237, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 13, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 12, 49, ch. 93-217; s. 35, ch. 96-169; s. 16, ch. 2001-45; s. 62, ch. 2007-230.

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

History.—s. 10, ch. 69-309; ss. 19, 35, ch. 69-106; s. 7, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 238, ch. 77-147; s. 1, ch. 77-457; ss. 5, 9, ch. 79-268; ss. 6, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 2, 19, ch. 82-148; ss. 14, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 13, 49, ch. 93-217; s. 17, ch. 2001-45; s. 63, ch. 2007-230.

400.118 Quality assurance; early warning system; monitoring; rapid response teams.—

(1) The agency shall establish an early warning system to detect conditions in nursing facilities that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include, but not be limited to, analysis of financial and quality-of-care indicators that would predict the need for the agency to take action pursuant to the authority set forth in this part.

(2) The agency shall also create teams of experts that can function as rapid response teams to visit nursing facilities identified through the agency's early warning system. Rapid response teams may visit facilities that request the agency's assistance. The rapid response teams shall not be deployed for the purpose of helping a facility prepare for a regular survey.

History.—s. 10, ch. 99-394; s. 17, ch. 2000-263; s. 18, ch. 2001-45; s. 38, ch. 2009-223.

400.1183 Resident grievance procedures.—

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

- (a) An explanation of how to pursue redress of a grievance.
- (b) The names, job titles, and telephone numbers of the employees responsible for implementing the facility's grievance procedure. The list must include the address and the toll-free telephone numbers of the ombudsman and the agency.
- (c) A simple description of the process through which a resident may, at any time, contact the toll-free telephone hotline of the ombudsman or the agency to report the unresolved grievance.
- (d) A procedure for providing assistance to residents who cannot prepare a written grievance without help.

(2) Each facility shall maintain records of all grievances and shall report to the agency at the time of relicensure the total number of grievances handled during the prior licensure period, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

- (3) Each facility must respond to the grievance within a reasonable time after its submission.
- (4) The agency may investigate any grievance at any time.

History.—s. 19, ch. 2001-45; s. 64, ch. 2007-230.

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

(1) Incident reports filed with the risk manager and administrator of a long-term care facility licensed under this part or part I of chapter 429, 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.

(2)(a) The meetings of an internal risk management and quality assurance committee of a long-term care facility licensed under this part or part I of chapter 429 are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Records of those meetings are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3)(a) 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 records made confidential and exempt pursuant to this section to the appropriate law enforcement agency or regulatory board.

(b) Records disclosed to a law enforcement agency remain confidential and exempt until criminal charges are filed.

(4) Records made confidential and exempt under this section and that are obtained by a regulatory board are not available to the public as part of the record of investigation and prosecution in a disciplinary proceeding made available to the public by the agency or the appropriate regulatory board. However, the agency or the appropriate regulatory board shall make available, upon request by a health care professional against whom probable cause has been found, any such records that form the basis of the determination of probable cause.

History.—s. 1, ch. 2001-44; s. 59, ch. 2002-1; s. 1, ch. 2006-110; s. 25, ch. 2006-197.

400.121 Denial, suspension, revocation of license; administrative fines; procedure; order to increase staffing.—

(1) The agency may deny an application, revoke or suspend a license, and impose an administrative

fine, not to exceed \$500 per violation per day for the violation of any provision of this part, part II of chapter 408, or applicable rules, against any applicant or licensee for the following violations by the applicant, licensee, or other controlling interest:

- (a) A violation of any provision of this part, part II of chapter 408, or applicable rules; or
- (b) An adverse action by a regulatory agency against any other licensed facility that has a common controlling interest with the licensee or applicant against whom the action under this section is being brought. If the adverse action involves solely the management company, the applicant or licensee shall be given 30 days to remedy before final action is taken. If the adverse action is based solely upon actions by a controlling interest, the applicant or licensee may present factors in mitigation of any proposed penalty based upon a showing that such penalty is inappropriate under the circumstances.

All hearings shall be held within the county in which the licensee or applicant operates or applies for a license to operate a facility as defined herein.

(2) Except as provided in s. 400.23(8), a \$500 fine shall be imposed for each violation. Each day a violation of this part or part II of chapter 408 occurs constitutes a separate violation and is subject to a separate fine, but in no event may any fine aggregate more than \$5,000. A fine may be levied pursuant to this section in lieu of and notwithstanding the provisions of s. 400.23. Fines paid shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(3) The agency shall revoke or deny a nursing home license if the licensee or controlling interest operates a facility in this state that:

(a) Has had two moratoria issued pursuant to this part or part II of chapter 408 which are imposed by final order for substandard quality of care, as defined by 42 C.F.R. part 483, within any 30-month period;

(b) Is conditionally licensed for 180 or more continuous days;

(c) Is cited for two class I deficiencies arising from unrelated circumstances during the same survey or investigation; or

(d) Is cited for two class I deficiencies arising from separate surveys or investigations within a 30-month period.

The licensee may present factors in mitigation of revocation, and the agency may make a determination not to revoke a license based upon a showing that revocation is inappropriate under the circumstances.

(4) If the agency has placed a moratorium pursuant to this part or part II of chapter 408 on any facility two times within a 7-year period, the agency may suspend the nursing home license.

(5) An action taken by the agency to deny, suspend, or revoke a facility's license under this part or part II of chapter 408 shall be heard by the Division of Administrative Hearings of the Department of Management Services within 60 days after the assignment of an administrative law judge, unless the 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 is authorized to require a facility to increase staffing beyond the minimum required by law, if the agency has taken administrative action against the facility for care-related deficiencies directly attributable to insufficient staff. Under such circumstances, the facility may request an expedited interim rate increase. The agency shall process the request within 10 days after receipt of all required documentation from the facility. A facility that fails to maintain the required increased staffing is subject to a fine of \$500 per day for each day the staffing is below the level required by the agency.

(7) Notwithstanding any other provision of law to the contrary, agency action in an administrative

proceeding under this section may be overcome by the licensee upon a showing by a preponderance of the evidence to the contrary.

(8) In addition to any other sanction imposed under this part or part II of chapter 408, in any final order that imposes sanctions, the agency may assess costs related to the investigation and prosecution of the case. Payment of agency costs shall be deposited into the Health Care Trust Fund.

History.—s. 11, ch. 69-309; s. 1, ch. 69-267; ss. 19, 35, ch. 69-106; s. 9, ch. 70-361; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 239, ch. 77-147; s. 1, ch. 77-457; s. 19, ch. 78-95; ss. 6, 9, ch. 79-268; ss. 7, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 15, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 14, 49, ch. 93-217; s. 36, ch. 96-169; s. 1, ch. 98-248; s. 11, ch. 99-394; s. 20, ch. 2001-45; s. 65, ch. 2007-230; s. 13, ch. 2008-9.

400.126 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, when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 400.062.

(b) The licensee is closing the facility or has informed the agency that it intends to close the facility 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. However, the failure on the part of the agency, after receiving notice of the closing of a facility that is certified to provide services under Title XIX of the Social Security Act, a minimum of 90 days prior to the closing date, to make adequate arrangement for relocating those residents who are receiving assistance under the Medicaid program shall in and of itself not be grounds to petition for the appointment of a receiver. Under these circumstances, if a facility remains open beyond the closing date, the agency shall reimburse the facility for all costs incurred, up to the cap, for those residents who are receiving assistance under the Medicaid program, provided the facility continues to be licensed pursuant to this part and certified to provide services under Title XIX of the Social Security Act.

(c) The agency determines that conditions exist in the facility 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 licensee cannot meet its financial obligation for providing food, shelter, care, and utilities. Evidence such as the issuance of bad checks or an accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities shall constitute prima facie evidence that the ownership of the facility lacks the financial ability to operate the home.

(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 the owner or administrator of the facility named in the petition of the filing of the petition and the date set for the hearing. The court may grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed when the owner or administrator, or a representative of the owner or administrator, is not present at the hearing on the petition, 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 the

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 person qualified by education, training, or experience to carry out the responsibilities of a receiver pursuant to this section, who must either be qualified pursuant to s. 400.20 or who must employ a licensed nursing home administrator in compliance with s. 400.20, except that the court 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 shall 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 shall 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 for private-pay residents. The receiver may apply to the agency for a rate increase for Title XIX of the Social Security Act residents if the facility is not receiving the "state reimbursement cap" and expenditures justify an increase in the rate.

(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, provided 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 under this section.

(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 receivership, or which, in the case of a purchase agreement, become due during the period of 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 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 or assets and all resident records 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 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 or mortgage holders 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 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

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

(10) Within 30 days after the termination, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(11) 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 of 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. A licensee that is placed in receivership by the court is liable for all expenses and costs incurred by the Health Care Trust Fund that are related to capital improvement and operating costs and are no more than 10 percent above the facility's Medicaid rate which occur as a result of the receivership.

(12) Concurrently with the appointment of a receiver, the agency and the Department of Elderly Affairs shall coordinate an assessment of each resident in the facility by the Comprehensive Assessment and Review for Long-Term-Care (CARES) Program for the purpose of evaluating each resident's need for the level of care provided in a nursing facility and the potential for providing such care in alternative settings. If the CARES assessment determines that a resident could be cared for in a less restrictive setting or does not meet the criteria for skilled or intermediate care in a nursing home, the department and agency shall refer the resident for such care, as is appropriate for the resident. Residents referred pursuant to this subsection shall be given primary consideration for receiving services under the community care for the elderly program in the same manner as persons classified to receive such services pursuant to s. 430.205.

History.—ss. 8, 18, ch. 80-186; s. 2, ch. 81-318; ss. 17, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 57, ch. 91-282; s. 30, ch. 93-177; ss. 16, 49, ch. 93-217; s. 766, ch. 95-148; s. 21, ch. 2001-45; s. 14, ch. 2008-9.

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

- (a) Be under the administrative direction and charge of a licensed administrator.
- (b) Appoint a medical director licensed pursuant to chapter 458 or chapter 459. The agency may establish by rule more specific criteria for the appointment of a medical director.
- (c) Have available the regular, consultative, and emergency services of physicians licensed by the state.
- (d) 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 this paragraph may 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 in this paragraph. A pharmacist who repackages and relabels prescription medications, as authorized under this paragraph, may charge a reasonable fee for costs resulting from the implementation of this provision.

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

(f) Be allowed and encouraged by the agency to provide other needed services under certain conditions. If the facility has a standard licensure status, and has had no class I or class II deficiencies during the past 2 years or has been awarded a Gold Seal under the program established in s. 400.235, it may be encouraged by the agency to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services. Respite care may be offered to persons in need of short-term or temporary nursing home services. Respite care must be provided in accordance with this part and rules adopted by the agency. However, the agency shall, by rule, adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services. The agency shall allow for shared programming and staff in a facility which meets minimum standards and offers services pursuant to this paragraph, but, if the facility is cited for deficiencies in patient care, may require additional staff and programs appropriate to the needs of service recipients. A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives 24-hour respite care. A person receiving either respite care for 24 hours or longer or adult day services must be included when calculating minimum staffing for the facility. Any costs and revenues generated by a nursing home facility from nonresidential programs or services shall be excluded from the calculations of Medicaid per diems for nursing home institutional care reimbursement.

(g) 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 on a single campus, be allowed to share programming and staff. At the time of inspection and in the semiannual report required pursuant to paragraph (o), 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 paragraph 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.

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

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

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

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

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

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

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

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

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

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

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

d. A nursing facility that has failed to comply with state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for a period of 6 consecutive days. For the purposes of this sub-subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure to impose such an admissions moratorium constitutes a class II deficiency.

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

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

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

(p) 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.

(q) If the facility implements a dining and hospitality attendant program, ensure that the program is developed and implemented under the supervision of the facility director of nursing. A licensed nurse, licensed speech or occupational therapist, or a registered dietitian must conduct training of dining and hospitality attendants. A person employed by a facility as a dining and hospitality attendant must perform tasks under the direct supervision of a licensed nurse.

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

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

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

(u) Before November 30 of each year, subject to the availability of an adequate supply of the necessary vaccine, provide for immunizations against influenza viruses to all its consenting residents in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Subject to these

exemptions, any consenting person who becomes a resident of the facility after November 30 but before March 31 of the following year must be immunized within 5 working days after becoming a resident. Immunization shall not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph.

(v) Assess all residents for eligibility for pneumococcal polysaccharide vaccination (PPV) and vaccinate residents when indicated within 60 days after the effective date of this act in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Residents admitted after the effective date of this act shall be assessed within 5 working days of admission and, when indicated, vaccinated within 60 days in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Immunization shall not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to comply with or implement this paragraph.

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

(2) 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.

History.—s. 13, ch. 69-309; ss. 19, 35, ch. 69-106; s. 12, ch. 70-361; s. 3, ch. 76-168; s. 241, ch. 77-147; s. 3, ch. 77-401; s. 1, ch. 77-457; ss. 9, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 18, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 17, 49, ch. 93-217; s. 21, ch. 95-418; s. 12, ch. 99-394; s. 18, ch. 2000-263; s. 4, ch. 2000-350; s. 1, ch. 2001-42; ss. 22, 57, ch. 2001-45; s. 35, ch. 2001-62; s. 144, ch. 2001-277; s. 60, ch. 2002-1; s. 29, ch. 2002-223; s. 6, ch. 2002-400; s. 23, ch. 2003-57; s. 2, ch. 2003-120; s. 1, ch. 2005-136; s. 2, ch. 2006-28; s. 26, ch. 2006-197; s. 67, ch. 2007-230; s. 39, ch. 2009-223; s. 82, ch. 2010-5; s. 1, ch. 2010-156; s. 2, ch. 2010-197.

400.1413 Volunteers in nursing homes.—

(1) It is the intent of the Legislature to encourage the involvement of volunteers in nursing homes in this state. The Legislature also acknowledges that the licensee is responsible for all the activities that take place in the nursing home and recognizes the licensee's need to be aware of and coordinate volunteer activities in the nursing home. Therefore, a nursing home may require that volunteers:

- (a) Sign in and out with staff of the nursing home upon entering or leaving the facility.
- (b) Wear an identification badge while in the building.
- (c) Participate in a facility orientation and training program.

(2) This section does not affect the activities of state or local long-term care ombudsman councils authorized under part I.

History.—s. 23, ch. 2001-45.

400.1415 Patient records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical record or releases medical records for the purposes of solicitation or marketing the sale of goods or services absent a specific written release or authorization permitting utilization of patient information, or other nursing home record, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

History.—s. 5, ch. 93-217; s. 7, ch. 99-394; s. 11, ch. 2001-222; s. 142, ch. 2001-277.

Note.—Former s. 400.0231.

400.142 Emergency medication kits; orders not to resuscitate.—

(1) Other provisions of this chapter or of chapter 465, chapter 499, or chapter 893 to the contrary notwithstanding, each nursing home operating pursuant to a license issued by the agency may maintain an emergency medication kit for the purpose of storing medicinal drugs to be administered under emergency conditions to residents residing in such facility.

(2) The agency shall adopt such rules as it may deem appropriate to the effective implementation of this act, including, but not limited to, rules which:

(a) Define the term “emergency medication kit.”

(b) Describe the medicinal drugs eligible to be placed in emergency medication kits.

(c) Establish requirements for the storing of medicinal drugs in emergency medication kits and the maintenance of records with respect thereto.

(d) Establish requirements for the administration of medicinal drugs to residents under emergency conditions from emergency medication kits.

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. The agency 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 agency. The absence of an order not to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

History.—ss. 40, 83, ch. 83-181; s. 30, ch. 93-177; ss. 32, 49, ch. 93-217; s. 3, ch. 99-331; s. 2, ch. 2000-295.

Note.—Former s. 400.3221.

400.145 Records of care and treatment of resident; copies to be furnished.—

(1) Unless expressly prohibited by a legally competent resident, any nursing home licensed pursuant to this part shall furnish to the spouse, guardian, surrogate, proxy, or attorney in fact, as provided in chapters 744 and 765, of a current resident, within 7 working days after receipt of a written request, or of a former resident, within 10 working days after receipt of a written request, a copy of that resident’s records which are in the possession of the facility. Such records shall include medical and psychiatric records and any records concerning the care and treatment of the resident performed by the facility, except progress notes and consultation report sections of a psychiatric nature. Copies of such records shall not be considered part of a deceased resident’s estate and may be made available prior to the

administration of an estate, upon request, to the spouse, guardian, surrogate, proxy, or attorney in fact, as provided in chapters 744 and 765. A facility may charge a reasonable fee for the copying of resident records. Such fee shall not exceed \$1 per page for the first 25 pages and 25 cents per page for each page in excess of 25 pages. The facility shall further allow any such spouse, guardian, surrogate, proxy, or attorney in fact, as provided in chapters 744 and 765, to examine the original records in its possession, or microfilms or other suitable reproductions of the records, upon such reasonable terms as shall be imposed, to help assure that the records are not damaged, destroyed, or altered.

(2) No person shall be allowed to obtain copies of residents' records pursuant to this section more often than once per month, except that physician's reports in the residents' records may be obtained as often as necessary to effectively monitor the residents' condition.

History.—s. 1, ch. 87-302; s. 23, ch. 91-71; s. 30, ch. 93-177; s. 18, ch. 93-217; s. 228, ch. 96-406.

400.147 Internal risk management and quality assurance program.—

(1) Every facility shall, as part of its administrative functions, establish an internal risk management and quality assurance program, the purpose of which is to assess resident care practices; review facility quality indicators, facility incident reports, deficiencies cited by the agency, and resident grievances; and develop plans of action to correct and respond quickly to identified quality deficiencies. The program must include:

(a) A designated person to serve as risk manager, who is responsible for implementation and oversight of the facility's risk management and quality assurance program as required by this section.

(b) A risk management and quality assurance committee consisting of the facility risk manager, the administrator, the director of nursing, the medical director, and at least three other members of the facility staff. The risk management and quality assurance committee shall meet at least monthly.

(c) Policies and procedures to implement the internal risk management and quality assurance program, which must include the investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents to residents.

(d) The development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents and employees of the licensed health care facility to report adverse incidents to the risk manager, or to his or her designee, within 3 business days after their occurrence.

(e) The development of appropriate measures to minimize the risk of adverse incidents to residents, including, but not limited to, education and training in risk management and risk prevention for all nonphysician personnel, as follows:

1. Such education and training of all nonphysician personnel must be part of their initial orientation; and

2. At least 1 hour of such education and training must be provided annually for all nonphysician personnel of the licensed facility working in clinical areas and providing resident care.

(f) The analysis of resident grievances that relate to resident care and the quality of clinical services.

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

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

(4) Each internal risk management and quality assurance program shall include the use of incident reports to be filed with the risk manager and the facility administrator. The risk manager shall have free access to all resident records of the licensed facility. The incident reports are part of the workpapers of the attorney defending the licensed facility in litigation relating to the licensed facility and are subject to discovery, but are not admissible as evidence in court. A person filing an incident report is not subject to civil suit by virtue of such incident report. As a part of each internal risk management and quality assurance program, the incident reports shall be used to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct the problem areas.

(5) For purposes of reporting to the agency under this section, the term "adverse incident" means:

(a) An event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred, and which results in one of the following:

1. Death;
2. Brain or spinal damage;
3. Permanent disfigurement;
4. Fracture or dislocation of bones or joints;
5. A limitation of neurological, physical, or sensory function;
6. Any condition that required medical attention to which the resident has not given his or her informed consent, including failure to honor advanced directives;
7. Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident's condition prior to the adverse incident; or

8. An event that is reported to law enforcement or its personnel for investigation; or

(b) Resident elopement, if the elopement places the resident at risk of harm or injury.

(6) The internal risk manager of each licensed facility shall:

(a) Investigate every allegation of sexual misconduct which is made against a member of the facility's personnel who has direct patient contact when the allegation is that the sexual misconduct occurred at the facility or at the grounds of the facility;

(b) Report every allegation of sexual misconduct to the administrator of the licensed facility; and

(c) Notify the resident representative or guardian of the victim that an allegation of sexual misconduct has been made and that an investigation is being conducted.

(7) The facility shall initiate an investigation and shall notify the agency within 1 business day after the risk manager or his or her designee has received a report pursuant to paragraph (1)(d). The notification must be made in writing and be provided electronically, by facsimile device or overnight mail delivery. The notification must include information regarding the identity of the affected resident, the type of adverse incident, the initiation of an investigation by the facility, and whether the events causing or resulting in the adverse incident represent a potential risk to any other resident. The notification is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

(8)(a) Each facility shall complete the investigation and submit an adverse incident report to the

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

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

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

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

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

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

(11) The agency shall review, as part of its licensure inspection process, the internal risk management and quality assurance program at each facility regulated by this section to determine whether the program meets standards established in statutory laws and rules, is being conducted in a manner designed to reduce adverse incidents, and is appropriately reporting incidents as required by this section.

(12) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any risk manager for the implementation and oversight of the internal risk management and quality assurance program in a facility licensed under this part as required by this section, or for any act or proceeding undertaken or performed within the scope of the functions of such internal risk management and quality assurance program if the risk manager acts without intentional fraud.

(13) If the agency, through its receipt of the adverse incident reports prescribed in subsection (7), or through any investigation, has a reasonable belief that conduct by a staff member or employee of a facility is grounds for disciplinary action by the appropriate regulatory board, the agency shall report this fact to the regulatory board.

(14) The agency may adopt rules to administer this section.

(15) Information gathered by a credentialing organization under a quality assurance program is not discoverable from the credentialing organization. This subsection does not limit discovery of, access to, or use of facility records, including those records from which the credentialing organization gathered its

information.

History.—s. 24, ch. 2001-45; s. 8, ch. 2002-400; s. 40, ch. 2009-223.

400.148 Medicaid “Up-or-Out” Quality of Care Contract Management Program.—

(1) The Legislature finds that the federal Medicare program has implemented successful models of managing the medical and supportive-care needs of long-term nursing home residents. These programs have maintained the highest practicable level of good health and have the potential to reduce the incidence of preventable illnesses among long-stay residents of nursing homes, thereby increasing the quality of care for residents and reducing the number of lawsuits against nursing homes. Such models are operated at no cost to the state. It is the intent of the Legislature that the Agency for Health Care Administration replicate such oversight for Medicaid recipients in poor-performing nursing homes and in assisted living facilities and nursing homes that are experiencing disproportionate numbers of lawsuits, with the goal of improving the quality of care in such homes or facilitating the revocation of licensure.

(2) The pilot project must ensure:

(a) Oversight and coordination of all aspects of a resident’s medical care and stay in a nursing home;

(b) Facilitation of close communication between the resident, the resident’s guardian or legal representative, the resident’s attending physician, the resident’s family, and staff of the nursing facility;

(c) Frequent onsite visits to the resident;

(d) Early detection of medical or quality problems that have the potential to lead to adverse outcomes and unnecessary hospitalization;

(e) Close communication with regulatory staff;

(f) Immediate investigation of resident quality-of-care complaints and communication and cooperation with the appropriate entity to address those complaints, including the ombudsman, state agencies, agencies responsible for Medicaid program integrity, and local law enforcement agencies;

(g) Assistance to the resident or the resident’s representative to relocate the resident if quality-of-care issues are not otherwise addressed; and

(h) Use of Medicare and other third-party funds to support activities of the program, to the extent possible.

(3) The agency shall model the pilot project activities after such Medicare-approved demonstration projects.

(4) The agency may contract to provide similar oversight services to Medicaid recipients.

(5) The agency shall, jointly with the Statewide Public Guardianship Office, develop a system in the pilot project areas to identify Medicaid recipients who are residents of a participating nursing home or assisted living facility who have diminished ability to make their own decisions and who do not have relatives or family available to act as guardians in nursing homes listed on the Nursing Home Guide Watch List. The agency and the Statewide Public Guardianship Office shall give such residents priority for publicly funded guardianship services.

History.—s. 25, ch. 2001-45; s. 107, ch. 2010-102.

400.151 Contracts.—

(1) The presence of each resident in a facility shall be covered by a contract, executed by the licensee and the resident or his or her designee or legal representative at the time of admission or prior thereto and at the expiration of the term of a previous contract, and modified by the licensee and the resident or his or her designee or legal representative at the time the source of payment for the

resident's care changes. Each party to the contract is entitled to a duplicate original thereof, printed in boldfaced type, and the licensee shall keep on file all contracts which it has with residents. The licensee may not destroy or otherwise dispose of any such contract until 5 years after its expiration or such longer period as may be provided in the rules of the agency. Microfilmed records or records reproduced by a similar process of duplication may be kept in lieu of the original records.

(2) Each contract to which this section applies shall contain express provisions specifically setting forth the services and accommodations to be provided by the licensee, the rates or charges therefor, bed reservation and refund policies, and any other matters which the parties deem appropriate. The licensee shall attach to the contract a list of services and supplies available but not covered by the per diem rate of the facility or by Titles XVIII and XIX of the Social Security Act and the standard charge to the resident for each item. The licensee shall provide written notification to each party to the contract of any changes in any attachment thereto, no fewer than 14 days in advance of the effective date of those changes. The agency shall specify by rule an alternative method for notification of changes in the cost of supplies. If the resident is a party to the contract, the licensee shall provide him or her with a written and oral notification of the changes.

History.—s. 14, ch. 69-309; ss. 19, 35, ch. 69-106; s. 13, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 19, 79, 83, ch. 83-181; s. 46, ch. 85-81; s. 30, ch. 93-177; ss. 19, 49, ch. 93-217; s. 767, ch. 95-148.

400.162 Property and personal affairs of residents.—

(1) The admission of a resident to a facility and his or her presence in the facility 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 the aforementioned persons any authority or responsibility for the personal affairs of the resident, except that which may be necessary for the safety and orderly management of the facility.

(2) No licensee, owner, administrator, employee, or representative thereof shall act as guardian, trustee, or conservator for any resident of the facility or any of such resident's property unless the person is the resident's spouse or a blood relative within the third degree of consanguinity.

(3) A licensee shall provide for the safekeeping of personal effects, funds, and other property of the resident in the facility. Whenever necessary for the protection of valuables, or in order to avoid unreasonable responsibility therefor, the licensee may require that such valuables be excluded or removed from the facility and kept at some place not subject to the control of the licensee. At the request of a resident, the facility shall mark the resident's personal property with the resident's name or another type of identification, without defacing the property. Any theft or loss of a resident's personal property shall be documented by the facility. The facility shall develop policies and procedures to minimize the risk of theft or loss of the personal property of residents. A copy of the policy shall be provided to every employee and to each resident and the resident's representative if appropriate at admission and when revised. Facility policies must include provisions related to reporting theft or loss of a resident's property to law enforcement and any facility waiver of liability for loss or theft.

(4) A licensee shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

(5)(a) Any funds or other property belonging to a resident which are received by a licensee shall be held in trust. Funds held in trust shall be kept separate from the funds and property of the facility; shall be deposited in a bank, savings association, trust company, or credit union located in this state and, if possible, located in the same district in which the facility is located; shall not be represented as part of

the assets of the facility on a financial statement; and shall be used or otherwise expended only for the account of the resident.

(b)1. Any licensee which holds resident funds in trust, as provided in paragraph (a), during the period for which a license is requested or issued shall file a surety bond with the agency in an amount equal to twice the average monthly balance in the resident trust fund during the prior year or \$5,000, whichever is greater. The bond shall be executed by the licensee as principal and by a surety company authorized and licensed to do business in the state as surety. The bond shall be conditioned upon the faithful compliance of the licensee with the provisions of this section and shall run to the agency for the benefit of any resident injured by the violation by the licensee of the provisions of this section.

2. A new bond or a proper continuation certificate shall be required on the annual renewal date of each licensee's bond. Such bond or certificate shall be filed with the agency as provided in subparagraph 1.

3. Any surety company which 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.

(c) As an alternative to posting a surety bond, the licensee may enter into a self-insurance agreement as specified in rules adopted by the agency. Funds contained in the pool shall run to any resident suffering financial loss as a result of the violation by the licensee of the provisions of this section. Such funds shall be awarded to any resident in an amount equal to the amount that the resident can establish, by affidavit or other adequate evidence, was deposited in trust with the licensee and which could not be paid to the resident within 30 days of the resident's request. The agency shall promulgate rules with regard to the establishment, organization, and operation of such self-insurance pools. Such rules shall include, but shall not be limited to, requirements for monetary reserves to be maintained by such self-insurers to assure their financial solvency.

(d) If, at any time during the period for which a license is issued, a licensee that has not purchased a surety bond or entered into a self-insurance agreement, as provided in paragraphs (b) and (c), is requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the agency of the request and make application for a surety bond or for participation in a self-insurance agreement within 7 days of the request, exclusive of weekends and holidays. Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained by the licensee for review by the agency and the State Nursing Home and Long-Term Care Facility Ombudsman Council.

(e) Moneys or securities received as advance payment for care may at no time exceed the cost of care for a 6-month period.

(f) At least every 3 months, the licensee shall furnish the resident and the guardian, trustee, or conservator, if any, for the resident a complete and verified statement of all funds and other property to which this subsection applies, detailing the amounts and items received, together with their sources and disposition. In any event, the licensee shall furnish such a statement annually and upon the discharge or transfer of a resident. Any governmental agency or private charitable agency contributing funds or other property on account of a resident also shall be entitled to receive such statement annually and upon discharge or transfer and such other report as it may require pursuant to law.

(6) In the event of the death of a resident, a licensee shall return all refunds and funds held in trust to the resident's personal representative, if one has been appointed at the time the nursing home 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 nursing home to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, funds due to the resident shall be placed in an interest-bearing account in a bank, savings association, trust company, or credit union located in this state and, if possible, located within the same district in which the facility is located, which funds shall not be represented as part of the assets of the facility on a financial statement, and the licensee shall maintain such account until such time as the trust funds are disbursed pursuant to the provisions of the Florida Probate Code. All other property of a deceased resident being held in trust by the licensee shall be returned to the resident's personal representative, if one has been appointed at the time the nursing home disburses such property, and if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the nursing home to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, property being held in trust shall be safeguarded until such time as the property is disbursed pursuant to the provisions of the Florida Probate Code. The trust funds and property of deceased residents shall be kept separate from the funds and the property of the licensee and from the funds and property of the residents of the facility. The nursing home needs to maintain only one account in which the trust funds amounting to less than \$100 of deceased residents are placed. However, it shall be the obligation of the nursing home to maintain adequate records to permit compilation of interest due each individual resident's account. Separate accounts shall be maintained with respect to trust funds of deceased residents equal to or in excess of \$100. In the event the trust funds of the deceased resident are not disbursed pursuant to the provisions of the Florida Probate Code within 2 years of the death of the resident, the trust funds shall be deposited in the Health Care Trust Fund and expended as provided for in s. 400.063, notwithstanding the provisions of any other law of this state. Any other property of a deceased resident held in trust by a licensee which is not disbursed in accordance with the provisions of the Florida Probate Code shall escheat to the state as provided by law.

History.—s. 15, ch. 69-309; s. 14, ch. 70-361; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 9, ch. 79-268; ss. 2, 3, ch. 81-318; ss. 3, 19, ch. 82-148; ss. 20, 79, 83, ch. 83-181; s. 1, ch. 85-286; s. 37, ch. 87-225; s. 30, ch. 93-177; ss. 20, 49, ch. 93-217; s. 768, ch. 95-148; s. 13, ch. 99-394; s. 15, ch. 2008-9; s. 41, ch. 2009-223.

400.165 Itemized resident billing, form and content prescribed by the agency.—

(1) Within 7 days following discharge or release from a nursing home, or within 7 days after the earliest date at which the cost of all goods or services provided on behalf of the resident are billed to the facility, the nursing home shall submit to the resident, or to his or her survivor or legal guardian, an itemized statement detailing in language comprehensible to an ordinary layperson the specific nature of charges or expenses incurred by the resident. The initial billing shall contain a statement of specific services received and expenses incurred for such items of service, enumerating in detail the constituent components of the services received within each department of the nursing home and including unit price data on rates charged by the nursing home as may be prescribed by the agency.

(2) Each statement shall:

- (a) Not include charges of nursing home-based physicians if billed separately.
- (b) Not include any generalized category of expenses such as “other” or “miscellaneous” or similar categories.
- (c) List drugs by brand or generic name and may not refer to drug code numbers when referring to drugs of any sort.
- (d) Specifically identify therapy treatment as to the date, type, and length of treatment when therapy treatment is a part of the statement. The person receiving a statement pursuant to this section

shall be fully and accurately informed as to each charge and service provided by the institution preparing the statement.

(3) On each itemized statement there shall appear the words "A FOR-PROFIT (or NOT-FOR-PROFIT or PUBLIC) NURSING HOME LICENSED BY THE STATE OF FLORIDA" or substantially similar words sufficient to identify clearly and plainly the ownership status of the nursing home.

(4) In any billing for services subsequent to the initial billing for such services, the resident, or the resident's survivor or legal guardian, may elect, at his or her option, to receive a copy of the detailed statement of specific services received and expenses incurred for each such item of service as provided in subsection (1).

(5) No physician, dentist, or nursing home may add to the price charged by any third party except for a service or handling charge representing a cost actually incurred as an item of expense; however, the physician, dentist, or nursing home is entitled to fair compensation for all professional services rendered. The amount of the service or handling charge, if any, shall be set forth clearly in the bill to the resident.

History.—ss. 22, 27, ch. 82-182; ss. 21, 79, 81, 83, ch. 83-181; s. 30, ch. 93-177; ss. 21, 49, ch. 93-217; s. 769, ch. 95-148.

Note.—Former s. 400.425.

400.17 Bribes, kickbacks, certain solicitations prohibited. —

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

(a) "Bribe" means any consideration corruptly given, received, promised, solicited, or offered to any individual with intent or purpose to influence the performance of any act or omission.

(b) "Kickback" means that part of the payment for items or services which is returned to the payor by the provider of such items or services with the intent or purpose to induce the payor to purchase the items or services from the provider.

(2) Whoever furnishes items or services directly or indirectly to a nursing home resident and solicits, offers, or receives any:

(a) Kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment; or

(b) Return of part of an amount given in payment for referring any such individual to another person for the furnishing of such items or services;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine not exceeding \$5,000, or both.

(3) No person shall, in connection with the solicitation of contributions to nursing homes, willfully misrepresent or mislead anyone, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if such is not the fact.

(4) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of a nursing home by any agent, employee, owner, or representative of a nursing home shall be grounds for denial, suspension, or revocation of the license for any nursing home on behalf of which such contributions were solicited.

(5) The admission, maintenance, or treatment of a nursing home resident whose care is supported in whole or in part by state funds may not be made conditional upon the receipt of any manner of contribution or donation from any person. However, this may not be construed to prohibit the offer or receipt of contributions or donations to a nursing home which are not related to the care of a specific resident. Contributions solicited or received in violation of this subsection shall be grounds for denial,

suspension, or revocation of a license for any nursing home on behalf of which such contributions were solicited.

History.—s. 16, ch. 69-309; s. 16, ch. 70-361; s. 3, ch. 76-168; s. 3, ch. 76-201; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 22, 79, 83, ch. 83-181; s. 30, ch. 93-177; s. 49, ch. 93-217.

400.175 Patients with Alzheimer's disease or other related disorders; certain disclosures.—A facility licensed under this part which claims that it provides special care for persons who have Alzheimer's disease or other related disorders must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons. The facility must give a copy of all such advertisements or a copy of the document to each person who requests information about programs and services for persons with Alzheimer's disease or other related disorders offered by the facility and must maintain a copy of all such advertisements and documents in its records. The agency shall examine all such advertisements and documents in the facility's records as part of the license renewal procedure.

History.—s. 1, ch. 93-105.

400.1755 Care for persons with Alzheimer's disease or related disorders.—

(1) As a condition of licensure, facilities licensed under this part must provide to each of their employees, upon beginning employment, basic written information about interacting with persons with Alzheimer's disease or a related disorder.

(2) All employees who are expected to, or whose responsibilities require them to, have direct contact with residents with Alzheimer's disease or a related disorder must, in addition to being provided the information required in subsection (1), also have an initial training of at least 1 hour completed in the first 3 months after beginning employment. This training must include, but is not limited to, an overview of dementias and must provide basic skills in communicating with persons with dementia.

(3) An individual who provides direct care shall be considered a direct caregiver and must complete the required initial training and an additional 3 hours of training within 9 months after beginning employment. This training shall include, but is not limited to, managing problem behaviors, promoting the resident's independence in activities of daily living, and skills in working with families and caregivers.

(a) The required 4 hours of training for certified nursing assistants are part of the total hours of training required annually.

(b) For a health care practitioner as defined in s. 456.001, continuing education hours taken as required by that practitioner's licensing board shall be counted toward this total of 4 hours.

(4) For an employee who is a licensed health care practitioner as defined in s. 456.001, training that is sanctioned by that practitioner's licensing board shall be considered to be approved by the Department of Elderly Affairs.

(5) The Department of Elderly Affairs or its designee must approve the initial and continuing training provided in the facilities. The department must approve training offered in a variety of formats, including, but not limited to, Internet-based training, videos, teleconferencing, and classroom instruction. The department shall keep a list of current providers who are approved to provide initial and continuing training. The department shall adopt rules to establish standards for the trainers and the training required in this section.

(6) Upon completing any training listed in this section, 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 or to an assisted living facility, home health agency, adult day care center, or adult family-care home. The direct caregiver must comply with other applicable continuing education requirements.

History.—s. 26, ch. 2001-45; s. 62, ch. 2005-2.

400.176 Rebates prohibited; penalties.—

(1) It is unlawful for any person to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for residents referred to a nursing home licensed under this part.

(2) The agency shall adopt rules which assess administrative penalties for acts prohibited by subsection (1). In the case of an entity licensed by the agency, such penalties may include any disciplinary action available to the agency under the appropriate licensing laws. In the case of an entity not licensed by the agency, such penalties may include:

(a) A fine not to exceed \$5,000; and

(b) If applicable, a recommendation by the agency to the appropriate licensing board that disciplinary action be taken.

History.—s. 2, ch. 79-106; s. 2, ch. 81-318; ss. 23, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 22, 49, ch. 93-217.

400.179 Liability for Medicaid underpayments and overpayments.—

(1) It is the intent of the Legislature to protect the rights of nursing home residents and the security of public funds when a nursing facility is sold or the ownership is transferred.

(2) Because any transfer of a nursing facility may expose the fact that Medicaid may have underpaid or overpaid the transferor, and because in most instances, any such underpayment or overpayment can only be determined following a formal field audit, the liabilities for any such underpayments or overpayments shall be as follows:

(a) The Medicaid program shall be liable to the transferor for any underpayments owed during the transferor's period of operation of the facility.

(b) Without regard to whether the transferor had leased or owned the nursing facility, the transferor shall remain liable to the Medicaid program for all Medicaid overpayments received during the transferor's period of operation of the facility, regardless of when determined.

(c) Where the facility transfer takes any form of a sale of assets, in addition to the transferor's continuing liability for any such overpayments, if the transferor fails to meet these obligations, the transferee shall be liable for all liabilities that can be readily identifiable 90 days in advance of the transfer. Such liability shall continue in succession until the debt is ultimately paid or otherwise resolved. It shall be the burden of the transferee to determine the amount of all such readily identifiable overpayments from the Agency for Health Care Administration, and the agency shall cooperate in every way with the identification of such amounts. Readily identifiable overpayments shall include overpayments that will result from, but not be limited to:

1. Medicaid rate changes or adjustments;
2. Any depreciation recapture;
3. Any recapture of fair rental value system indexing; or
4. Audits completed by the agency.

The transferor shall remain liable for any such Medicaid overpayments that were not readily identifiable 90 days in advance of the nursing facility transfer.

(d) Where the transfer involves a facility that has been leased by the transferor:

1. The transferee shall, as a condition to being issued a license by the agency, acquire, maintain, and provide proof to the agency of a bond with a term of 30 months, renewable annually, in an amount not less than the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility.

2. A leasehold licensee may meet the requirements of subparagraph 1. by payment of a nonrefundable fee, paid at initial licensure, paid at the time of any subsequent change of ownership, and paid annually thereafter, in the amount of 1 percent of the total of 3 months' Medicaid payments to the facility computed on the basis of the preceding 12-month average Medicaid payments to the facility. If a preceding 12-month average is not available, projected Medicaid payments may be used. The fee shall be deposited into the Grants and Donations Trust Fund and shall be accounted for separately as a Medicaid nursing home overpayment account. These fees shall be used at the sole discretion of the agency to repay nursing home Medicaid overpayments. Payment of this fee shall not release the licensee from any liability for any Medicaid overpayments, nor shall payment bar the agency from seeking to recoup overpayments from the licensee and any other liable party. As a condition of exercising this lease bond alternative, licensees paying this fee must maintain an existing lease bond through the end of the 30-month term period of that bond. The agency is herein granted specific authority to promulgate all rules pertaining to the administration and management of this account, including withdrawals from the account, subject to federal review and approval. This provision shall take effect upon becoming law and shall apply to any leasehold license application. The financial viability of the Medicaid nursing home overpayment account shall be determined by the agency through annual review of the account balance and the amount of total outstanding, unpaid Medicaid overpayments owing from leasehold licensees to the agency as determined by final agency audits. By March 31 of each year, the agency shall assess the cumulative fees collected under this subparagraph, minus any amounts used to repay nursing home Medicaid overpayments and amounts transferred to contribute to the General Revenue Fund pursuant to s. 215.20. If the net cumulative collections, minus amounts utilized to repay nursing home Medicaid overpayments, exceed \$25 million, the provisions of this subparagraph shall not apply for the subsequent fiscal year.

3. The leasehold licensee may meet the bond requirement through other arrangements acceptable to the agency. The agency is herein granted specific authority to promulgate rules pertaining to lease bond arrangements.

4. All existing nursing facility licensees, operating the facility as a leasehold, shall acquire, maintain, and provide proof to the agency of the 30-month bond required in subparagraph 1., above, on and after July 1, 1993, for each license renewal.

5. It shall be the responsibility of all nursing facility operators, operating the facility as a leasehold, to renew the 30-month bond and to provide proof of such renewal to the agency annually.

6. Any failure of the nursing facility operator to acquire, maintain, renew annually, or provide proof to the agency shall be grounds for the agency to deny, revoke, and suspend the facility license to operate such facility and to take any further action, including, but not limited to, enjoining the facility, asserting a moratorium pursuant to part II of chapter 408, or applying for a receiver, deemed necessary to ensure compliance with this section and to safeguard and protect the health, safety, and welfare of

the facility's residents. A lease agreement required as a condition of bond financing or refinancing under s. 154.213 by a health facilities authority or required under s. 159.30 by a county or municipality is not a leasehold for purposes of this paragraph and is not subject to the bond requirement of this paragraph.

(e) For the 2009-2010 fiscal year only, the provisions of paragraph (d) shall not apply. This paragraph expires July 1, 2010.

History.—ss. 12, 18, ch. 80-186; s. 2, ch. 81-318; ss. 24, 79, 83, ch. 83-181; s. 51, ch. 83-218; s. 30, ch. 93-177; ss. 23, 49, ch. 93-217; s. 119, ch. 99-8; s. 15, ch. 2001-377; s. 28, ch. 2002-223; s. 10, ch. 2002-400; s. 1, ch. 2003-405; s. 63, ch. 2005-2; s. 3, ch. 2006-28; s. 68, ch. 2007-230; s. 1, ch. 2008-143; s. 3, ch. 2009-47; s. 13, ch. 2009-82; s. 2, ch. 2010-156.

400.18 Closing of nursing facility.—

(1) In addition to the requirements of part II of chapter 408, the licensee also shall inform each resident or the next of kin, legal representative, or agency acting on behalf of the resident of the fact, and the proposed time, of discontinuance of operation and give at least 90 days' notice so that suitable arrangements may be made for the transfer and care of the resident. In the event any resident has no such person to represent him or her, the licensee shall be responsible for securing a suitable transfer of the resident before the discontinuance of operation. The agency shall be responsible for arranging for the transfer of those residents requiring transfer who are receiving assistance under the Medicaid program.

(2) A representative of the agency shall be placed in a facility 30 days before the voluntary discontinuance of operation, or immediately upon the determination by the agency that the licensee is discontinuing operation or that existing conditions or practices represent an immediate danger to the health, safety, or security of the residents in the facility, to:

- (a) Monitor the transfer of residents to other facilities.
- (b) Ensure that the rights of residents are protected.
- (c) Observe the operation of the facility.
- (d) Assist the management of the facility by advising the management on compliance with state and federal laws and rules.
- (e) Recommend further action by the agency.

(3) The agency shall discontinue the monitoring of a facility pursuant to subsection (2) when:

(a) All residents in the facility have been relocated; or

(b) The agency determines that the conditions which gave rise to the placement of a representative of the agency in the facility no longer exist and the agency is reasonably assured that those conditions will not recur.

History.—s. 17, ch. 69-309; ss. 19, 35, ch. 69-106; s. 15, ch. 70-361; s. 3, ch. 76-168; s. 4, ch. 76-201; s. 1, ch. 77-457; ss. 11, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 5, 22, ch. 82-182; ss. 25, 79, 83, ch. 83-181; s. 58, ch. 91-282; s. 30, ch. 93-177; ss. 24, 49, ch. 93-217; s. 770, ch. 95-148; s. 69, ch. 2007-230.

400.19 Right of entry and inspection.—

(1) In accordance with part II of chapter 408, the agency and any duly designated officer or employee thereof or a member of the State Long-Term Care Ombudsman Council or the local long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 that provides extended care or other long-term care services, at any reasonable time in order to determine the state of compliance with the provisions of

this part, part II of chapter 408, and applicable rules in force pursuant thereto. The agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

(2) The agency shall coordinate nursing home facility licensing activities and responsibilities of any duly designated officer or employee involved in nursing home facility inspection to assure necessary, equitable, and consistent supervision of inspection personnel without unnecessary duplication of inspections, consultation services, or complaint investigations.

(3) The agency shall every 15 months conduct at least one unannounced inspection to determine compliance by the licensee with statutes, and with rules promulgated under the provisions of those statutes, governing minimum standards of construction, quality and adequacy of care, and rights of residents. The survey shall be conducted every 6 months for the next 2-year period if the facility has been cited for a class I deficiency, has been cited for two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency. In addition to any other fees or fines in this part, the agency shall assess a fine for each facility that is subject to the 6-month survey cycle. The fine for the 2-year period shall be \$6,000, one-half to be paid at the completion of each survey. The agency may adjust this fine by the change in the Consumer Price Index, based on the 12 months immediately preceding the increase, to cover the cost of the additional surveys. The agency shall verify through subsequent inspection that any deficiency identified during inspection is corrected. However, the agency may verify the correction of a class III or class IV deficiency unrelated to resident rights or resident care without reinspecting the facility if adequate written documentation has been received from the facility, which provides assurance that the deficiency has been corrected. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the agency to any unauthorized person shall constitute cause for suspension of not fewer than 5 working days according to the provisions of chapter 110.

(4) The agency shall conduct unannounced onsite facility reviews following written verification of licensee noncompliance in instances in which a long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be reasonably expected.

History.—s. 18, ch. 69-309; ss. 19, 35, ch. 69-106; s. 17, ch. 70-361; s. 3, ch. 76-168; s. 5, ch. 76-201; s. 1, ch. 77-457; ss. 35, 36, ch. 79-190; ss. 13, 18, ch. 80-186; ss. 2, 3, ch. 81-318; ss. 12, 19, ch. 82-148; ss. 26, 79, 83, ch. 83-181; ss. 21, 30, ch. 93-177; ss. 25, 49, ch. 93-217; s. 14, ch. 99-394; s. 139, ch. 2000-349; s. 59, ch. 2000-367; s. 27, ch. 2001-45; s. 70, ch. 2007-230.

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

(1) The agency shall provide information to the public about all of the licensed nursing home facilities operating in the state. The agency shall, within 60 days after a licensure inspection visit or within 30 days after any interim visit to a facility, send copies of the inspection reports to the local long-term care ombudsman council, the agency's local office, and a public library or the county seat for

the county in which the facility is located. The agency may provide electronic access to inspection reports as a substitute for sending copies.

(2) The agency shall publish the Nursing Home Guide quarterly in electronic form 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 section entitled "Have you considered programs that provide alternatives to nursing home care?" which shall be the first section of the Nursing Home Guide and which shall prominently display information about available alternatives to nursing homes and how to obtain additional information regarding these alternatives. The Nursing Home Guide shall explain that this state offers alternative programs that permit qualified elderly persons to stay in their homes instead of being placed in nursing homes and shall encourage interested persons to call the Comprehensive Assessment Review and Evaluation for Long-Term Care Services (CARES) Program to inquire if they qualify. The Nursing Home Guide shall list available home and community-based programs which shall clearly state the services that are provided and indicate whether nursing home services are included if needed.
 2. A list by name and address of all nursing home facilities in this state, including any prior name by which a facility was known during the previous 24-month period.
 3. Whether such nursing home facilities are proprietary or nonproprietary.
 4. The current owner of the facility's license and the year that that entity became the owner of the license.
 5. 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.
 6. The total number of beds in each facility and the most recently available occupancy levels.
 7. The number of private and semiprivate rooms in each facility.
 8. The religious affiliation, if any, of each facility.
 9. The languages spoken by the administrator and staff of each facility.
 10. Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.
 11. Recreational and other programs available at each facility.
 12. Special care units or programs offered at each facility.
 13. 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.
 14. Survey and deficiency information, including all federal and state recertification, licensure, revisit, and complaint survey information, for each facility for the past 30 months. For noncertified nursing homes, state survey and deficiency information, including licensure, revisit, and complaint survey information for the past 30 months shall be provided.
- (b) The agency may provide the following additional information on an Internet site or in printed form as the information becomes available:
1. The licensure status history of each facility.
 2. The rating history of each facility.
 3. The regulatory history of each facility, which may include federal sanctions, state sanctions, federal fines, state fines, and other actions.
 4. Whether the facility currently possesses the Gold Seal designation awarded pursuant to s.

400.235.

5. Internet links to the Internet sites of the facilities or their affiliates.

(3) Each nursing home facility licensee shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of the reports shall be retained in the records for not less than 5 years following the date the reports are filed or issued.

(a) The agency shall publish in the Nursing Home Guide a "Nursing Home Guide Watch List" to assist consumers in evaluating the quality of nursing home care in Florida. The watch list must identify each facility that met the criteria for a conditional licensure status and each facility that is operating under bankruptcy protection. The watch list must include, but is not limited to, the facility's name, address, and ownership; the county in which the facility operates; the license expiration date; the number of licensed beds; a description of the deficiency causing the facility to be placed on the list; any corrective action taken; and the cumulative number of days and percentage of days the facility had a conditional license in the past 30 months. The watch list must include a brief description regarding how to choose a nursing home, the categories of licensure, the agency's inspection process, an explanation of terms used in the watch list, and the addresses and phone numbers of the agency's health quality assurance field offices.

(b) Upon publication of each Nursing Home Guide, the agency must post a copy on its website by the 15th calendar day of the second month following the end of the calendar quarter. Each nursing home licensee must retrieve the most recent version of the Nursing Home Guide from the agency's website.

(4) Any records of a nursing home facility determined by the agency to be necessary and essential to establish lawful compliance with any rules or standards must be made available to the agency on the premises of the facility and submitted to the agency. Each facility must submit this information to the agency by electronic transmission when available.

(5) Every nursing home facility licensee shall:

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

1. A concise summary of the last inspection report pertaining to the nursing home and issued by the agency, with references to the page numbers of the full reports, noting any deficiencies found by the agency and the actions taken by the licensee to rectify the deficiencies and indicating in the summaries where the full reports may be inspected in the nursing home.

2. A copy of all of the pages that list the facility in the most recent version of the Nursing Home Guide.

(b) Upon request, provide to any person who has completed a written application with an intent to be admitted to, or to any resident of, a nursing home, or to any relative, spouse, or guardian of the person, a copy of the last inspection report pertaining to the nursing home and issued by the agency, provided the person requesting the report agrees to pay a reasonable charge to cover copying costs.

(6) The agency may adopt rules as necessary to administer this section.

History.—s. 6, ch. 76-201; ss. 2, 12, ch. 80-198; s. 250, ch. 81-259; s. 2, ch. 81-318; ss. 6, 22, ch. 82-182; ss. 27, 79, 83, ch. 83-181; s. 16, ch. 90-347; s. 30, ch. 93-177; ss. 26, 49, ch. 93-217; s. 26, ch. 97-100; s. 15, ch. 99-394; s. 140, ch. 2000-349; s. 5, ch. 2000-350; s. 60, ch. 2000-367; ss. 28, 55, ch. 2001-45; s. 16, ch. 2001-377; s. 38, ch. 2003-1; s. 1, ch. 2006-49; s. 27, ch. 2006-197; s. 71, ch. 2007-230; s. 42, ch. 2009-223.

400.20 Licensed nursing home administrator required.—No nursing home shall operate except under the supervision of a licensed nursing home administrator, and no person shall be a nursing home

administrator unless he or she is the holder of a current license as provided in chapter 468.

History.—s. 19, ch. 69-309; s. 18, ch. 70-361; s. 3, ch. 76-168; s. 242, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 28, 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 27, 49, ch. 93-217; s. 771, ch. 95-148.

400.211 Persons employed as nursing assistants; certification requirement.—

(1) To serve as a nursing assistant in any nursing home, a person must be certified as a nursing assistant under part II of chapter 464, unless the person is a registered nurse or practical nurse licensed in accordance with part I of chapter 464 or an applicant for such licensure who is permitted to practice nursing in accordance with rules adopted by the Board of Nursing pursuant to part I of chapter 464.

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

- (a) Persons who are enrolled in, or have completed, a state-approved nursing assistant program;
- (b) Persons who have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state; or
- (c) Persons who have preliminarily passed the state's certification exam.

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

(3) Nursing homes shall require persons seeking employment as a certified nursing assistant to submit an employment history to the facility. The facility shall verify the employment history unless, through diligent efforts, such verification is not possible. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, a former employer who reasonably and in good faith communicates his or her honest opinion about a former employee's job performance.

(4) When employed by a nursing home facility for a 12-month period or longer, a nursing assistant, to maintain certification, shall submit to a performance review every 12 months and must receive regular inservice education based on the outcome of such reviews. The inservice training must:

(a) Be sufficient to ensure the continuing competence of nursing assistants and must meet the standard specified in s. 464.203(7);

(b) Include, at a minimum:

- 1. Techniques for assisting with eating and proper feeding;
- 2. Principles of adequate nutrition and hydration;
- 3. Techniques for assisting and responding to the cognitively impaired resident or the resident with difficult behaviors;
- 4. Techniques for caring for the resident at the end-of-life; and
- 5. Recognizing changes that place a resident at risk for pressure ulcers and falls; and

(c) Address areas of weakness as determined in nursing assistant performance reviews and may address the special needs of residents as determined by the nursing home facility staff.

Costs associated with this training may not be reimbursed from additional Medicaid funding through interim rate adjustments.

History.—ss. 2, 3, ch. 82-163; ss. 29, 79, 82, 83, ch. 83-181; s. 1, ch. 86-253; s. 8, ch. 89-294; s. 61, ch. 92-136; s. 30, ch. 93-177; ss. 28, 49, ch. 93-217; s. 49, ch. 94-218; s. 1054, ch. 95-148; s. 38, ch. 95-228; s. 127, ch. 95-418; s. 10, ch. 96-268; s. 24, ch. 98-166; s. 3, ch. 98-248; s. 120, ch. 99-8; s. 206, ch. 99-397; s. 95, ch. 2000-318; s. 29, ch. 2001-45; s. 5, ch. 2004-298.

400.215 Personnel screening requirement.—

(1) The agency shall require level 2 background screening for personnel as required in s. 408.809(1) (e) pursuant to chapter 435 and s. 408.809.

(2) The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement is not subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.

History.—s. 2, ch. 98-248; s. 16, ch. 99-394; s. 96, ch. 2000-318; s. 72, ch. 2000-349; s. 10, ch. 2004-267; s. 28, ch. 2006-197; s. 6, ch. 2010-114.

¹**Note.**—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

400.23 Rules; evaluation and deficiencies; licensure status.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this part and part II of chapter 408 shall include criteria by which a reasonable and consistent quality of resident care may be ensured and the results of such resident care can be demonstrated and by which safe and sanitary nursing homes can be provided. 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 nursing home. In addition, efforts shall be made to minimize the paperwork associated with the reporting and documentation requirements of these rules.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Health and the Department of Elderly Affairs, shall adopt and enforce rules to implement this part and part II of chapter 408, which shall include reasonable and fair criteria in relation to:

(a) The location of the facility and housing conditions that will ensure the health, safety, and comfort of residents, including an adequate call system. In making such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The agency shall update or revise such criteria as the need arises. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. In performing any inspections of facilities authorized by this part or part II of chapter 408, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to nursing homes. Residents or their representatives shall be able to request a change in the placement of the bed in their room, provided that at admission they are presented with a room that meets requirements of the Florida Building Code. The location of a bed may be changed if the requested placement does not infringe on the resident’s roommate or interfere with the resident’s care or safety as determined by the care planning team in accordance with facility policies and procedures. In addition, the bed placement may not be used as a restraint. Each facility shall maintain a log of resident rooms with beds that are not in strict compliance with the Florida Building Code in order for such log to be used by surveyors and nurse monitors during inspections and visits. A resident or resident representative who requests that a bed be moved shall sign a statement indicating that he or she understands the room will not be in compliance with the Florida Building Code, but they would prefer to exercise their right to self-determination. The statement must be retained as part of the resident’s care plan. Any facility that offers this option must submit a letter signed by the nursing home administrator of record to the agency notifying it of this practice with a copy of the policies and procedures of the facility. The agency is directed to provide assistance to the Florida Building Commission in updating the construction standards

of the code relative to nursing homes.

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

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

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

(e) A uniform accounting system.

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

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan 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 emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding 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.

(h) The availability, distribution, and posting of reports and records pursuant to s. 400.191 and the Gold Seal Program pursuant to s. 400.235.

(3)(a)1. The agency shall adopt rules providing minimum staffing requirements for nursing homes. These requirements shall include, for each nursing home facility:

a. A minimum weekly average of certified nursing assistant and licensed nursing staffing combined of 3.9 hours of direct care per resident per day. As used in this sub-subparagraph, a week is defined as Sunday through Saturday.

b. A minimum certified nursing assistant staffing of 2.7 hours of direct care per resident per day. A facility may not staff below one certified nursing assistant per 20 residents.

c. A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day. A facility may not staff below one licensed nurse per 40 residents.

2. Nursing assistants employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing assistants only if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home must document compliance with staffing standards as required under this paragraph and post daily the names of staff on duty for the benefit of facility residents and the public.

4. The agency shall recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants, provided that the facility otherwise meets the minimum

staffing requirements for licensed nurses and that the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. In no event may the hours of a licensed nurse with dual job responsibilities be counted twice.

(b) Nonnursing staff providing eating assistance to residents shall not count toward compliance with minimum staffing standards.

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

(4) Rules developed pursuant to this section shall not restrict the use of shared staffing and shared programming in facilities which are part of retirement communities that provide multiple levels of care and otherwise meet the requirement of law or rule.

(5) The agency, in collaboration with the Division of Children's Medical Services of the Department of Health, must, no later than December 31, 1993, adopt rules for minimum standards of care for persons under 21 years of age who reside in nursing home facilities. The rules must include a methodology for reviewing a nursing home facility under ss. 408.031-408.045 which serves only persons under 21 years of age. A facility may be exempt from these standards for specific persons between 18 and 21 years of age, if the person's physician agrees that minimum standards of care based on age are not necessary.

(6) Prior to conducting a survey of the facility, the survey team shall obtain a copy of the local long-term care ombudsman council report on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the local long-term care ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. In addition to license categories authorized under part II of chapter 408, the agency shall assign a licensure status of standard or conditional to each nursing home.

(a) A standard licensure status means that a facility has no class I or class II deficiencies and has corrected all class III deficiencies within the time established by the agency.

(b) A conditional licensure status means that a facility, due to the presence of one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the agency, is not in substantial compliance at the time of the survey with criteria established under this part or with rules adopted by the agency. If the facility has no class I, class II, or class III deficiencies at the time of the followup survey, a standard licensure status may be assigned.

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

(d) The current licensure status of each facility must be indicated in bold print on the face of the license. A list of the deficiencies of the facility shall be posted in a prominent place that is in clear and unobstructed public view at or near the place where residents are being admitted to that facility. Licensees receiving a conditional licensure status for a facility shall prepare, within 10 working days after receiving notice of deficiencies, a plan for correction of all deficiencies and shall submit the plan to the agency for approval.

(e) The agency shall adopt rules that:

1. Establish uniform procedures for the evaluation of facilities.
2. Provide criteria in the areas referenced in paragraph (c).
3. Address other areas necessary for carrying out the intent of this section.

(8) The agency shall adopt rules pursuant to this part and part II of chapter 408 to provide that, when the criteria established under subsection (2) are not met, such deficiencies shall be classified according to the nature and the scope of the deficiency. The scope shall be cited as isolated, patterned, or widespread. An isolated deficiency is a deficiency affecting one or a very limited number of residents, or involving one or a very limited number of staff, or a situation that occurred only occasionally or in a very limited number of locations. A patterned deficiency is a deficiency where more than a very limited number of residents are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same resident or residents have been affected by repeated occurrences of the same deficient practice but the effect of the deficient practice is not found to be pervasive throughout the facility. A widespread deficiency is a deficiency in which the problems causing the deficiency are pervasive in the facility or represent systemic failure that has affected or has the potential to affect a large portion of the facility's residents. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) A class I deficiency is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. The condition or practice constituting a class I violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. A class I deficiency is subject to a civil penalty of \$10,000 for an isolated deficiency, \$12,500 for a patterned deficiency, and \$15,000 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or any inspection or complaint investigation since the last licensure inspection. A fine must be levied notwithstanding the correction of the deficiency.

(b) A class II deficiency is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class II deficiency is subject to a civil penalty of \$2,500 for an isolated deficiency, \$5,000 for a patterned deficiency, and \$7,500 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during

the last licensure inspection or any inspection or complaint investigation since the last licensure inspection. A fine shall be levied notwithstanding the correction of the deficiency.

(c) A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class III deficiency is subject to a civil penalty of \$1,000 for an isolated deficiency, \$2,000 for a patterned deficiency, and \$3,000 for a widespread deficiency. The fine amount shall be doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or any inspection or complaint investigation since the last licensure inspection. A citation for a class III deficiency must specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, a civil penalty may not be imposed.

(d) A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident. If the class IV deficiency is isolated, no plan of correction is required.

(9) Civil penalties paid by any licensee under subsection (8) shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(10) Agency records, reports, ranking systems, Internet information, and publications must be promptly updated to reflect the most current agency actions.

History.—s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 76-168; s. 7, ch. 76-201; s. 2, ch. 76-252; s. 2, ch. 77-188; s. 13, ch. 77-401; s. 1, ch. 77-457; s. 1, ch. 78-393; ss. 8, 9, ch. 79-268; ss. 3, 12, ch. 80-198; ss. 1, 2, ch. 80-211; s. 251, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181; s. 2, ch. 86-253; s. 1, ch. 90-125; ss. 9, 77, ch. 91-282; s. 30, ch. 93-177; s. 25, ch. 93-211; ss. 29, 49, ch. 93-217; s. 42, ch. 98-89; s. 121, ch. 99-8; s. 14, ch. 99-332; s. 17, ch. 99-394; s. 29, ch. 2000-141; s. 97, ch. 2000-318; s. 141, ch. 2000-349; s. 6, ch. 2000-350; s. 61, ch. 2000-367; ss. 30, 54, ch. 2001-45; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 39, ch. 2003-1; s. 2, ch. 2003-405; s. 1, ch. 2004-270; s. 4, ch. 2004-298; s. 2, ch. 2005-60; s. 2, ch. 2005-147; s. 1, ch. 2005-234; s. 4, ch. 2006-28; s. 72, ch. 2007-230; s. 44, ch. 2009-223; s. 3, ch. 2010-156.

400.232 Review and approval of plans; fees and costs.—The design, construction, erection, alteration, modification, repair, and demolition of all public and private health care facilities are governed by the Florida Building Code and the Florida Fire Prevention Code under ss. 553.73 and 633.022. In addition to the requirements of ss. 553.79 and 553.80, the agency shall review the facility plans and survey the construction of facilities licensed under this chapter.

(1) The agency shall approve or disapprove the plans and specifications within 60 days after receipt of the final plans and specifications. The agency may be granted one 15-day extension for the review period, if the director of the agency so approves. If the agency fails to act within the specified time, it shall be deemed to have approved the plans and specifications. When the agency disapproves plans and specifications, it shall set forth in writing the reasons for disapproval. Conferences and consultations may be provided as necessary.

(2) The agency is authorized to charge an initial fee of \$2,000 for review of plans and construction on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for the portion of the review which encompasses initial review through the initial revised construction document review. The agency is further authorized to collect its actual costs on all subsequent portions

of the review and construction inspections. Initial fee payment shall accompany the initial submission of plans and specifications. Any subsequent payment that is due is payable upon receipt of the invoice from the agency. Notwithstanding any other provisions of law to the contrary, all money received by the agency pursuant to the provisions of this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

History.—s. 22, ch. 69-309; ss. 19, 35, ch. 69-106; s. 19, ch. 70-361; s. 3, ch. 76-168; s. 7, ch. 76-201; s. 2, ch. 77-188; s. 1, ch. 77-457; ss. 8, 9, ch. 79-268; ss. 2, 3, ch. 81-318; ss. 30, 79, 83, ch. 83-181; s. 1, ch. 90-125; ss. 9, 77, ch. 91-282; s. 30, ch. 93-177; ss. 29, 49, ch. 93-217; s. 17, ch. 99-394; s. 30, ch. 2000-141; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

Note.—Former s. 400.23(11), (12).

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(1) To protect the health and welfare of persons receiving care in nursing facilities, it is the intent of the Legislature to develop a regulatory framework that promotes the stability of the industry and facilitates the physical, social, and emotional well-being of nursing facility residents.

(2) The Legislature intends to develop an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period. This program shall be known as the Gold Seal Program.

(3)(a) The Gold Seal Program shall be developed and implemented by the Governor's Panel on Excellence in Long-Term Care which shall operate under the authority of the Executive Office of the Governor. The panel shall be composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; the State Long-Term Care Ombudsman; one person appointed by the Florida Life Care Residents Association; one person appointed by the State Surgeon General; two persons appointed by the Secretary of Health Care Administration; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. Vacancies on the panel shall be filled in the same manner as the original appointments.

(b) Members of the Governor's Panel on Excellence in Long-Term Care shall be prohibited from having any ownership interest in a nursing facility. Any member of the panel who is employed by a nursing facility in any capacity shall be prohibited from participating in reviewing or voting on recommendations involving the facility by which the member is employed or any facility under common ownership with that facility.

(c) Recommendations to the panel for designation of a nursing facility as a Gold Seal facility may be received by the panel after January 1, 2000. The activities of the panel shall be supported by staff of the Department of Elderly Affairs and the Agency for Health Care Administration.

(4) The panel shall consider the quality of care provided to residents when evaluating a facility for the Gold Seal Program. The panel shall determine the procedure or procedures for measuring the quality of care.

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(a) Had no class I or class II deficiencies within the 30 months preceding application for the program.

(b) Evidence financial soundness and stability according to standards adopted by the agency in administrative rule. Such standards must include, but not be limited to, criteria for the use of financial

statements that are prepared in accordance with generally accepted accounting principles and that are reviewed or audited by certified public accountants. A nursing home that is part of the same corporate entity as a continuing care facility licensed under chapter 651 which meets the minimum liquid reserve requirements specified in s. 651.035 and is accredited by a recognized accrediting organization under s. 651.028 and rules of the Office of Insurance Regulation satisfies this requirement as long as the accreditation is not provisional. Facilities operated by a federal or state agency are deemed to be financially stable for purposes of applying for the Gold Seal.

(c) Participate in a consumer satisfaction process, and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing facility, its environment, the services and care provided, the staff's skills and interactions with residents, attention to residents' needs, and the facility's efforts to act on information gathered from the consumer satisfaction measures.

(d) Evidence the involvement of families and members of the community in the facility on a regular basis.

(e) Have a stable workforce, as described in s. 400.141, as evidenced by a relatively low rate of turnover among certified nursing assistants and licensed nurses within the 30 months preceding application for the Gold Seal Program, and demonstrate a continuing effort to maintain a stable workforce and to reduce turnover of licensed nurses and certified nursing assistants.

(f) Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program.

(g) Provide targeted inservice training provided to meet training needs identified by internal or external quality assurance efforts.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

(6) The agency, nursing facility industry organizations, consumers, State Long-Term Care Ombudsman Council, and members of the community may recommend to the Governor facilities that meet the established criteria for consideration for and award of the Gold Seal. The panel shall review nominees and make a recommendation to the Governor for final approval and award. The decision of the Governor is final and is not subject to appeal.

(7) A facility must be licensed and operating for 30 months before it is eligible to apply for the Gold Seal Program. The agency shall establish by rule the frequency of review for designation as a Gold Seal Program facility and under what circumstances a facility may be denied the privilege of using this designation. The designation of a facility as a Gold Seal Program facility is not transferable to another license, except when an existing facility is being relicensed in the name of an entity related to the current licenseholder by common ownership or control, and there will be no change in the management, operation, or programs at the facility as a result of the relicensure.

(8)(a) Facilities awarded the Gold Seal may use the designation in their advertising and marketing.

(b) Upon approval by the United States Department of Health and Human Services, the agency shall adopt a revised schedule of survey and relicensure visits for Gold Seal Program facilities. Gold Seal Program facilities may be surveyed for certification and relicensure every 2 years, so long as they maintain the standards associated with retaining the Gold Seal.

(9) The agency may adopt rules as necessary to administer this section.

History.—s. 18, ch. 99-394; s. 12, ch. 2000-305; s. 7, ch. 2000-350; ss. 31, 58, ch. 2001-45; s. 17, ch. 2001-377; s. 24, ch. 2003-57; s. 1, ch. 2003-120; s. 6, ch. 2004-298; s. 49, ch. 2008-6.

400.241 Prohibited acts; penalties for violations.—

(1) It is unlawful for any person, long-term care facility, or other entity to willfully interfere with the unannounced inspections mandated by s. 400.19(3) or part II of chapter 408. Alerting or advising a facility of the actual or approximate date of such inspection shall be a per se violation of this subsection.

(2) A violation of any provision of this part or of any minimum standard, rule, or regulation adopted pursuant thereto constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is a separate offense.

History.—s. 11, ch. 70-361; s. 347, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 31, 79, 83, ch. 83-181; s. 30, ch. 93-177; s. 49, ch. 93-217; s. 19, ch. 99-394; s. 73, ch. 2007-230.

400.25 Educational program authorized.—The agency may conduct a clinic or seminar at such times and places as shall be convenient for the greatest number at which information may be offered in the general field of health education, management, and other subjects that will increase the knowledge and efficiency of applicants or licensees under this part. The board must approve the educational content of such clinic or seminar if it is intended to satisfy the educational requirements of the board.

History.—s. 24, ch. 69-309; ss. 19, 35, ch. 69-106; s. 21, ch. 70-361; s. 3, ch. 76-168; s. 243, ch. 77-147; s. 1, ch. 77-457; s. 252, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 30, 49, ch. 93-217.

400.275 Agency duties.—

(1) The agency shall ensure that each newly hired nursing home surveyor, as a part of basic training, is assigned full-time to a licensed nursing home for at least 2 days within a 7-day period to observe facility operations outside of the survey process before the surveyor begins survey responsibilities. Such observations may not be the sole basis of a deficiency citation against the facility. The agency may not assign an individual to be a member of a survey team for purposes of a survey, evaluation, or consultation visit at a nursing home facility in which the surveyor was an employee within the preceding 5 years.

(2) The agency shall semiannually provide for joint training of nursing home surveyors and staff of facilities licensed under this part on at least one of the 10 federal citations that were most frequently issued against nursing facilities in this state during the previous calendar year.

(3) Each member of a nursing home survey team who is a health professional licensed under part I of chapter 464, part X of chapter 468, or chapter 491 shall earn not less than 50 percent of required continuing education credits in geriatric care. Each member of a nursing home survey team who is a health professional licensed under chapter 465 shall earn not less than 30 percent of required continuing education credits in geriatric care.

(4) The agency must ensure that when a deficiency is related to substandard quality of care, a physician with geriatric experience licensed under chapter 458 or chapter 459 or a registered nurse with geriatric experience licensed under chapter 464 participates in the agency's informal dispute resolution process.

History.—s. 32, ch. 2001-45.

400.33 Legislative intent; community-based care for the elderly.—It is the intent of the

Legislature to encourage the development of programs for community-based care for the elderly as an alternative to institutionalization. The Legislature finds and declares that routine health care provided on an outpatient basis is one such program, the availability of which would fill an unmet need, improve the quality and quantity of health care available to elderly persons while minimizing the cost of such care, and reduce the incidence of unnecessary or premature institutionalization of elderly persons. The purpose of this section and s. 400.332 is to encourage the development of geriatric outpatient nurse clinics to make such services available. The Legislature intends that existing and available nursing facility treatment rooms be used for geriatric outpatient nurse clinics in order that the cost of such programs be kept low.

History.—s. 1, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 30, ch. 93-177; ss. 33, 49, ch. 93-217.

400.332 Funds received not revenues for purpose of Medicaid program.—Any funds received by a nursing home in connection with its participation in the geriatric outpatient nurse clinic program shall not be considered as revenues for purposes of cost reports under the Medicaid program.

History.—s. 4, ch. 77-401; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 59, ch. 91-282; s. 30, ch. 93-177; s. 49, ch. 93-217.

400.334 Activity relating to unions by nursing home employees.—

(1) Participation by an employee of a nursing home in any activity that assists, promotes, deters, or discourages union organizing shall not be allowed during any time the employee is counted in staffing calculations for minimum staffing standards.

(2) Salaries paid by any health care provider to an employee for any activity that assists, promotes, deters, or discourages union organizing shall not be an allowable cost for Medicaid cost reporting purposes.

(3) Any expense, including, but not limited to, legal and consulting fees and salaries of supervisors and employees, incurred for activities directly relating to influencing employees with respect to unionization shall not be an allowable cost for Medicaid cost reporting purposes.

(4) This section does not apply to any activity performed, or any expense incurred, in connection with:

(a) Addressing a grievance or negotiating or administering a collective bargaining agreement;

(b) Performing an activity required by federal or state law or by a collective bargaining agreement;

or

(c) Keeping employees informed of issues and keeping lines of communication open between employees and employers as a part of normal personnel management,

provided such activities or expenses are not directly related to influencing employees with respect to unionization.

History.—s. 1, ch. 2002-231.

PART III HOME HEALTH AGENCIES

400.461 Short title; purpose.

400.462 Definitions.

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

400.471 Application for license; fee.

- 400.474 Administrative penalties.
- 400.476 Staffing requirements; notifications; limitations on staffing services.
- 400.4785 Patients with Alzheimer's disease or other related disorders; staff training requirements; certain disclosures.
- 400.484 Right of inspection; deficiencies; fines.
- 400.487 Home health service agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.
- 400.488 Assistance with self-administration of medication.
- 400.491 Clinical records.
- 400.492 Provision of services during an emergency.
- 400.494 Information about patients confidential.
- 400.497 Rules establishing minimum standards.
- 400.506 Licensure of nurse registries; requirements; penalties.
- 400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.
- 400.512 Screening of home health agency personnel; nurse registry personnel and contractors; and companions and homemakers.
- 400.518 Prohibited referrals to home health agencies.
- 400.5185 Review and modification of prior authorization.

400.461 Short title; purpose. —

(1) This part, consisting of ss. 400.461-400.518, may be cited as the "Home Health Services Act."

(2) The purpose of this part is to provide for the licensure of every home health agency and nurse registry and to provide for the development, establishment, and enforcement of basic standards that will ensure the safe and adequate care of persons receiving health services in their own homes.

History.—ss. 36, 37, ch. 75-233; s. 2, ch. 81-318; ss. 61, 79, 83, ch. 83-181; s. 1, ch. 88-219; s. 1, ch. 90-319; ss. 1, 23, ch. 93-214; s. 47, ch. 98-171; s. 1, ch. 2005-243.

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

(1) "Administrator" means a direct employee, as defined in subsection (9), who is 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, under part II of this chapter, or under part I of chapter 429.

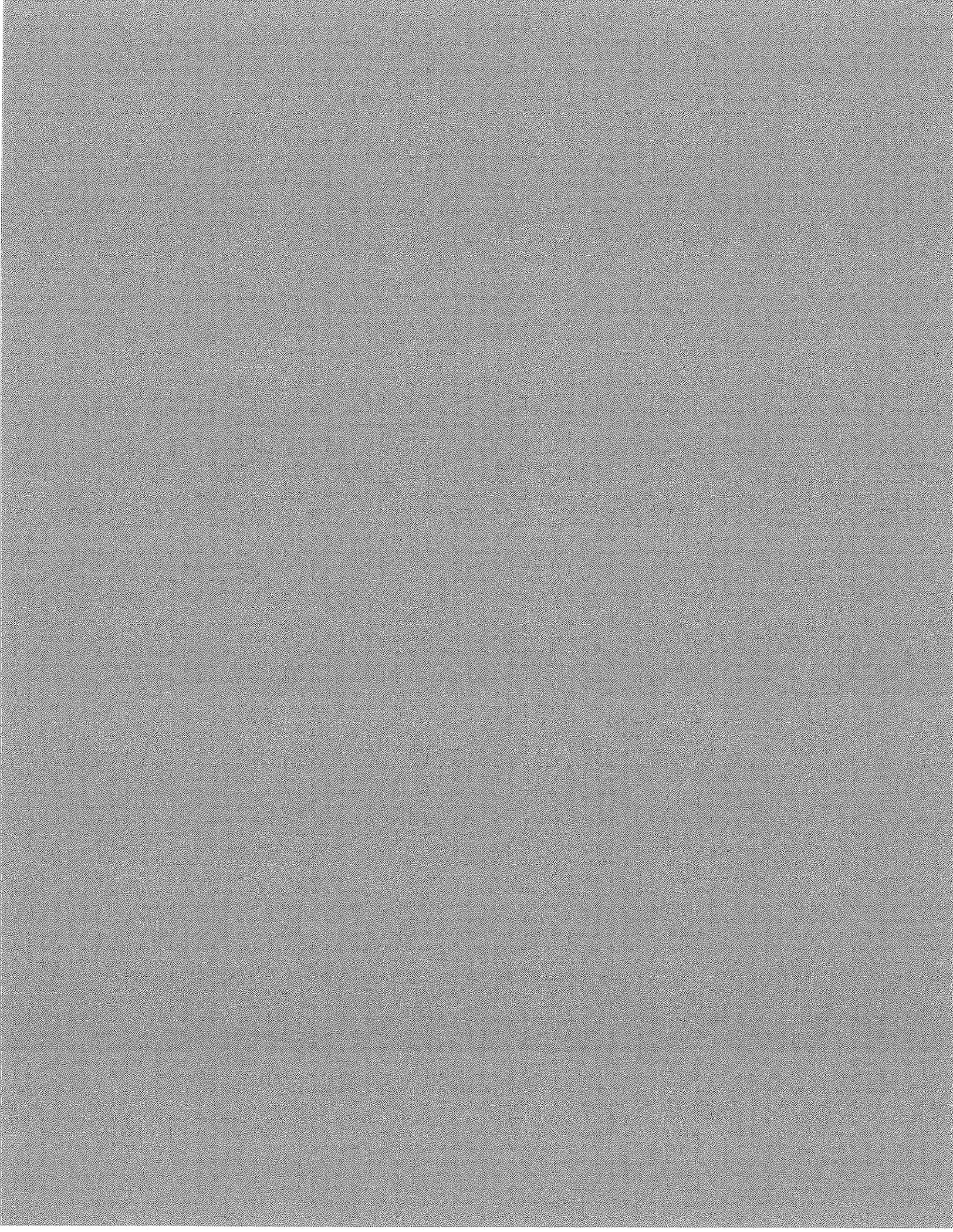
(2) "Admission" means a decision by the home health agency, during or after an evaluation visit to the patient's home, that there is reasonable expectation that the patient's medical, nursing, and social needs for skilled care can be adequately met by the agency in the patient's place of residence. Admission includes completion of an agreement with the patient or the patient's legal representative to provide home health services as required in s. 400.487(1).

(3) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(4) "Agency" means the Agency for Health Care Administration.

(5) "Certified nursing assistant" means any person who has been issued a certificate under part II of chapter 464.

(6) "Client" means an elderly, handicapped, or convalescent individual who receives companion



Select Year:

PART V

The 2010 Florida Statutes (including Special Session A)

[Title XXIX](#)
PUBLIC
HEALTH

[Chapter 400](#)
NURSING HOMES AND RELATED HEALTH CARE
FACILITIES

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400.701 Intermediate care facilities; intent.—The Legislature recognizes the need to develop a continuum of long-term care in this state to meet the needs of the elderly and disabled persons. The Legislature finds that there is a gap between the level of care provided in assisted living facilities and in nursing homes. The Legislature finds that exploration of intermediate-level care facilities which would fill the gap between assisted living facilities and nursing homes, where both the federal and state government share the cost of providing care, is an appropriate option to explore in the continuum of care.

History.—s. 38, ch. 89-294; s. 25, ch. 95-210.

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The 2010 Florida Statutes(including Special Session A)

Title XXIX
PUBLIC
HEALTH

Chapter 400
NURSING HOMES AND RELATED HEALTH CARE
FACILITIES

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Chapter](#)

400.801 Homes for special services.—

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

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

(b) “Home for special services” means a site licensed by the agency prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

¹(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and entities licensed by or applying for licensure from the agency pursuant to this section. A license issued by the agency is required in order to operate a home for special services in this state.

(b) The agency shall require level 2 background screening for personnel as required in s. 408.809(1) pursuant to chapter 435 and s. 408.809.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not be more than \$2,000 per biennium.

(4) The agency may adopt rules for implementing and enforcing this section and part II of chapter 408.

(5)(a) In addition to the requirements of part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules is punishable by payment of an administrative fine not to exceed \$5,000.

(b) A violation of s. 408.812 or rules adopted under that section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continuing violation is a separate offense.

History.—s. 35, ch. 93-217; ss. 59, 71, ch. 98-171; s. 85, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 51, ch. 2004-267; s. 6, ch. 2006-192; s. 90, ch. 2007-230; s. 10, ch. 2010-114.

¹**Note.**—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

Select Year:

The 2010 Florida Statutes(including Special Session A)

[Title XXIX](#)
PUBLIC
HEALTH

[Chapter 400](#)
NURSING HOMES AND RELATED HEALTH CARE
FACILITIES

[View Entire
Chapter](#)

400.805 Transitional living facilities.—

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

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

(b) “Department” means the Department of Health.

(c) “Transitional living facility” means a site where specialized health care services are provided, including, but not limited to, rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. This term does not include a hospital licensed under chapter 395 or any federally operated hospital or facility.

(2)(a) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this section. A license issued by the agency is required for the operation of a transitional living facility in this state.

(b) In accordance with this section, an applicant or a licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The fee shall consist of a \$4,000 license fee and a \$78.50 per bed fee per biennium.

(c) The agency may not issue a license to an applicant until the agency receives notice from the department as provided in paragraph (3)(b).

¹(d) The agency shall require level 2 background screening for personnel as required in s. [408.809\(1\)](#) (e) pursuant to chapter 435 and s. [408.809](#).

(3)(a) The agency shall adopt rules in consultation with the department governing the physical plant of transitional living facilities and the fiscal management of transitional living facilities.

(b) The department shall adopt rules in consultation with the agency governing the services provided to clients of transitional living facilities. The department shall enforce all requirements for providing services to the facility's clients. The department must notify the agency when it determines that an applicant for licensure meets the service requirements adopted by the department.

(c) The agency and the department shall enforce requirements under this section and part II of chapter 408, as such requirements relate to them respectively, and their respective adopted rules.

(4) In accordance with s. [408.811](#), any designated officer or employee of the agency, of the state, or of the local fire marshal may enter unannounced upon and into the premises of any facility licensed under this section in order to determine the state of compliance with this section, part II of chapter 408, and applicable rules.

(5)(a) In accordance with part II of chapter 408, a violation of any provision of this section, part II of chapter 408, or applicable rules is punishable by payment of an administrative or a civil penalty fine not

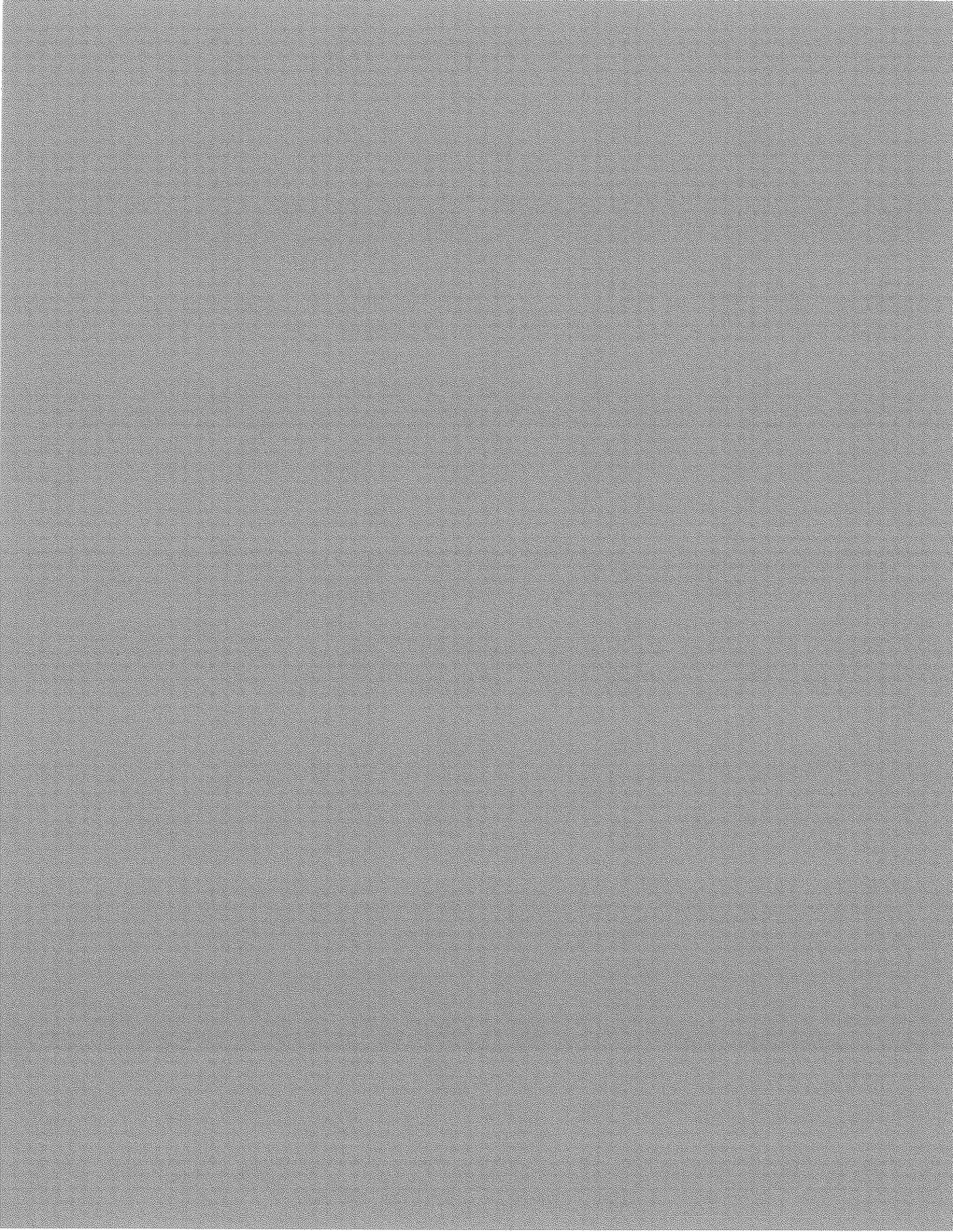
to exceed \$5,000.

(b) Unlicensed activity pursuant to s. [408.812](#) is a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). Each day of a continuing violation is a separate offense.

(6) The agency may adopt rules to administer the requirements of part II of chapter 408.

History.—s. 36, ch. 93-217; s. 1, ch. 98-12; ss. 60, 71, ch. 98-171; s. 16, ch. 99-240; s. 22, ch. 2000-153; s. 86, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 52, ch. 2004-267; s. 91, ch. 2007-230; s. 11, ch. 2010-114.

¹**Note.**—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”



referrals and rebates shall be a condition of licensure.

History.—s. 1, ch. 99-189.

PART VIII
INTERMEDIATE CARE FACILITIES FOR
DEVELOPMENTALLY DISABLED PERSONS

- 400.960 Definitions.
- 400.962 License required; license application.
- 400.964 Personnel screening requirement.
- 400.966 Receivership proceedings.
- 400.967 Rules and classification of deficiencies.
- 400.968 Right of entry.
- 400.9685 Administration of medication.
- 400.969 Violation of part; penalties.

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

- (1) “Active treatment” means the provision of services by an interdisciplinary team which are necessary to maximize a client’s individual independence or prevent regression or loss of functional status.
- (2) “Agency” means the Agency for Health Care Administration.
- (3) “Autism” has the same meaning as in s. 393.063.
- (4) “Cerebral palsy” has the same meaning as in s. 393.063.
- (5) “Client” means any person determined by the Agency for Persons with Disabilities to be eligible for developmental services.
- (6) “Developmental disability” has the same meaning as in s. 393.063.
- (7) “Direct service provider” means a person 18 years of age or older who has direct contact with individuals with developmental disabilities and who is unrelated to the individuals with developmental disabilities.
- (8) “Intermediate care facility for the developmentally disabled” means a residential facility licensed and certified in accordance with state law, and certified by the Federal Government, pursuant to the Social Security Act, as a provider of Medicaid services to persons with developmental disabilities.
- (9) “Prader-Willi syndrome” has the same meaning as in s. 393.063.
- (10)(a) “Restraint” means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one’s body.
 - (b) A drug used as a restraint is a medication used to control the person’s behavior or to restrict his or her freedom of movement. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.
 - (c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(11) "Retardation" has the same meaning as in s. 393.063.

(12) "Seclusion" means the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this part, the term does not mean isolation due to a person's medical condition or symptoms.

(13) "Spina bifida" has the same meaning as in s. 393.063.

History.—s. 9, ch. 99-144; s. 42, ch. 2006-227.

400.962 License required; license application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the Agency for Health Care Administration pursuant to this part. A license issued by the agency is required in order to operate an intermediate care facility for the developmentally disabled in this state.

(2) Separate licenses are required for facilities maintained on separate premises even if operated under the same management. However, a separate license is not required for separate buildings on the same grounds.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be \$234 per bed unless modified by rule. The application must indicate the location of the facility for which a license is sought and that such location conforms to the local zoning ordinances.

(4) The applicant must demonstrate that sufficient numbers of staff, qualified by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

(5) The applicant must agree to provide or arrange for active treatment services by an interdisciplinary team to maximize individual independence or prevent regression or loss of functional status. Standards for active treatment shall be adopted by the Agency for Health Care Administration by rule pursuant to ss. 120.536(1) and 120.54. Active treatment services shall be provided in accordance with the individual support plan and shall be reimbursed as part of the per diem rate as paid under the Medicaid program.

History.—s. 9, ch. 99-144; s. 92, ch. 2000-349; s. 8, ch. 2000-350; s. 59, ch. 2001-45; s. 421, ch. 2003-261; s. 55, ch. 2004-267; s. 69, ch. 2006-197; s. 43, ch. 2006-227; s. 115, ch. 2007-230.

¹400.964 Personnel screening requirement.—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

History.—s. 9, ch. 99-144; s. 93, ch. 2000-349; s. 11, ch. 2004-267; s. 16, ch. 2010-114.

¹Note.—Section 58, ch. 2010-114, provides that "[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act."

400.966 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for an intermediate care facility for the developmentally disabled which is owned and operated by a corporation or partnership when:

- (a) Any person is operating the facility without a license and refuses to apply for a license.
 - (b) The licensee is closing the facility or has informed the agency that it intends to close the facility, and adequate arrangements have not been made to relocate the residents within 7 days, exclusive of weekends and holidays, after the closing of the facility.
 - (c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.
 - (d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this part and all rules adopted under this part.
- (2) The petition for receivership shall take precedence over other court business unless the court determines that some other pending proceeding, having similar statutory precedence, has priority.
- (3) A hearing must be conducted within 5 days after the filing of the petition, at which time all interested parties must be given the opportunity to present evidence pertaining to the petition. The agency shall notify the owner or operator of the facility named in the petition of its filing and the date set for the hearing.
- (4) The court shall grant the petition only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time the petition was filed is permitted to continue. A receiver may not be appointed ex parte unless the court determines that any of the conditions listed in subsection (1) exist; that the facility owner or operator cannot be found; that all reasonable means of locating the owner or operator and notifying him or her of the petition and hearing have been exhausted; or that the owner or operator after notification of the hearing chooses not to attend. After such findings, the court may appoint any person qualified by education, training, or experience to carry out the responsibilities of receiver pursuant to this section, except that the court may not appoint any owner or affiliate of the facility that is in receivership. Before the appointment as receiver of a person who is the operator, manager, or supervisor of another facility, the court must determine that the person can reasonably operate, manage, or supervise more than one facility. The receiver may be appointed for up to 90 days, with the option of petitioning the court for 30-day extensions. 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 agency receiver may petition the court for 30-day extensions. The court shall grant an extension upon a showing of good cause. The agency may petition the court to appoint a substitute receiver.
- (5) During the first 60 days of the receivership, the agency may not take action to decertify or revoke the license of a facility unless conditions causing imminent danger to the health and welfare of the residents exist and a receiver has been unable to remove those conditions. After the first 60 days of receivership, and every 60 days thereafter until the receivership is terminated, the agency shall submit to the court the results of an assessment of the ability of the facility to assure the safety and care of the residents. If the conditions at the facility or the intentions of the owner indicate that the purpose of the receivership is to close the facility rather than to facilitate its continued operation, the agency shall

place the residents in appropriate alternative residential settings as quickly as possible. If, in the opinion of the court, the agency has not been diligent in its efforts to make adequate arrangements for placement, the court shall find the agency to be in contempt and shall order the agency to submit its plans for moving the residents.

(6) The receiver shall provide 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 the residents' 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) 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 that, in the case of a rental agreement, are for the use of the property during the period of the receivership or that, in the case of a purchase agreement, become due during the period of the receivership.

(e) 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 owner at the time the petition for receivership was filed, or at a fair and reasonable rate otherwise approved by the court for private, paying residents. The receiver may apply to the agency for a rate increase for residents under Title XIX of the Social Security Act if the facility is not receiving the state reimbursement cap and if expenditures justify an increase in the rate.

(f) May correct or eliminate any deficiency in the structure, furnishings, or staffing of the facility which endangers the safety or health of residents while they remain in the facility, provided that the total cost of correction does not exceed \$3,000. The court may order expenditures for this purpose in excess of \$3,000 on application from the receiver after notice to the owner. A hearing may be requested by the owner within 72 hours.

(g) May let contracts and hire agents and employees to carry out the powers and duties of the receiver under this section.

(h) Shall have full power to direct, manage, hire, and discharge employees of the facility subject to any contract rights they may have. The receiver shall hire and pay employees at the rate of compensation, including benefits, approved by the court. Receivership does not relieve the owner of any obligations to employees which had been made before the appointment of a receiver and were not carried out by the receiver.

(i) Shall be entitled to 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 such property or assets and all resident records of which the receiver takes possession; and he or she shall provide for the prompt transfer of the property, assets, and records of any resident transferred to the resident's new placement. An inventory list certified by the owner and receiver must be made when the receiver takes possession of the facility.

(7)(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 had they been 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 owed to the facility or its owner discharges any obligation to the facility to the extent of the payment.

(8)(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 or to the mortgage holders at least 10 days prior to the hearing. The payment by the receiver of the amount determined by the court to be reasonable is a defense to any action brought against the receiver by any person who received such notice, which action is for payment or for possession of the goods or real estate subject to the lease, mortgage, or security interest involved; 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, mortgage, or security interest involved.

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

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

(11) 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.

(12) The court may terminate a receivership when:

(a) The court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist; or

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

(13) Within 30 days after termination of the receivership, unless this time period is extended by the court, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed, and of the expenses of the receivership.

(14) This section does not relieve any owner, operator, 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, operator, or employee before the appointment of a receiver, and this section does not suspend during the receivership any obligation of the owner, operator, or employee for

payment of taxes or other operating and maintenance expenses of the facility or any obligation of the owner, operator, or 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 the approval of the court that ordered the receivership. A receivership imposed under this section is subject to the Health Care Trust Fund pursuant to s. 400.063. The owner of a facility placed in receivership by the court is liable for all expenses and costs incurred by the Health Care Trust Fund which occur as a result of the receivership.

History.—s. 9, ch. 99-144; s. 16, ch. 2008-9.

400.967 Rules and classification of deficiencies.—

(1) It is the intent of the Legislature that rules adopted and enforced under this part and part II of chapter 408 include criteria by which a reasonable and consistent quality of resident care may be ensured, the results of such resident care can be demonstrated, and safe and sanitary facilities can be provided.

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Agency for Persons with Disabilities and the Department of Elderly Affairs, shall adopt and enforce rules to administer this part and part II of chapter 408, which shall include reasonable and fair criteria governing:

(a) The location and construction of the facility; including fire and life safety, plumbing, heating, cooling, lighting, ventilation, and other housing conditions that ensure the health, safety, and comfort of residents. The agency shall establish standards for facilities and equipment to increase the extent to which new facilities and a new wing or floor added to an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The agency shall update or revise the criteria as the need arises. All facilities must comply with those lifesafety code requirements and building code standards applicable at the time of approval of their construction plans. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. The agency shall adopt fair and reasonable rules setting forth conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical nursing, and other personnel, having responsibility for any part of the care given to residents.

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

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

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and measurement of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive emergency management plan. The agency shall adopt rules establishing minimum criteria for the plan 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 emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding 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 Agency for Persons with Disabilities, 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.

(h) The use of restraint and seclusion. Such rules must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion, including individualized plans for the use of restraints or seclusion in emergency situations; establish professional qualifications of and training for staff who may order or be engaged in the use of restraint or seclusion; establish requirements for facility data collection and reporting relating to the use of restraint and seclusion; and establish procedures relating to the documentation of the use of restraint or seclusion in the client's facility or program record.

(3) The agency shall adopt rules to provide that, when the criteria established under this part and part II of chapter 408 are not met, such deficiencies shall be classified according to the nature of the deficiency. The agency shall indicate the classification on the face of the notice of deficiencies as follows:

(a) Class I deficiencies are those 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 harm would result therefrom. The condition or practice constituting a class I violation must be abated or eliminated immediately, unless a fixed period of time, as determined by the agency, is required for correction. A class I deficiency is subject to a civil penalty in an amount not less than \$5,000 and not exceeding \$10,000 for each deficiency. A fine may be levied notwithstanding the correction of the deficiency.

(b) Class II deficiencies are those which the agency determines have a direct or immediate relationship to the health, safety, or security of the facility residents, other than class I deficiencies. A class II deficiency is subject to a civil penalty in an amount not less than \$1,000 and not exceeding \$5,000 for each deficiency. A citation for a class II deficiency shall specify the time within which the deficiency must be corrected. If a class II deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(c) Class III deficiencies are those which the agency determines to have an indirect or potential relationship to the health, safety, or security of the facility residents, other than class I or class II deficiencies. A class III deficiency is subject to a civil penalty of not less than \$500 and not exceeding \$1,000 for each deficiency. A citation for a class III deficiency shall specify the time within which the deficiency must be corrected. If a class III deficiency is corrected within the time specified, no civil penalty shall be imposed, unless it is a repeated offense.

(4) The agency shall approve or disapprove the plans and specifications within 60 days after receipt of the final plans and specifications. The agency may be granted one 15-day extension for the review period, if the secretary of the agency so approves. If the agency fails to act within the specified time, it is deemed to have approved the plans and specifications. When the agency disapproves plans and specifications, it must set forth in writing the reasons for disapproval. Conferences and consultations

may be provided as necessary.

(5) The agency may charge an initial fee of \$2,000 for review of plans and construction on all projects, no part of which is refundable. The agency may also collect a fee, not to exceed 1 percent of the estimated construction cost or the actual cost of review, whichever is less, for the portion of the review which encompasses initial review through the initial revised construction document review. The agency may collect its actual costs on all subsequent portions of the review and construction inspections. Initial fee payment must accompany the initial submission of plans and specifications. Any subsequent payment that is due is payable upon receipt of the invoice from the agency. Notwithstanding any other provision of law, all money received by the agency under this section shall be deemed to be trust funds, to be held and applied solely for the operations required under this section.

History.—s. 9, ch. 99-144; s. 14, ch. 2000-305; s. 44, ch. 2006-227; s. 118, ch. 2007-230; s. 108, ch. 2010-102.

400.968 Right of entry.—In addition to the requirements of s. 408.811, any designated officer or employee of the agency, or any officer or employee of the state or of the local fire marshal, may enter unannounced the premises of any facility licensed under this part in order to determine the state of compliance with this part, part II of chapter 408, and applicable rules.

History.—s. 9, ch. 99-144; s. 37, ch. 2002-400; s. 119, ch. 2007-230.

400.9685 Administration of medication.—

(1) Notwithstanding the provisions of the Nurse Practice Act, part I of chapter 464, unlicensed direct care services staff who are providing services to clients in intermediate care facilities for the developmentally disabled, licensed pursuant to this part, may administer prescribed, prepackaged, premeasured medications under the general supervision of a registered nurse as provided in this section and applicable rules. Training required by this section and applicable rules must be conducted by a registered nurse licensed pursuant to chapter 464 or a physician licensed pursuant to chapter 458 or chapter 459.

(2) Each facility that allows unlicensed direct care service staff to administer medications pursuant to this section must:

(a) Develop and implement policies and procedures that include a plan to ensure the safe handling, storage, and administration of prescription medication.

(b) Maintain written evidence of the expressed and informed consent for each client.

(c) Maintain a copy of the written prescription including the name of the medication, the dosage, and administration schedule.

(d) Maintain documentation regarding the prescription including the name, dosage, and administration schedule, reason for prescription, and the termination date.

(e) Maintain documentation of compliance with required training.

(3) Agency rules shall specify the following as it relates to the administration of medications by unlicensed staff:

(a) Medications authorized and packaging required.

(b) Acceptable methods of administration.

(c) A definition of “general supervision.”

(d) Minimum educational requirements of staff.

(e) Criteria of required training and competency that must be demonstrated prior to the administration of medications by unlicensed staff including inservice training.

(f) Requirements for safe handling, storage, and administration of medications.

History.—s. 2, ch. 2003-57.

400.969 Violation of part; penalties.—

(1) In addition to the requirements of part II of chapter 408, and except as provided in s. 400.967(3), a violation of any provision of this part, part II of chapter 408, or applicable rules is punishable by payment of an administrative or civil penalty not to exceed \$5,000.

(2) A violation of this part or of rules adopted under this part is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of a continuing violation is a separate offense.

History.—s. 9, ch. 99-144; s. 37, ch. 2002-400; s. 120, ch. 2007-230.

Note.—Former s. 400.968(4).

**PART IX
HEALTH CARE SERVICES POOLS**

400.980 Health care services pools.

400.980 Health care services pools.—

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

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

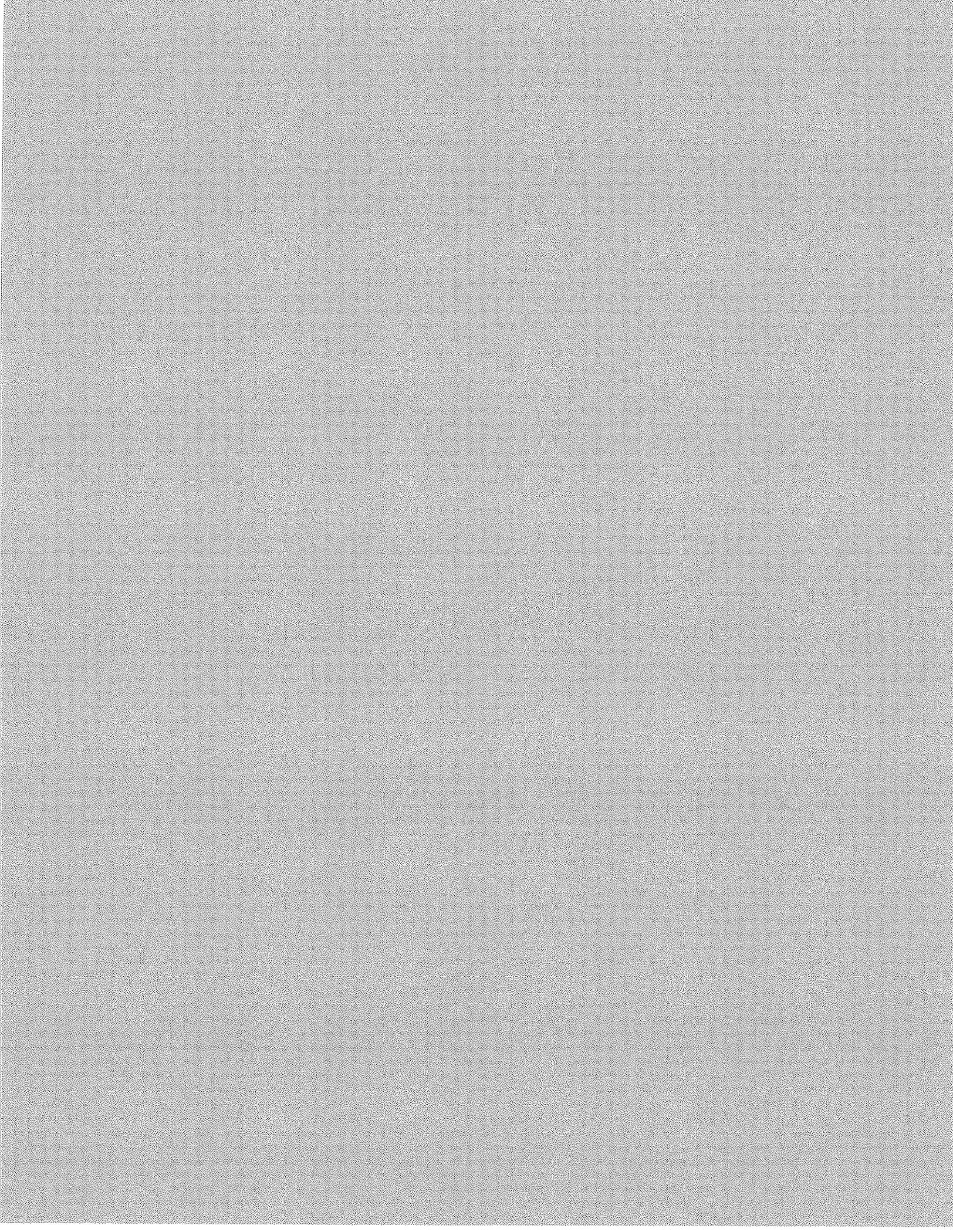
(b) “Health care services pool” means any person, firm, corporation, partnership, or association engaged for hire in the business of providing temporary employment in health care facilities, residential facilities, and agencies for licensed, certified, or trained health care personnel including, without limitation, nursing assistants, nurses’ aides, and orderlies. However, the term does not include nursing registries, a facility licensed under this chapter or chapter 429, 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.

(2) The requirements of part II of chapter 408 apply to the provision of services that require licensure or registration pursuant to this part and part II of chapter 408 and to entities registered by or applying for such registration from the agency pursuant to this part. Registration or a license issued by the agency is required for the operation of a health care services pool in this state. In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted using this part, part II of chapter 408, and applicable rules. The agency shall adopt rules and provide forms required for such registration and shall impose a registration fee in an amount sufficient to cover the cost of administering this part and part II of chapter 408. In addition to the requirements in part II of chapter 408, the registrant must provide the agency with any change of information contained on the original registration application within 14 days prior to the change.

(3) The agency shall require level 2 background screening for personnel as required in s. 408.809(1) pursuant to chapter 435 and s. 408.809.

(4) A health care services pool may not require an employee to recruit new employees from persons employed at a health care facility to which the health care services pool employee is assigned. Nor shall a health care facility to which employees of a health care services pool are assigned recruit new employees from the health care services pool.

(5) A health care services pool shall document that each temporary employee provided to a health care facility has met the licensing, certification, training, or continuing education requirements, as



Select Year:

see 408.032(8)

The 2010 Florida Statutes(including Special Session A)Title XXIX
PUBLIC HEALTHChapter 408
HEALTH CARE ADMINISTRATION[View Entire Chapter](#)

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

- (1) “Agency” means the Agency for Health Care Administration.
- (2) “Capital expenditure” means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, which is made to change the bed capacity of the facility, or substantially change the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, initial financing costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment.
- (3) “Certificate of need” means a written statement issued by the agency evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.
- (4) “Commenced construction” means initiation of and continuous activities beyond site preparation associated with erecting or modifying a health care facility, including procurement of a building permit applying the use of agency-approved construction documents, proof of an executed owner/contractor agreement or an irrevocable or binding forced account, and actual undertaking of foundation forming with steel installation and concrete placing.
- (5) “District” means a health service planning district composed of the following counties:
 - District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.
 - District 2.—Holmes, Washington, Bay, Jackson, Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.
 - District 3.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua, Marion, Citrus, Hernando, Sumter, and Lake Counties.
 - District 4.—Baker, Nassau, Duval, Clay, St. Johns, Flagler, and Volusia Counties.
 - District 5.—Pasco and Pinellas Counties.
 - District 6.—Hillsborough, Manatee, Polk, Hardee, and Highlands Counties.
 - District 7.—Seminole, Orange, Osceola, and Brevard Counties.
 - District 8.—Sarasota, DeSoto, Charlotte, Lee, Glades, Hendry, and Collier Counties.
 - District 9.—Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties.
 - District 10.—Broward County.
 - District 11.—Miami-Dade and Monroe Counties.
- (6) “Exemption” means the process by which a proposal that would otherwise require a certificate of need may proceed without a certificate of need.

(7) "Expedited review" means the process by which certain types of applications are not subject to the review cycle requirements contained in s. 408.039(1), and the letter of intent requirements contained in s. 408.039(2).

(8) "Health care facility" means a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled. A facility relying solely on spiritual means through prayer for healing is not included as a health care facility.

(9) "Health services" means inpatient diagnostic, curative, or comprehensive medical rehabilitative services and includes mental health services. Obstetric services are not health services for purposes of ss. 408.031-408.045.

(10) "Hospice" or "hospice program" means a hospice as defined in part IV of chapter 400.

(11) "Hospital" means a health care facility licensed under chapter 395.

(12) "Intermediate care facility for the developmentally disabled" means a residential facility licensed under chapter 393 and certified by the Federal Government pursuant to the Social Security Act as a provider of Medicaid services to persons who are mentally retarded or who have a related condition.

(13) "Long-term care hospital" means a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(e) and seeks exclusion from the acute care Medicare prospective payment system for inpatient hospital services.

(14) "Mental health services" means inpatient services provided in a hospital licensed under chapter 395 and listed on the hospital license as psychiatric beds for adults; psychiatric beds for children and adolescents; intensive residential treatment beds for children and adolescents; substance abuse beds for adults; or substance abuse beds for children and adolescents.

(15) "Nursing home geographically underserved area" means:

(a) A county in which there is no existing or approved nursing home;

(b) An area with a radius of at least 20 miles in which there is no existing or approved nursing home;

or

(c) An area with a radius of at least 20 miles in which all existing nursing homes have maintained at least a 95 percent occupancy rate for the most recent 6 months or a 90 percent occupancy rate for the most recent 12 months.

(16) "Skilled nursing facility" means an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(17) "Tertiary health service" means a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. The agency shall establish by rule a list of all tertiary health services.

History.—s. 19, ch. 87-92; s. 19, ch. 88-294; s. 2, ch. 89-308; s. 7, ch. 89-354; s. 21, ch. 91-158; s. 54, ch. 91-221; s. 1, ch. 91-282; ss. 15, 16, ch. 92-33; s. 10, ch. 92-58; s. 22, ch. 93-214; s. 8, ch. 95-144; s. 28, ch. 95-210; s. 2, ch. 95-394; s. 1, ch.

Select Year:

The 2010 Florida Statutes(including Special Session A)

[Title XXX](#)
SOCIAL WELFARE

[Chapter 419](#)
COMMUNITY RESIDENTIAL HOMES

[View Entire Chapter](#)

419.001 Site selection of community residential homes. –

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

(a) “Community residential home” means a dwelling unit licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or licensed by the Agency for Health Care Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

(b) “Licensing entity” or “licensing entities” means the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents.

(c) “Local government” means a county as set forth in chapter 7 or a municipality incorporated under the provisions of chapter 165.

(d) “Planned residential community” means a local government-approved, planned unit development that is under unified control, is planned and developed as a whole, has a minimum gross lot area of 8 acres, and has amenities that are designed to serve residents with a developmental disability as defined in s. [393.063](#) but that shall also provide housing options for other individuals. The community shall provide choices with regard to housing arrangements, support providers, and activities. The residents’ freedom of movement within and outside the community may not be restricted. For the purposes of this paragraph, local government approval must be based on criteria that include, but are not limited to, compliance with appropriate land use, zoning, and building codes. A planned residential community may contain two or more community residential homes that are contiguous to one another. A planned residential community may not be located within a 10-mile radius of any other planned residential community.

(e) “Resident” means any of the following: a frail elder as defined in s. [429.65](#); a person who has a handicap as defined in s. [760.22\(7\)\(a\)](#); a person who has a developmental disability as defined in s. [393.063](#); a nondangerous person who has a mental illness as defined in s. [394.455](#); or a child who is found to be dependent as defined in s. [39.01](#) or s. [984.03](#), or a child in need of services as defined in s. [984.03](#) or s. [985.03](#).

(f) “Sponsoring agency” means an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local

laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents. Such homes with six or fewer residents shall not be required to comply with the notification provisions of this section; provided that, prior to licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity.

(3)(a) When a site for a community residential home has been selected by a sponsoring agency in an area zoned for multifamily, the agency shall notify the chief executive officer of the local government in writing and include in such notice the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. Such notice shall also contain a statement from the licensing entity indicating the licensing status of the proposed community residential home and specifying how the home meets applicable licensing criteria for the safe care and supervision of the clients in the home. The sponsoring agency shall also provide to the local government the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located. The local government shall review the notification of the sponsoring agency in accordance with the zoning ordinance of the jurisdiction.

(b) Pursuant to such review, the local government may:

1. Determine that the siting of the community residential home is in accordance with local zoning and approve the siting. If the siting is approved, the sponsoring agency may establish the home at the site selected.
2. Fail to respond within 60 days. If the local government fails to respond within such time, the sponsoring agency may establish the home at the site selected.
3. Deny the siting of the home.

(c) The local government shall not deny the siting of a community residential home unless the local government establishes that the siting of the home at the site selected:

1. Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area.
2. Does not meet applicable licensing criteria established and determined by the licensing entity, including requirements that the home be located to assure the safe care and supervision of all clients in the home.
3. Would result in such a concentration of community residential homes in the area in proximity to the site selected, or would result in a combination of such homes with other residences in the community, such that the nature and character of the area would be substantially altered. A home that is located within a radius of 1,200 feet of another existing community residential home in a multifamily zone shall be an overconcentration of such homes that substantially alters the nature and character of the area. A home that is located within a radius of 500 feet of an area of single-family zoning substantially alters the nature and character of the area.

(4) Community residential homes, including homes of six or fewer residents which would otherwise

meet the definition of a community residential home, which are located within a planned residential community are not subject to the proximity requirements of this section and may be contiguous to each other. A planned residential community must comply with the applicable local government's land development code and other local ordinances. A local government may not impose proximity limitations between homes within a planned residential community if such limitations are based solely on the types of residents anticipated to be living in the community.

(5) All distance requirements in this section shall be measured from the nearest point of the existing home or area of single-family zoning to the nearest point of the proposed home.

(6) If agreed to by both the local government and the sponsoring agency, a conflict may be resolved through informal mediation. The local government shall arrange for the services of an independent mediator or may utilize the dispute resolution process established by a regional planning council pursuant to s. 186.509. Mediation shall be concluded within 45 days of a request therefor. The resolution of any issue through the mediation process shall not alter any person's right to a judicial determination of any issue if that person is entitled to such a determination under statutory or common law.

(7) The licensing entity shall not issue a license to a sponsoring agency for operation of a community residential home if the sponsoring agency does not notify the local government of its intention to establish a program, as required by subsection (3). A license issued without compliance with the provisions of this section shall be considered null and void, and continued operation of the home may be enjoined.

(8) A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.

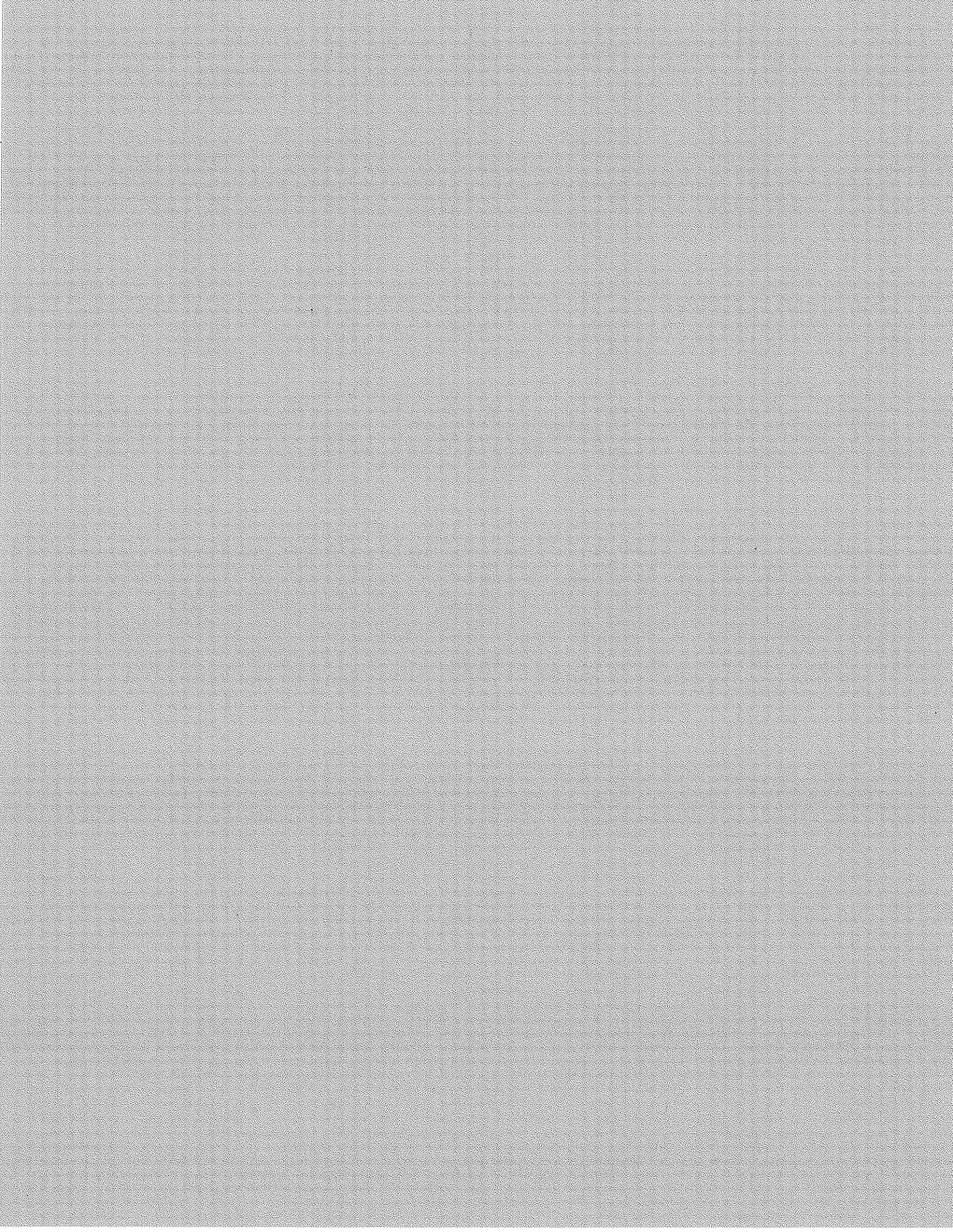
(9) Nothing in this section shall be deemed to affect the authority of any community residential home lawfully established prior to October 1, 1989, to continue to operate.

(10) Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others.

(11) The siting of community residential homes in areas zoned for single family shall be governed by local zoning ordinances. Nothing in this section prohibits a local government from authorizing the development of community residential homes in areas zoned for single family.

(12) Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the criteria of this section. State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes.

History.—s. 1, ch. 89-372; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 36, ch. 93-206; s. 6, ch. 95-152; s. 42, ch. 96-169; s. 222, ch. 97-101; s. 46, ch. 98-280; s. 14, ch. 98-338; s. 53, ch. 99-193; s. 23, ch. 99-284; s. 7, ch. 2000-135; s. 93, ch. 2004-267; s. 34, ch. 2006-86; s. 110, ch. 2006-120; s. 1, ch. 2006-177; s. 99, ch. 2007-5; s. 30, ch. 2008-245; s. 3, ch. 2010-193.



Select Year: The 2010 Florida Statutes(including Special Session A)Title XXX
SOCIAL WELFAREChapter 429
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ASSISTED LIVING FACILITIES

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429.01 Short title; purpose.—

- (1) This act may be cited as the "Assisted Living Facilities Act."
- (2) The purpose of this act is to promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote the dignity, individuality, privacy, and decisionmaking ability of such persons, to provide for the health, safety, and welfare of residents of assisted living facilities in the state, to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents of such facilities through the efforts of the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Children and Family Services, the Department of Health, assisted living

facilities, and other community agencies. To the maximum extent possible, appropriate community-based programs must be available to state-supported residents to augment the services provided in assisted living facilities. The Legislature recognizes that assisted living facilities are an important part of the continuum of long-term care in the state. In support of the goal of aging in place, the Legislature further recognizes that assisted living facilities should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities. The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible. Regulations governing these facilities must be sufficiently flexible to allow facilities to adopt policies that enable residents to age in place when resources are available to meet their needs and accommodate their preferences.

(3) The principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration to enforce this part.

History.—ss. 1, 2, ch. 75-233; ss. 12, 13, ch. 80-198; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 2, ch. 87-371; s. 2, ch. 91-263; s. 28, ch. 92-33; ss. 1, 38, 39, ch. 93-216; s. 6, ch. 95-210; s. 46, ch. 95-418; s. 122, ch. 99-8; s. 2, ch. 2006-197.

Note.—Former s. 400.401.

429.02 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) “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.

(6) “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.

(7) “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.

(8) “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.

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

(10) "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.

(11) "Extended congregate care" means acts beyond those authorized in subsection (16) 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.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "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.

(19) "Resident" means a person 18 years of age or older, residing in and receiving care from a

facility.

(20) "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; 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.

(21) "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.

(22) "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.

(23) "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.

(24) "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.

(25) "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.

(26) "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.

History.—s. 3, ch. 75-233; ss. 12, 14, ch. 80-198; s. 2, ch. 81-318; ss. 6, 19, ch. 82-148; ss. 41, 79, 83, ch. 83-181; s. 4, ch. 85-145; s. 3, ch. 87-371; s. 10, ch. 89-294; s. 3, ch. 91-263; s. 1, ch. 93-209; ss. 2, 38, 39, ch. 93-216; s. 7, ch. 95-210; ss. 1, 22, 47, ch. 95-418; s. 2, ch. 97-82; s. 1, ch. 98-80; s. 98, ch. 2000-318; ss. 2, 29, ch. 2006-197; s. 138, ch. 2007-230.

Note.—Former s. 400.402.

429.04 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.

(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 of 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 colocated with a nursing home licensed under part II of chapter 400 or colocated with a facility licensed under this part in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

History.—ss. 4, 5, ch. 75-233; ss. 12, 15, ch. 80-198; s. 2, ch. 81-318; ss. 42, 79, 83, ch. 83-181; s. 4, ch. 87-371; s. 4, ch. 91-263; ss. 3, 38, 39, ch. 93-216; s. 19, ch. 93-268; s. 2, ch. 94-206; s. 1055, ch. 95-148; s. 8, ch. 95-210; s. 2, ch. 98-80; s. 1, ch. 98-148; ss. 2, 30, ch. 2006-197.

Note.—Former s. 400.404.

429.07 License required; fee.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require

licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate an assisted living facility 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) In addition to the requirements of s. 408.806, each license granted by the agency must state the type of care for which the license is granted. 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. 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.

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

1. In order for extended congregate care services to be provided, 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 the 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 and part II of chapter 408. The notification of approval or the denial of the request shall be made in accordance with part II of chapter 408. 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 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 which results in requiring the facility to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility licensed 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 pursuant to this part or part II of chapter 408 or initiation of injunctive proceedings.

2. A facility that is licensed to provide extended congregate care services shall maintain a written progress report on each person who receives services which 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 the facility 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, part II of chapter 408, and relevant rules. One of the 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 the 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. The agency must first 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. A facility that is licensed to provide extended congregate care services must:
 - 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.
 - d. Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place, 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, directly or through contract, the services of a person licensed under part I of chapter 464.
 - h. In addition to the training mandated in s. 429.52, provide specialized training as defined by rule for facility staff.
4. A facility that is licensed to provide extended congregate care services is exempt from the criteria for continued residency set forth in rules adopted under s. 429.41. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing supervision. A licensed facility that provides extended congregate care services must also 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 the 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. 429.26(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).
8. Failure to provide extended congregate care services may result in denial of extended congregate

care license renewal.

(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 and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with part II of chapter 408. 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, part II of chapter 408, and 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), unless the facility is licensed to provide extended congregate care services.

(4) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule.

(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.

(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.

(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.

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

History.—s. 6, ch. 75-233; s. 8, ch. 79-12; ss. 12, 16, ch. 80-198; s. 2, ch. 81-318; ss. 43, 79, 83, ch. 83-181; s. 2, ch. 86-104; s. 5, ch. 87-371; s. 11, ch. 89-294; s. 5, ch. 91-263; s. 10, ch. 91-282; s. 22, ch. 93-177; ss. 4, 38, 39, ch. 93-216; s. 20,

ch. 95-146; s. 9, ch. 95-210; ss. 2, 18, 23, ch. 95-418; s. 3, ch. 97-82; s. 18, ch. 97-96; s. 3, ch. 98-80; s. 99, ch. 2000-318; s. 33, ch. 2001-45; ss. 2, 31, ch. 2006-197; s. 101, ch. 2007-5; s. 139, ch. 2007-230; s. 141, ch. 2010-102.

Note.—Former s. 400.407.

429.075 Limited mental health license.—An assisted living facility that serves three or more mental health residents must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility, must not have any current uncorrected deficiencies or violations, and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such designation may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408.

Notification of approval or denial of such request shall be made in accordance with this part, part II of chapter 408, and applicable rules. This training will be provided by or approved by the Department of Children and Family Services.

(2) Facilities licensed to provide services to mental health residents shall provide appropriate supervision and staffing to provide for the health, safety, and welfare of such residents.

(3) A facility that has a limited mental health license must:

(a) Have a copy of each mental health resident's community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(4) A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

History.—s. 3, ch. 95-418; s. 37, ch. 96-169; s. 4, ch. 97-82; s. 66, ch. 97-100; s. 4, ch. 98-80; s. 2, ch. 2006-197; s. 140, ch. 2007-230.

Note.—Former s. 400.4075.

429.08 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties.—

(1)(a) This section applies to the unlicensed operation of an assisted living facility in addition to the requirements of part II of chapter 408.

(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 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) The agency shall publish a list, by county, of licensed assisted living facilities. This information may be provided electronically or through the agency's Internet site.

(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 pursuant to part II of chapter 408.

(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 provider as defined in s. 408.803 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 pursuant to part II of chapter 408 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 pursuant to part II of chapter 408 shall be fined and required to prepare a corrective action plan designed to prevent such referrals.

History.—s. 17, ch. 88-350; s. 6, ch. 91-263; s. 29, ch. 92-33; ss. 5, 39, ch. 93-216; s. 10, ch. 95-210; ss. 4, 48, ch. 95-418; s. 5, ch. 98-80; s. 1, ch. 99-179; s. 1, ch. 2000-318; s. 36, ch. 2001-62; s. 2, ch. 2004-344; ss. 2, 33, ch. 2006-197; s. 141, ch. 2007-230; s. 60, ch. 2009-223.

Note.—Former s. 400.408.

429.11 Initial application for license; provisional license.—

(1) Each applicant for licensure must comply with all provisions of part II of chapter 408 and must:

(a) Identify 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.

(b) Provide 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.

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

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

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

(4) 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.

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

(6) In addition to the license categories available in s. 408.808, 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.

(7) 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.

History.—s. 7, ch. 75-233; s. 3, ch. 77-323; ss. 12, 17, ch. 80-198; s. 2, ch. 81-318; ss. 7, 19, ch. 82-148; ss. 44, 47, 79, 83, ch. 83-181; s. 5, ch. 85-145; s. 1, ch. 85-251; s. 6, ch. 87-371; s. 12, ch. 89-294; s. 7, ch. 91-263; ss. 6, 38, 39, ch. 93-216; s. 5, ch. 95-418; s. 6, ch. 98-80; s. 42, ch. 98-171; ss. 2, 34, ch. 2006-197; s. 142, ch. 2007-230.

Note.—Former s. 400.411.

429.12 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, in addition to the requirements of part II of chapter 408, whenever a facility is sold or the ownership thereof is transferred, including leasing:

(1) The transferee shall notify the residents, in writing, of the change of ownership within 7 days after receipt of the new license.

(2) The transferor of a facility the license of which is denied pending an administrative hearing shall, as a part of the written change-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 change of ownership and that failure to correct the condition which resulted in the moratorium pursuant to part II of chapter 408 or denial of licensure is grounds for denial of the transferee's license.

History.—ss. 45, 83, ch. 83-181; s. 7, ch. 87-371; s. 8, ch. 91-263; ss. 7, 38, 39, ch. 93-216; s. 772, ch. 95-148; s. 11, ch. 95-210; s. 6, ch. 95-418; ss. 2, 35, ch. 2006-197; s. 143, ch. 2007-230.

Note.—Former s. 400.412.

429.14 Administrative penalties.—

¹(1) In addition to the requirements of part II of chapter 408, the agency may deny, revoke, and suspend any license issued under this part and impose an administrative fine in the manner provided in chapter 120 against a licensee for a violation of any provision of this part, part II of chapter 408, or applicable rules, or for any of the following actions by a licensee, for the actions of any person subject to level 2 background screening under s. 408.809, 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 specified in s. 429.19:

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) Failure to comply with the background screening standards of this part, s. 408.809(1), or chapter 435.

(g) Violation of a moratorium.

(h) 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.

(i) 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.

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

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

(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 controlling interest as defined in part II of chapter 408 which 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; or had an injunctive proceeding initiated against it.

(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 or part II of chapter 408, 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.

History.—s. 8, ch. 75-233; ss. 12, 18, ch. 80-198; s. 2, ch. 81-318; ss. 46, 79, 83, ch. 83-181; s. 8, ch. 87-371; s. 13, ch. 89-

294; s. 30, ch. 91-71; s. 46, ch. 92-58; ss. 8, 38, 39, ch. 93-216; s. 50, ch. 94-218; s. 39, ch. 95-228; s. 7, ch. 95-418; s. 38, ch. 96-169; s. 126, ch. 96-410; s. 7, ch. 98-80; s. 43, ch. 98-171; s. 73, ch. 2000-349; s. 34, ch. 2001-45; s. 19, ch. 2003-57; s. 13, ch. 2004-267; ss. 2, 36, ch. 2006-197; s. 144, ch. 2007-230; s. 61, ch. 2009-223; s. 28, ch. 2010-114.

¹Note.—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act.”

²Note.—The words “facility be heard” are as enacted by s. 43, ch. 98-171.

Note.—Former s. 400.414.

429.17 Expiration of license; renewal; conditional license.—

(1) 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.

(2) A license shall be renewed in accordance with part II of chapter 408 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.

(3) In addition to the requirements of part II of chapter 408, 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.

(4) In addition to the license categories available in s. 408.808, 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.

(5) 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.

(6) The department may by rule establish renewal procedures, identify forms, and specify documentation necessary to administer this section. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408.

History.—s. 9, ch. 75-233; ss. 12, 19, ch. 80-198; s. 2, ch. 81-318; ss. 9, 19, ch. 82-148; ss. 47, 79, 83, ch. 83-181; s. 2, ch. 88-350; s. 14, ch. 89-294; s. 9, ch. 91-263; s. 23, ch. 93-177; ss. 10, 38, 39, ch. 93-216; s. 9, ch. 95-418; s. 9, ch. 98-80; s. 44, ch. 98-171; s. 212, ch. 99-13; s. 20, ch. 2003-57; ss. 2, 38, ch. 2006-197; s. 146, ch. 2007-230.

Note.—Former s. 400.417.

¹**429.174 Background screening.**—The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809.

History.—ss. 15, 25, ch. 89-294; ss. 11, 38, 39, ch. 93-216; s. 10, ch. 98-80; ss. 45, 71, ch. 98-171; s. 142, ch. 98-403; s. 213, ch. 99-13; s. 74, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 418, ch. 2003-261; s. 14, ch. 2004-267; ss. 2, 39, ch. 2006-197; s. 147, ch. 2007-230; s. 29, ch. 2010-114.

¹Note.—Section 58, ch. 2010-114, provides that “[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening

as set forth in this act.”

Note.—Former s. 400.4174.

429.176 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.

History.—ss. 44, 83, ch. 83-181; s. 10, ch. 91-263; ss. 12, 38, 39, ch. 93-216; ss. 10, 24, ch. 95-418; s. 11, ch. 98-80; s. 46, ch. 98-171; ss. 2, 40, ch. 2006-197; s. 148, ch. 2007-230.

Note.—Former s. 400.4176.

429.177 Patients with Alzheimer’s disease or other related disorders; certain disclosures.—A facility licensed under this part which claims that it provides special care for persons who have Alzheimer’s disease or other related disorders must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons. The facility must give a copy of all such advertisements or a copy of the document to each person who requests information about programs and services for persons with Alzheimer’s disease or other related disorders offered by the facility and must maintain a copy of all such advertisements and documents in its records. The agency shall examine all such advertisements and documents in the facility’s records as part of the license renewal procedure.

History.—s. 2, ch. 93-105; s. 2, ch. 2006-197.

Note.—Former s. 400.4177.

429.178 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).

(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).

(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.

History.—s. 15, ch. 97-82; ss. 2, 41, ch. 2006-197.

Note.—Former s. 400.4178.

429.18 Disposition of fees and administrative fines.—Income from fees and fines collected under this part shall be directed to and used by the agency for the following purposes:

(1) 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, if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.

(2) 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 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.

(3) Any trust funds accrued each year under this part and not used for the purposes specified in subsections (1) and (2) shall be used to offset the costs of the licensure program, verifying information submitted, defraying the costs of processing the names of applicants, and conducting inspections and monitoring visits pursuant to this part and part II of chapter 408.

History.—ss. 12, 20, ch. 80-198; s. 2, ch. 81-318; ss. 8, 19, ch. 82-148; ss. 48, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 16, ch. 89-294; s. 11, ch. 91-263; s. 11, ch. 91-282; ss. 13, 38, 39, ch. 93-216; s. 19, ch. 95-418; s. 12, ch. 98-80; ss. 2, 42, ch.

2006-197; s. 149, ch. 2007-230.

Note.—Former s. 400.418.

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408, the agency shall impose an administrative fine in the manner provided in chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility, for the actions of any person subject to level 2 background screening under s. 408.809, 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 defined in s. 408.813. 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.

(b) Class “II” violations are defined in s. 408.813. 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.

(c) Class “III” violations are defined in s. 408.813. 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.

(d) Class “IV” violations are defined in s. 408.813. 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.

(3) For purposes of this section, 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) Any facility whose owner fails to apply for a change-of-ownership license in accordance with part II of chapter 408 and operates the facility under the new ownership is subject to a fine of \$5,000.

(7) 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) to verify the correction of the violations.

(8) During an inspection, the agency shall make a reasonable attempt to discuss each violation with the owner or administrator of the facility, prior to written notification.

(9) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined 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 Agency for Persons with Disabilities, 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. This information may be provided electronically or through the agency's Internet site.

History.—ss. 12, 21, ch. 80-198; s. 254, ch. 81-259; s. 2, ch. 81-318; ss. 49, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 17, ch. 89-294; s. 12, ch. 91-263; ss. 14, 38, 39, ch. 93-216; s. 13, ch. 98-80; s. 2, ch. 99-179; s. 19, ch. 2000-263; s. 142, ch. 2000-349; s. 62, ch. 2000-367; s. 35, ch. 2001-45; s. 21, ch. 2003-57; ss. 2, 43, ch. 2006-197; s. 41, ch. 2006-227; s. 150, ch. 2007-230; s. 62, ch. 2009-223.

Note.—Former s. 400.419.

429.195 Rebates prohibited; penalties.—

(1) It is unlawful for any assisted living facility licensed under this part to contract or promise to pay or receive any commission, bonus, kickback, or rebate or engage in any split-fee arrangement in any form whatsoever with any physician, surgeon, organization, agency, or person, either directly or indirectly, for residents referred to an assisted living facility licensed under this part. A facility may employ or contract with persons to market the facility, provided the employee or contract provider clearly indicates that he or she represents the facility. A person or agency independent of the facility may provide placement or referral services for a fee to individuals seeking assistance in finding a suitable facility; however, any fee paid for placement or referral services must be paid by the individual looking for a facility, not by the facility.

(2) A violation of this section shall be considered patient brokering and is punishable as provided in s. 817.505.

History.—ss. 18, 25, ch. 89-294; s. 13, ch. 91-263; ss. 15, 38, 39, ch. 93-216; s. 773, ch. 95-148; s. 12, ch. 95-210; s. 14, ch. 98-80; s. 2, ch. 2006-197.

Note.—Former s. 400.4195.

429.20 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, 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.

History.—ss. 50, 83, ch. 83-181; ss. 16, 38, 39, ch. 93-216; s. 13, ch. 95-210; ss. 2, 44, ch. 2006-197.

Note.—Former s. 400.42.

429.22 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.

(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.

(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.

History.—ss. 12, 22, ch. 80-198; s. 255, ch. 81-259; s. 2, ch. 81-318; ss. 51, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 14, ch. 91-263; ss. 18, 38, 39, ch. 93-216; s. 774, ch. 95-148; s. 15, ch. 98-80; ss. 2, 45, ch. 2006-197; s. 152, ch. 2007-230.

Note.—Former s. 400.422.

429.23 Internal risk management and quality assurance program; adverse incidents and reporting requirements.—

(1) Every facility licensed under this part may, as part of its administrative functions, voluntarily establish a risk management and quality assurance program, the purpose of which is to assess resident care practices, facility incident reports, deficiencies cited by the agency, adverse incident reports, and resident grievances and develop plans of action to correct and respond quickly to identify quality differences.

(2) Every facility licensed under this part is required to maintain adverse incident reports. For purposes of this section, the term, "adverse incident" means:

(a) An event over which facility personnel could exercise control rather than as a result of the resident's condition and results in:

1. Death;
2. Brain or spinal damage;
3. Permanent disfigurement;
4. Fracture or dislocation of bones or joints;
5. Any condition that required medical attention to which the resident has not given his or her consent, including failure to honor advanced directives;
6. Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident's condition before the incident; or
7. An event that is reported to law enforcement or its personnel for investigation; or

(b) Resident elopement, if the elopement places the resident at risk of harm or injury.

(3) Licensed facilities shall provide within 1 business day after the occurrence of an adverse incident, by electronic mail, facsimile, or United States mail, a preliminary report to the agency on all adverse incidents specified under this section. The report must include information regarding the identity of the affected resident, the type of adverse incident, and the status of the facility's investigation of the incident.

(4) Licensed facilities shall provide within 15 days, by electronic mail, facsimile, or United States mail, a full report to the agency on all adverse incidents specified in this section. The report must include the results of the facility's investigation into the adverse incident.

(5) Each facility shall report monthly to the agency any liability claim filed against it. The report must include the name of the resident, the dates of the incident leading to the claim, if applicable, and the type of injury or violation of rights alleged to have occurred. This report is not discoverable in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.

(6) Abuse, neglect, or exploitation must be reported to the Department of Children and Family Services as required under chapter 415.

(7) The information reported to the agency pursuant to subsection (3) which relates to persons licensed under chapter 458, chapter 459, chapter 461, chapter 464, or chapter 465 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each incident and determine whether it potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 apply.

(8) If the agency, through its receipt of the adverse incident reports prescribed in this part or through any investigation, has reasonable belief that conduct by a staff member or employee of a licensed facility is grounds for disciplinary action by the appropriate board, the agency shall report this fact to such regulatory board.

(9) The adverse incident reports and preliminary adverse incident reports required under this section are confidential as provided by law and are not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or appropriate regulatory board.

(10) The Department of Elderly Affairs may adopt rules necessary to administer this section.

History.—s. 36, ch. 2001-45; s. 2, ch. 2006-197; s. 63, ch. 2009-223.

Note.—Former s. 400.423.

429.24 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; 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.

(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.

History.—s. 11, ch. 75-233; ss. 12, 23, ch. 80-198; s. 2, ch. 81-318; ss. 52, 79, 83, ch. 83-181; s. 10, ch. 87-371; s. 1, ch. 88-364; s. 15, ch. 91-263; ss. 19, 38, 39, ch. 93-216; s. 775, ch. 95-148; s. 2, ch. 98-148; ss. 2, 46, ch. 2006-197.

Note.—Former s. 400.424.

429.255 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. 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.

¹(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.

History.—ss. 16, 38, ch. 91-263; ss. 20, 38, 39, ch. 93-216; s. 4, ch. 99-331; s. 3, ch. 2000-295; s. 100, ch. 2000-318; ss. 2, 47, ch. 2006-197; s. 1, ch. 2010-200.

¹**Note.**—Section 1, ch. 2010-200, amended and redesignated subsection (3) as subsection (4) and added new subsections (3) and (5), effective July 1, 2011, to read:

(3)(a) An assisted living facility licensed under this part with 17 or more beds shall have on the premises at all times a functioning automated external defibrillator as defined in s. 768.1325(2)(b).

(b) The facility is encouraged to register the location of each automated external defibrillator with a local emergency medical services medical director.

(c) The provisions of ss. 768.13 and 768.1325 apply to automated external defibrillators within the facility.

(4) Facility staff may withhold or withdraw cardiopulmonary resuscitation or the use of an automated external defibrillator 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 or use of an automated external defibrillator 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 or use of an automated external defibrillator as otherwise permitted by law.

(5) The Department of Elderly Affairs may adopt rules to implement the provisions of this section relating to use of an automated external defibrillator.

Note.—Former s. 400.4255.

429.256 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 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.

History.—s. 16, ch. 98-80; s. 214, ch. 99-13; ss. 2, 48, ch. 2006-197.

Note.—Former s. 400.4256.

429.26 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.

(5) Except as provided in s. 429.07, 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) 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.

(10) 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.

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

History.—ss. 12, 30, ch. 80-198; s. 2, ch. 81-318; ss. 53, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 6, ch. 85-145; s. 11, ch. 87-371; s. 19, ch. 89-294; s. 17, ch. 91-263; ss. 21, 38, 39, ch. 93-216; s. 776, ch. 95-148; s. 15, ch. 95-210; ss. 25, 49, ch. 95-418; s. 39, ch. 96-169; s. 5, ch. 97-82; s. 215, ch. 99-13; s. 101, ch. 2000-318; s. 75, ch. 2000-349; s. 37, ch. 2001-45; s. 61, ch. 2002-1; ss. 2, 49, ch. 2006-197; s. 153, ch. 2007-230; s. 64, ch. 2009-223.

Note.—Former s. 400.426.

429.27 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,

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.

History.—s. 12, ch. 75-233; ss. 12, 24, ch. 80-198; s. 2, ch. 81-152; s. 2, ch. 81-318; ss. 4, 19, ch. 82-148; ss. 54, 79, 83, ch. 83-181; s. 3, ch. 86-104; s. 12, ch. 87-371; s. 72, ch. 91-224; s. 18, ch. 91-263; ss. 22, 38, 39, ch. 93-216; s. 777, ch. 95-148; s. 3, ch. 98-148; s. 216, ch. 99-13; ss. 2, 50, ch. 2006-197.

Note.—Former s. 400.427.

429.275 Business practice; personnel records; liability insurance.—The assisted living facility shall be administered on a sound financial basis that is consistent with good business practices.

(1) The administrator or owner of a facility shall maintain accurate business records that identify, summarize, and classify funds received and expenses disbursed and shall use written accounting procedures and a recognized accounting system.

(2) The administrator or owner of a facility shall maintain personnel records for each staff member which contain, at a minimum, documentation of background screening, if applicable, documentation of compliance with all training requirements of this part or applicable rule, and a copy of all licenses or certification held by each staff who performs services for which licensure or certification is required under this part or rule.

(3) The administrator or owner of a facility shall maintain liability insurance coverage that is in force at all times.

(4) The department may by rule clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures, and specify documentation as necessary to implement the requirements of this section.

History.—s. 4, ch. 98-148; s. 2, ch. 2006-197.

Note.—Former s. 400.4275.

429.28 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.

(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.

(l) 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.

History.—ss. 12, 31, ch. 80-198; s. 2, ch. 81-318; ss. 55, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 65, ch. 91-221; s. 19, ch. 91-263; ss. 23, 38, 39, ch. 93-216; s. 778, ch. 95-148; s. 11, ch. 95-418; s. 17, ch. 98-80; s. 20, ch. 2000-263; ss. 76, 143, ch. 2000-349; s. 63, ch. 2000-367; s. 38, ch. 2001-45; ss. 2, 51, ch. 2006-197.

Note.—Former s. 400.428.

429.29 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 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. This section does not preclude theories of recovery not arising out of negligence or s. 429.28 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.

(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 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.

History.—ss. 12, 32, ch. 80-198; s. 2, ch. 81-318; ss. 56, 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; ss. 24, 38, 39, ch. 93-216; s. 779, ch. 95-148; s. 31, ch. 99-225; s. 39, ch. 2001-45; ss. 2, 52, ch. 2006-197.

Note.—Former s. 400.429.

429.293 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 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 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 unsworn 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.

History.—s. 40, ch. 2001-45; ss. 2, 53, ch. 2006-197.

Note.—Former s. 400.4293.

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

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

(2) No facility shall be held liable for any civil damages as a result of complying with this section.

History.—s. 41, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4294.

429.295 Certain provisions not applicable to actions under this part.—An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and the provisions of s. 768.21(8) do not apply to a claim alleging death of the resident.

History.—s. 42, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4295.

429.296 Statute of limitations.—

(1) Any action for damages brought under this part shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of

action accrued.

(2) In those actions covered by this subsection in which it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event not more than 6 years from the date the incident giving rise to the injury occurred.

(3) This section shall apply to causes of action that have accrued prior to the effective date of this section; however, any such cause of action that would not have been barred under prior law may be brought within the time allowed by prior law or within 2 years after the effective date of this section, whichever is earlier, and will be barred thereafter. In actions where it can be shown that fraudulent concealment or intentional misrepresentation of fact prevented the discovery of the injury, the period of limitations is extended forward 2 years from the time that the injury is discovered with the exercise of due diligence, but in no event more than 4 years from the effective date of this section.

History.—s. 43, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4296.

429.297 Punitive damages; pleading; burden of proof.—

(1) In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) “Gross negligence” means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

(4) The plaintiff must establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The “greater weight of the evidence” burden of proof applies to a

determination of the amount of damages.

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 44, ch. 2001-45; s. 2, ch. 2006-197.

Note.—Former s. 400.4297.

429.298 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$1 million.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$4 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

(e) In any case in which the findings of fact support an award of punitive damages pursuant to paragraph (b) or paragraph (c), the clerk of the court shall refer the case to the appropriate law enforcement agencies, to the state attorney in the circuit where the long-term care facility that is the subject of the underlying civil cause of action is located, and, for multijurisdictional facility owners, to the Office of the Statewide Prosecutor; and such agencies, state attorney, or Office of the Statewide Prosecutor shall initiate a criminal investigation into the conduct giving rise to the award of punitive damages. All findings by the trier of fact which support an award of punitive damages under this paragraph shall be admissible as evidence in any subsequent civil or criminal proceeding relating to the acts giving rise to the award of punitive damages under this paragraph.

(2) The claimant's attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the final judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than punitive damages.

(3) The jury may neither be instructed nor informed as to the provisions of this section.

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be equally divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as

provided herein.

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

(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

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

(5) This section is remedial in nature and shall take effect upon becoming a law.

History.—s. 45, ch. 2001-45; s. 419, ch. 2003-261; s. 2, ch. 2006-197.

Note.—Former s. 400.4298.

429.31 Closing of facility; notice; penalty.—

(1) In addition to the requirements of part II of chapter 408, the facility shall 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 discontinuance of operation, following the notification requirements provided in s. 429.28(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) 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.

History.—s. 13, ch. 75-233; ss. 12, 25, ch. 80-198; s. 2, ch. 81-318; ss. 57, 79, 83, ch. 83-181; s. 20, ch. 91-263; ss. 25, 38, 39, ch. 93-216; s. 780, ch. 95-148; s. 50, ch. 95-418; s. 123, ch. 99-8; ss. 2, 54, ch. 2006-197; s. 154, ch. 2007-230.

Note.—Former s. 400.431.

429.34 Right of entry and inspection.—In addition to the requirements of s. 408.811, any duly designated officer or employee of the department, the Department of Children and Family Services, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a member of the state or local long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to

determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable rules. Data collected by the state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

History.—s. 14, ch. 75-233; s. 1, ch. 77-174; ss. 12, 26, ch. 80-198; s. 2, ch. 81-318; ss. 10, 18, 19, ch. 82-148; ss. 58, 79, 83, ch. 83-181; s. 1, ch. 88-350; s. 24, ch. 93-177; ss. 26, 38, 39, ch. 93-216; s. 51, ch. 95-418; s. 124, ch. 99-8; s. 144, ch. 2000-349; s. 64, ch. 2000-367; s. 46, ch. 2001-45; s. 3, ch. 2004-344; s. 2, ch. 2006-197; s. 155, ch. 2007-230.

Note.—Former s. 400.434.

429.35 Maintenance of records; reports.—

(1) Every facility shall maintain, as public information available for public inspection under such conditions as the agency shall prescribe, records containing copies of all inspection reports pertaining to the facility that have been issued by the agency to the facility. Copies of inspection reports shall be retained in the records for 5 years from the date the reports are filed or issued.

(2) Within 60 days after the date of the biennial inspection visit required under s. 408.811 or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ombudsman council in whose planning and service area, as defined in part II of chapter 400, the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district Adult Services and Mental Health Program Offices.

(3) Every facility shall post a copy of the last inspection report of the agency for that facility in a prominent location within the facility so as to be accessible to all residents and to the public. Upon request, the facility shall also provide a copy of the report to any resident of the facility or to an applicant for admission to the facility.

History.—ss. 12, 27, ch. 80-198; s. 2, ch. 81-318; ss. 75, 79, 83, ch. 83-181; s. 53, ch. 83-218; s. 1, ch. 88-145; s. 19, ch. 90-347; s. 21, ch. 91-263; ss. 27, 38, 39, ch. 93-216; s. 16, ch. 95-210; s. 57, ch. 2000-139; s. 145, ch. 2000-349; s. 65, ch. 2000-367; s. 2, ch. 2006-197; s. 102, ch. 2007-5; s. 156, ch. 2007-230; s. 118, ch. 2008-4.

Note.—Former s. 400.435.

429.41 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. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. 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 s. 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 firesafety 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 firesafety 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.

(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.

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

(4) 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 application procedures, criteria for reviewing waiver proposals, and procedures for reporting findings, as necessary to implement this subsection.

(5) 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 a facility that has a good record of past performance. However, a full inspection must be conducted in a facility that has 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 if 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.

History.—s. 16, ch. 75-233; ss. 12, 29, ch. 80-198; s. 2, ch. 81-318; ss. 59, 79, 83, ch. 83-181; s. 7, ch. 85-145; s. 1, ch. 86-87; s. 13, ch. 87-371; s. 20, ch. 89-294; s. 22, ch. 91-263; s. 25, ch. 93-177; s. 26, ch. 93-211; ss. 28, 38, 39, ch. 93-216; ss. 12, 20, 52, ch. 95-418; s. 27, ch. 97-100; s. 99, ch. 97-101; s. 5, ch. 98-148; s. 15, ch. 99-332; s. 47, ch. 2001-45; s. 7, ch. 2004-298; s. 2, ch. 2004-386; ss. 2, 55, ch. 2006-197; s. 157, ch. 2007-230; s. 142, ch. 2010-102.

Note.—Former s. 400.441.

429.42 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, 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.

History.—s. 1, ch. 89-218; s. 1, ch. 90-192; s. 23, ch. 91-263; ss. 29, 38, 39, ch. 93-216; s. 17, ch. 95-210; s. 18, ch. 98-80; s. 6, ch. 98-148; ss. 2, 56, ch. 2006-197.

Note.—Former s. 400.442.

429.44 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.

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

History.—s. 17, ch. 75-233; s. 3, ch. 79-152; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; ss. 30, 38, 39, ch. 93-216; s. 14, ch. 95-418; s. 7, ch. 98-148; ss. 2, 57, ch. 2006-197.

Note.—Former s. 400.444.

429.445 Compliance with local zoning requirements.—No facility licensed under this part may commence any construction which will expand the size of the existing structure unless the licensee first submits to the agency proof that such construction will be in compliance with applicable local zoning requirements. Facilities with a licensed capacity of less than 15 persons shall comply with the provisions of chapter 419.

History.—s. 2, ch. 85-251; s. 24, ch. 91-263; ss. 31, 39, ch. 93-216; s. 2, ch. 2006-197.

Note.—Former s. 400.445.

429.47 Prohibited acts; penalties for violation.—

(1) 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.

(2) 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.

(3) 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.

(4) 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.

*History.—*s. 18, ch. 75-233; s. 2, ch. 81-318; ss. 79, 83, ch. 83-181; s. 14, ch. 87-371; s. 25, ch. 91-263; ss. 32, 38, 39, ch. 93-216; s. 18, ch. 95-210; s. 217, ch. 99-13; ss. 2, 58, ch. 2006-197; s. 158, ch. 2007-230.

*Note.—*Former s. 400.447.

429.49 Resident records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical or other record of an assisted living facility, or causes or procures any such offense to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

*History.—*s. 48, ch. 2001-45; s. 2, ch. 2006-197.

*Note.—*Former s. 400.449.

429.52 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:

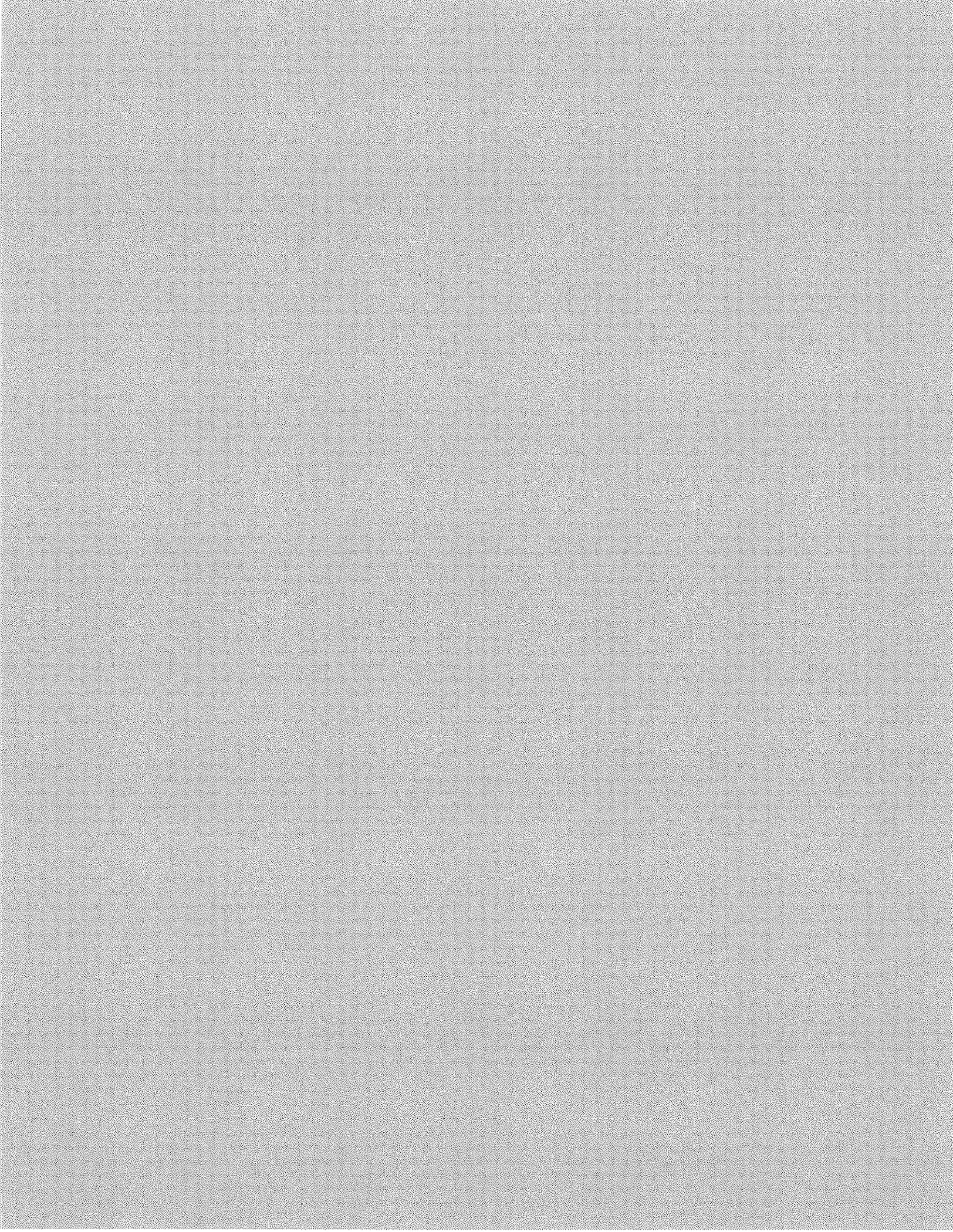
(a) State law and rules relating to assisted living facilities.

(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.



closed containers or systems pressurized at 15 pounds per square inch gauge (103 kPa) or less

Oxidizing gases

Unstable (reactive) materials, Class 2

Water-reactive materials, Class 2

[F] 307.6 High-hazard Group H-4. Buildings and structures which contain materials that are health hazards shall be classified as Group H-4. Such materials shall include, but not be limited to, the following:

Corrosives

Highly toxic materials

Toxic materials

[F] 307.7 High-hazard Group H-5 structures. Semiconductor fabrication facilities and comparable research and development areas in which hazardous production materials (HPM) are used and the aggregate quantity of materials is in excess of those listed in Tables 307.1(1) and 307.1(2) shall be classified as Group H-5. Such facilities and areas shall be designed and constructed in accordance with Section 415.8.

[F] 307.8 Multiple hazards. Buildings and structures containing a material or materials representing hazards that are classified in one or more of Groups H-1, H-2, H-3 and H-4 shall conform to the code requirements for each of the occupancies so classified.

SECTION 308 INSTITUTIONAL GROUP I

308.1 Institutional Group I. Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which people are cared for or live in a supervised environment, having physical limitations because of health or age are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as

II Group I-1, I-2 or I-3.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Residential board and care facilities

Assisted living facilities

Halfway houses

Group homes

Congregate care facilities

Social rehabilitation facilities

Alcohol and drug centers

Convalescent facilities

A facility such as the above with five or fewer persons shall be classified as a Group R-3 or shall comply with the *Florida Building Code, Residential* in accordance with Section 101.2.

A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis for more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

Hospitals

Nursing homes (both intermediate care facilities and skilled nursing facilities)

Mental hospitals

Detoxification facilities

A facility such as the above with five or fewer persons shall be classified as Group R-3 or shall comply with the *Florida Building Code, Residential*.

308.3.1 Child care facility. A child care facility that provides care on a 24-hour basis to more than five children 2¹/₂ years of age or less shall be classified as Group I-2.

308.4 Group I-3. This occupancy shall include buildings and structures that are inhabited by more than five persons who are under restraint or security. An I-3 facility is occupied by persons who are generally incapable of self-preservation due to security measures not under the occupants' control. This group shall include, but not be limited to, the following:

Prisons

Jails

Reformatories

Detention centers

Correctional centers

Prerelease centers

Buildings of Group I-3 shall be classified as one of the occupancy conditions indicated in Sections 308.4.1 through 308.4.5 (see Section 408.1).

308.4.1 Condition 1. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas, and other spaces where access or occupancy is permitted, to the exterior via means of egress without restraint. A Condition 1 facility is permitted to be constructed as Group R.

308.4.2 Condition 2. This occupancy condition shall include buildings in which free movement is allowed from sleeping areas and any other occupied smoke compartment to one or more other smoke compartments. Egress to the exterior is impeded by locked exits.

308.4.3 Condition 3. This occupancy condition shall include buildings in which free movement is allowed within individual smoke compartments, such as within a residential unit comprised of individual sleeping units and group activity spaces, where egress is impeded by remote-controlled release of means of egress from such a smoke compartment to another smoke compartment.

308.4.4 Condition 4. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Remote-controlled release is provided to permit movement from sleeping units, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.4.5 Condition 5. This occupancy condition shall include buildings in which free movement is restricted from an occupied space. Staff-controlled manual release is provided to permit movement from sleeping units, activity spaces and other occupied areas within the smoke compartment to other smoke compartments.

308.5 Group I-4, day care facilities. Reserved.

308.5.1 Adult care facility. Reserved.

308.5.2 Child care facility. Reserved.

Fraternities and sororities
Hotels (nontransient)
Monasteries
Motels (nontransient)
Vacation timeshare properties

Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

Buildings that do not contain more than two dwelling units.

Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Congregate living facilities with 16 or fewer persons.

Adult and child care facilities that are within a single-family home are permitted to comply with the *Florida Building Code, Residential*.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code, or shall comply with the *Florida Building Code, Residential*.

310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

CONGREGATE LIVING FACILITIES. A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.

DORMITORY. A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building.

RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from

**SECTION 310
RESIDENTIAL GROUP R**

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *Florida Building Code, Residential* in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient)
Hotels (transient)
Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses
Boarding houses (not transient)
Convents
Dormitories

↙

**SECTION 313
DAY-CARE OCCUPANCY GROUP D**

313.1 Scope. Group D occupancy is the use of a building or structure, or any portion thereof, in which three or more clients receive care, maintenance and supervision, by other than their relative(s) or legal guardian(s), for less than 24 hours per day. Occupancies that include part-day preschools, kindergartens and other schools whose purpose is primarily educational even though the children are of preschool age shall comply with the provisions for Group E occupancies.

313.2 Subclassifications. Day care occupancies in which more than 12 clients receive care, maintenance and supervision, by other than their relative(s) or legal guardian(s), for less than 24 hours per day shall be classified as day care occupancies. Day care occupancies of 12 or fewer clients shall be classified as day care homes and shall be divided into classifications as set forth in this section.

313.2.1 Family day care home. A family day care home is a day care home in which more than three but fewer than seven clients receive care, maintenance and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day with no more than two clients incapable of self-preservation.

313.2.2 Group day care home. A group day care home is a day-care home in which at least seven but not more than 12 clients receive care, maintenance, and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day with no more than three clients incapable of self-preservation. ↙

313.2.3 Adult day care. Adult day care shall include any building or portion thereof used for less than 24 hours per day to house more than three adults requiring care, maintenance and supervision by other than their relative(s). Clients shall be ambulatory or semiambulatory and shall not be bedridden. They shall not exhibit behavior that is harmful to themselves or others. ↙

313.2.4 Group D occupancies. Group D occupancies shall include, among others, the following:

- Child day care occupancies
- Adult day care occupancies, except where part of a health care occupancy
- Nursery schools
- Day care homes
- Kindergarten classes that are incidental to a child day care occupancy

In cases where care is incidental to some other occupancy, the section of this code governing such other occupancy shall apply.

the owner or operator by blood or marriage, and who require such services. The following are exempt from this part:

1. Any facility, institution, or other place that is operated by the federal government or any agency thereof.
2. Any freestanding inpatient hospice facility that is licensed by the state and which provides day care services to hospice patients only.
3. A licensed assisted living facility, a licensed hospital, or a licensed nursing home facility that provides services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional and respite services, to adults who are not residents, so long as the facility does not hold itself out as an adult day care center.

“**Capacity**” shall mean the number of participants for which a center has been licensed to provide care at any given time and shall be based upon required net floor space.

“**Net floor space**” shall mean the actual climatically controlled occupied area, not including accessory unoccupied areas such as hallways, stairs, closets, storage areas, bathrooms, kitchen or thickness of walls, set aside for the use of the day care center participants.

“**Participant space**” shall mean the required net floor space per participant. Maximum participant capacity shall refer to the licensed capacity.

433.3 The following minimum conditions shall be met:

433.3.1 The floor surface in kitchens, all rooms and areas in which food is stored or prepared and in which utensils are washed or stored shall be of smooth nonabsorbent material and constructed so it can be easily cleaned and shall be washable up to the highest level reached by splash or spray.

433.3.2 The walls and ceilings of all food preparation, utensil washing and hand washing rooms or areas shall have smooth, easily cleanable surfaces. Walls shall be washable up to the highest level reached by splash or spray.

433.3.3 Hot and cold running water under pressure shall be easily accessible to all rooms where food is prepared or utensils are washed.

433.3.4 Hand-washing facilities, provided with hot and cold running water, shall be located within the food preparation area in new adult day care facilities and adult day care facilities which are extensively altered.

433.3.5 Multiuse equipment and utensils shall be constructed and repaired with materials that are nontoxic, corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable and durable under conditions of normal use; and shall not impart odors, color or taste nor contribute to the contamination of food.

433.3.6 A three-compartment sink or a two-compartment sink and a dishwasher with an effective, automatic sanitizing cycle, shall be provided.

433.3.7 Refrigeration units and hot food storage units used for the storage of potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus 3°F (-16°C). The thermometer

SECTION 433 ADULT DAY CARE

433.1 General. Adult day care facilities shall comply with the following design and construction standards.

Note: See Agency for Health Care Administration (AHCA) Rule 58A-6, *Florida Administrative Code*, and Chapter 400, Part V, *Florida Statutes*.

433.2 Definitions.

“**Adult day care center**” or “**center**” means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to

shall be located in the warmest or coldest part of the units and of such type and so situated that the temperature can be easily and readily observed.

433.4 Participant and program data, emergency procedures. Fire safety protection shall be governed in accordance with the *Florida Fire Prevention Code*.

433.5 Physical plant, sanitary conditions, housekeeping standards and maintenance.

433.5.1 The participant capacity shall be determined by the total amount of net floor space available for all of the participants. Centers shall provide not less than 45 square feet (4 m²) of net floor area per participant. Centers shall be required to provide additional floor space for special target populations to accommodate activities required by participant care plans.

433.5.2 Facilities exempt pursuant to Section 400.553, *Florida Statutes*, shall utilize separate space over and above the minimum requirement needed to meet their own licensure certification approval requirements. Only congregate space shall be included in determining minimum space. For purposes of this section, congregate space shall mean climatically controlled living room, dining room, specialized activity rooms, or other rooms to be commonly used by all participants.

433.5.3 Center facilities shall consist of, but not be limited to, the following:

1. Bathrooms.
2. Dining areas.
3. Kitchen areas.
4. Rest areas.
5. Recreation and leisure time areas.

433.5.4 A private area shall be available for the provision of first aid, special care and counseling services when provided, or as necessary for other services required by participants. This area shall be appropriately furnished and equipped.

433.5.5 Bathrooms shall be ventilated and have hot and cold running water, supplying hot water at a minimum of 105°F (41°C) and a maximum of 115°F (46°C).

433.5.6 Recreation and leisure time areas shall be provided where a participant may read, engage in socialization or other leisure time activities. The recreation areas also may be utilized for dining areas.

433.5.7 All areas used by participants shall be suitably lighted and ventilated and maintained at a minimal inside temperature of 72°F (22°C) when outside temperatures are 65°F (18°C) or below, and all areas used by participants must not exceed 90°F (32°C). Mechanical cooling devices must be provided when indoor temperatures exceed 84°F (29°C). The facility shall have a thermometer which accurately identifies the temperature.

SECTION 434 ASSISTED LIVING FACILITIES

434.1 Scope. Assisted living facilities shall comply with the following design and construction standards as described herein.

Note: Other administrative and programmatic provisions may apply. See Agency of Health Care Administration (AHCA) Rule 58A-5, *Florida Administrative Code* and Chapter 400 Part III, *Florida Statutes*.

434.2 Definitions.

AGENCY. The Agency for Health Care Administration.

ASSISTED LIVING FACILITY. 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. The following are exempted from this definition:

1. Any facility, institution, or other place operated by the federal government or any agency of the federal government.
2. Any facility or part of a facility licensed under Chapter 393, *Florida Statutes*, or Chapter 394, *Florida Statutes*.
3. Any facility licensed as an adult family care home under Part VII Chapter 400, *Florida Statutes*.
4. 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.
5. 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.
6. 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.
7. Any facility certified under Chapter 651, *Florida Statutes*, or a retirement community, may provide services authorized under this section or Part IV of Chapter 400, *Florida Statutes* 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 section. If a facility provides personal services to residents who do not otherwise home health agency, the buildings or distinct parts of buildings where such services are rendered must be licensed under this section. 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 section or under Part II of Chapter 400, *Florida Statutes*, and apartments designed for independent living located on the same campus.

8. Any residential unit for independent living which is located within a facility certified under Chapter 651 *Florida Statutes*, or any residential unit which is colocated with a nursing home licensed under Part II of Chapter 400 *Florida Statutes*, or colocated with a facility licensed under this section in which services are provided through an outpatient clinic or a nursing home on an outpatient basis.

DEPARTMENT. The Department of Elderly Affairs.

EXTENDED CONGREGATE CARE. Acts beyond those authorized in subsection (5) that may be performed pursuant to part I of Chapter 464, *Florida Statutes*, by persons licensed thereunder while carrying out their professional duties. 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.

PERSONAL SERVICES. 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.

RELATIVE. 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.

RESIDENT. A person 18 years of age or older, residing in and receiving care from a facility.

RESIDENT'S REPRESENTATIVE OR DESIGNEE. 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 Section 400.424, *F.S.*; 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 Section 400.429, *Florida Statutes*.

AHCA CENTRAL OFFICE. The Assisted Living Unit, Agency for Health Care Administration.

CAPACITY. The number of residents for which a facility has been licensed to provide residential care.

DISTINCT PART. Designated bedrooms or apartments, bathrooms and a living area; or a separately identified wing, floor or building which includes bedrooms or apartments, bathrooms and a living area. The distinct part may include a separate dining area, or meals may be served in another part of the facility.

DOEA ASSISTED LIVING PROGRAM. The Assisted Living Program, Department of Elder Affairs.

FOOD SERVICE. The storage, preparation, serving and cleaning up of food intended for consumption in a facility or a formal agreement that meals will be regularly catered by a third party.

RENOVATION. Additions, repairs, restorations or other improvements to the physical plant of the facility within a five-year period that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before the renovation.

434.3 Codes and standards for the design and construction of assisted living facilities. Except as modified and required by this section of the code, Chapter 58A-5, *Florida Administrative Code* or Chapter 429 Part III, *Florida Statutes*, all new assisted living facilities and all additions, alterations, or renovations to existing assisted living facilities with more than 16 licensed beds shall also be in compliance with *The Guidelines for the Design and Construction of Health Care Facilities* (The Guidelines) Part I General, and Chapter 4.3 Assisted Living of Part 4, Other Health Care Facilities, incorporated by reference and obtainable from the American Institute of Architects, 1735 New York Ave., N.W., Washington, D.C. 20006-5292.

434.4 Additional physical plant requirements for assisted living facilities. In addition to the codes and standards referenced in Section 434.3 of the code, the following minimum essential facilities shall apply to all new assisted living facilities.

434.4.1 Indoor radon testing as mandated by Section 404.056(5), *Florida Statutes*, shall be completed by all facilities.

434.4.2 Heating and cooling.

434.4.2.1 When outside temperatures are 65°F (18°C) or below, an indoor temperature of at least 72°F (22°C)

shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours when residents are asleep, an indoor temperature of at least 68°F (20°C) shall be maintained.

434.4.2.2 During hours when residents are normally awake, mechanical cooling devices, such as electric fans, must be used in those areas of buildings used by residents when inside temperatures exceed 85°F (29°C) provided outside temperatures remain below 90°F (32°C). No residents shall be in any inside area that exceeds 90°F (32°C). However, during daytime hours when outside temperatures exceed 90°F (32°C), and at night, an indoor temperature of no more than 81°F (27°C) must be maintained in all areas used by residents.

434.4.2.3 Residents who have individually controlled thermostats in their bedrooms or apartments shall be permitted to control temperatures in those areas.

434.4.3 Common areas.

434.4.3.1 A minimum of 35 square feet (3 m²) of living and dining space per resident, live-in staff and live-in family member shall be provided except in facilities comprised of apartments. This space shall include living, dining, recreational or other space designated accessible to all residents, and shall not include bathrooms, corridors, storage space or screened porches which cannot be adapted for year round use. Facilities with apartments may count the apartment's living space square footage as part of the 35 square footage (3 m²) living and dining space requirement.

Those facilities also serving as adult day care centers must provide an additional 35 square feet (3 m²) of living and dining space per adult day care client. Excess floor space in residents' bedrooms or apartments cannot be counted toward meeting the requirement of 35 square feet (3 m²) of living and dining space requirements for adult day care participants. Day care participants may not use residents' bedrooms for resting unless the room is currently vacant.

434.4.3.2 A room, separate from resident bedrooms, shall be provided where residents may read, engage in socialization or other leisure time activities. Comfortable chairs or sofas shall be provided in this communal area.

434.4.3.3 The dining area shall be furnished to accommodate communal dining.

434.4.4 Bedrooms.

434.4.4.1 Resident sleeping rooms designated for single occupancy shall provide a minimum inside measurement of 80 square feet of usable floor space. Usable floor space does not include closet space or bathrooms.

434.4.4.2 Resident bedrooms designated for multiple occupancy shall provide a minimum inside measurement of 60 square feet (6 m²) of usable floor space per room occupant.

434.4.4.3 Resident bedrooms designated for multiple occupancy in facilities newly licensed or renovated six

months after October 17, 1999, shall have a maximum occupancy of two persons.

434.4.4.4 All resident bedrooms shall open directly into a corridor, common use area or to the outside. A resident must be able to exit his bedroom without having to pass through another bedroom unless the two rooms have been licensed as one bedroom.

434.4.4.5 All resident bedrooms shall be for the exclusive use of residents. Live-in staff and their family members shall be provided with sleeping space separate from the sleeping and congregate space required for residents.

434.4.5 Bathrooms.

434.4.5.1 There shall be at least one bathroom with one toilet and sink per six persons, and one bathtub or shower per eight persons. All residents, all live-in staff and family members, and respite care participants must be included when calculating the required number of toilets, sinks, bathtubs and showers. All adult day care participants shall be included when calculating the required number of toilets and sinks.

434.4.5.2 Each bathroom shall have a door in working order to assure privacy. The entry door to bathrooms with a single toilet shall have a lock which is operable from the inside by the resident with no key needed. A nonlocking door shall be permitted if the resident's safety would otherwise be jeopardized.

434.4.5.3 There shall be nonslip safety devices such as bath mats or peel off stickers in the showers and bathtubs of all facilities. Showers and bathtubs with a nonskid surface require a separate nonskid device only if the surface is worn. Grab bars shall be required in showers and bathtubs. Grab bars, whether portable or permanent, must be securely affixed to the floor or adjoining walls. Facilities newly licensed or renovated six months after October 17, 1999 must have grab bars next to the commode.

434.4.5.4 Sole access to a toilet or bathtub or shower shall not be through another resident's bedroom, except in apartments within a facility.

434.4.6 Security. External boundaries of a facility or a distinct part of a facility, including outside areas, may be secured using egress control or perimeter control devices if the following conditions are met.

434.4.6.1 The use of the device complies with all lifesafety requirements.

434.4.6.2 Residents residing within a secured area are able to move freely throughout the area, including the resident's bedroom or apartment, bathrooms and all common areas, and have access to outdoor areas on a regular basis and as requested by each resident.

434.4.6.3 Residents capable of entering and exiting without supervision have keys, codes or other mechanisms to exit the secured area without requiring staff assistance.

434.4.6.4 Staff who provide direct care or who have regular contact with residents residing in secured areas com-

plete Level 1 Alzheimer's training as described in Rule 58A-5.0191.

434.4.6.5 Pursuant to Section 400.441, *Florida Statutes*, facilities with 16 or fewer residents shall not be required to maintain an accessible telephone in each building where residents reside, maintain written staff job descriptions, have awake night staff or maintain standardized recipes as provided in Rules 58A-5.0182(6)(g), 58A-5.019(2)(e), 58A-5.019(4)(a) and 58A-5.020(2)(b), respectively.

434.5 Extended congregate care.

434.5.1 Physical site requirements. Each extended congregate care facility shall provide a homelike physical environment which promotes resident privacy and independence including:

434.5.1.1 A private room or apartment, or a semiprivate room or apartment shared with roommate of the resident's choice. The entry door to the room or apartment shall have a lock which is operable from the inside by the resident with no key needed. The resident shall be provided with a key to the entry door on request. The resident's service plan may allow for a nonlocking entry door if the resident's safety would otherwise be jeopardized.

434.5.1.2 A bathroom, with a toilet, sink and bathtub or shower, which is shared by a maximum of four residents. A centrally located hydromassage bathtub may substitute for the bathtub or shower in two of the bath rooms. The entry door to the bathroom shall have a lock which is operable from the inside by the resident with no key needed. The resident's service plan may allow for a nonlocking bathroom door if the resident's safety would otherwise be jeopardized.

SECTION 435 CONTROL OF RADIATION HAZARDS

435.1 Scope. Control of radiation hazards shall comply with the following design and construction standards as described herein.

Note: Other administrative and programmatic provisions may apply. See Department of Health (DOH) Rule 64E-5, *Florida Administrative Code*, and Chapter 40A, *Florida Statutes*.

435.2 Control of access to high radiation areas.

435.2.1 Definitions.

HIGH RADIATION AREA. An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 cm from any source of radiation or from any surface that the radiation penetrates. For purposes of this section, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

VERY HIGH RADIATION AREA. An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an

individual receiving an absorbed dose in excess to 500 rad (5 gray) in 1 hour at 1 m from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

435.2.2 The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

435.2.2.1 A control device that upon entry into the area causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 millisievert) in 1 hour at 30 cm from the source of radiation from any surface that the radiation penetrates;

435.2.2.2 A control device that energizes a conspicuous visible or audible signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

435.2.2.3 Entryways that are locked except during periods when access to the areas is required with positive control over each individual entry.

435.3 Caution signs.

435.3.1 Standard radiation symbol. Unless otherwise authorized by the department, the symbol prescribed in this section shall use the colors magenta or purple or black on yellow background. The symbol prescribed is the three-bladed design as follows:

435.3.1.1 Radiation symbol.

435.3.1.1.1 Cross-hatched area is to be magenta or purple or black.

435.3.1.1.2 The background is to be yellow.

435.3.2 Exception to color requirements for standard radiation symbol. In spite of the requirements of Section 435.3.1, licensees or registrants are authorized to label sources, source holders or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

435.3.3 Additional information on signs and labels. In addition to contents of signs and labels prescribed in this part, the licensee or registrant shall provide on or near the required signs and labels additional information to make individuals aware of potential radiation exposures and to minimize the exposures.

435.4 Posting requirements.

435.4.1 Posting of radiation areas. The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

435.4.2 Posting of high radiation areas. The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

The barrier can be removed during maintenance, inspection, and service operations.

435.12.7 If long-handled tools or poles are used in irradiator pools, the radiation dose rate on the handling areas of the tools must not exceed 2 millirem (0.02 millisievert) per hour.

435.13 Design requirements.

435.13.1 Panoramic irradiators shall meet the following design requirements:

435.13.1.1 Shielding. The shielding walls shall be designed to meet generally accepted building code requirements for reinforced concrete and shall design the walls, wall penetrations, and entrance ways to meet the radiation shielding requirements of 64E-5.1407. If the irradiator will use more than 2×10^{17} becquerels (5 million curies) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

435.13.1.2 Foundations. The foundation shall be designed with consideration given to soil characteristics to ensure it is adequate to support the weight of the facility.

435.13.1.3 Fire protection. The number, design, locations and spacing of the smoke and heat detectors and extinguishing system shall be appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The fire extinguishing system shall be designed to provide the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

435.13.1.4 Wiring. The electrical wiring and electrical equipment in the radiation room shall be selected to minimize failures due to prolonged exposure to radiation.

435.13.2 Pool irradiators shall meet the following design requirements.

435.13.2.1 Pool integrity. The pool shall be designed to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all penetrations meet the requirements of Section 435.12.2, and that metal components are metallurgically compatible with other components in the pool.

435.13.2.2 Water-handling system. The water purification system shall be designed to meet the requirements of Section 435.12.5. The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored. The licensee shall design the water chiller system so that it shall compensate adequately for the amount of heat generated by the sealed sources. The water-handling system must have remote controls capable of safely operating a contaminated system.

435.13.3 Floor penetrations. No floor penetrations, including expansion joints, floor joints and drains, shall allow the uncontrolled release of water from the radiation room that has not been analyzed for its radioactive content.

435.14 Construction control. The requirements of this section must be met before loading sources. Panoramic irradiators shall meet the following construction requirements:

435.14.1 Shielding. The construction of the shielding shall be monitored to verify that it meets design specifications and generally accepted building code requirements for reinforced concrete.

435.14.2 Foundations. The construction of the foundations shall be monitored to verify that they meet design specifications.

435.14.3 Fire protection. The ability of the heat and smoke detectors shall be verified to detect a fire, to activate alarms and to cause the source rack to become fully shielded automatically. The operability of the fire suppression or extinguishing system shall also be verified.

435.14.4 Wiring. The electrical wiring and electrical equipment that were installed shall be verified to meet the design specifications.

435.15 Pool irradiators shall meet the following construction requirements.

435.15.1 Pool integrity. The integrity of the pool shall be tested to verify that the pool meets the design specifications. The penetrations and water intakes shall be verified to meet the requirements of Section 435.12.2.

SECTION 436 DAY-CARE OCCUPANCIES

436.1 General.

436.1.1 Places of religious worship shall not be required to meet the provisions of this section in order to operate a nursery while services are being held in the building.

436.1.2 Where day care occupancies with clients 24 months or less in age or incapable of self-preservation are located one or more stories above the level of exit discharge or where day care occupancies are located two or more stories above the level of exit discharge, smoke barriers shall be provided to divide such stories into a minimum of two smoke compartments. The smoke barriers shall be constructed in accordance with Section 709 but shall not be required to have a fire-resistance rating.

436.2 Closet doors. Every closet door latch shall be such that clients can open the door from inside the closet.

436.3 Bathroom doors. Every bathroom door lock shall be designed to permit opening of the locked door from the outside in an emergency. The opening device shall be readily accessible to the staff.

436.4 Door closure. Any exit door designed to be normally closed shall be kept closed and shall comply with Section 715.3.

436.5 Location and construction types. Day care occupancies shall be limited to the locations and construction types specified in Table 436.5. Day care homes and adult day care shall be permitted to be of any type construction permitted by this code.

TABLE 436.5
DAY-CARE LOCATION AND TYPE OF CONSTRUCTION

LOCATION OF DAY CARE	TYPE OF CONSTRUCTION	
	Sprinklered Building	Construction Type
1 story below LED ¹	Yes	I, II, IIIA, IV, V-A
Level of Exit Discharge	No	Any type permitted by this code
1 story above LED ¹	Yes No	Any type
2 or 3 stories above LED ¹	Yes	I, II, III-A, V-A
> 3 stories above LED ¹ but not high rise	Yes	I
High rise	Yes	I

Notes:

¹LED means Level of Exit Discharge.

436.6 Protection from hazards. Rooms or spaces for the storage, processing or use of materials specified below shall be protected in accordance with the following:

436.6.1 The following rooms or spaces shall be separated from the remainder of the building by fire barriers having a fire resistance rating of not less than 1-hour or shall be protected by an approved automatic extinguishing system.

1. Boiler and furnace rooms.

Exception: Rooms enclosing only air-handling equipment.

2. Rooms or spaces used for the storage of combustible supplies in quantities deemed hazardous by the building official.
3. Rooms or spaces used for the storage of hazardous materials or flammable or combustible liquids in quantities deemed hazardous by recognized standards.

4. Janitor closets.

Exception: Doors to janitor closets shall be permitted to have ventilating louvers where the space is protected by automatic sprinklers.

436.6.2 The following rooms or spaces shall be separated from the remainder of the building by fire barriers having a fire resistance rating of not less than 1 hour and shall be protected by an approved automatic fire-extinguishing system.

1. Laundries.
2. Maintenance shops, including woodworking and painting areas.
3. Rooms or spaces used for processing or use of combustible supplies deemed hazardous by the building official.
4. Rooms or spaces used for processing or use of hazardous materials or flammable or combustible liquids in quantities deemed hazardous by recognized standards.

Exception: Food preparation facilities protected in accordance with NFPA 96 shall not be required to have openings protected between food preparation areas and

dining areas. Where domestic cooking equipment is used for food warming or limited cooking, protection or segregation of food preparation facilities shall not be required if approved by the building official.

436.6.3 Where automatic extinguishing is used to meet the requirements of this section, sprinkler piping serving not more than six sprinklers for any isolated hazardous area shall be permitted to be connected directly to a domestic water supply system having a capacity sufficient to provide 0.15 gpm/per square foot (6.1 L/min/m²) of floor area throughout the entire enclosed area. An indicating shutoff valve shall be installed in an accessible location between the sprinklers and the connection to the domestic water supply.

436.7 Detection and alarm systems. Day care occupancies shall be provided with a fire alarm system in accordance with Section 907 and this section.

Exception: Day care occupancies housed in one room.

436.7.1 Initiation of the required fire alarm system shall be by manual means and by operation of any required smoke detectors and required sprinkler systems.

436.7.1.1 Occupant notification signals shall be audible and visual signals in accordance with NFPA 72 and Chapter 11 of this code. The general evacuation alarm signal shall operate throughout the entire building.

Exceptions:

1. Where total evacuation of occupants is impractical because of building configuration, only the occupants in the affected zones shall be initially notified. Provisions shall be made to selectively notify occupants in other zones to afford orderly evacuation of the entire building.
2. Where occupants are incapable of evacuating themselves because of age, physical or mental disability or physical restraint, the private operating mode as described in NFPA 72 shall be permitted to be used. Only the attendants and other personnel required to evacuate occupants from a zone, area, floor, or building shall be required to be notified. This notification shall

include means to readily identify the zone, area, floor or building in need of evacuation.

436.7.1.2 Fire department notification. The fire alarm system shall be arranged to transmit the alarm automatically to the fire department in accordance with NFPA 72 by means of one of the following methods as approved by the building official:

1. An auxiliary alarm system, or
2. A central station connection, or
3. A proprietary system, or
4. A remote station connection.

Exception: Where none of the above means of notification is available, a plan for notification of the fire department, acceptable to the building official, shall be provided.

436.7.2 Detection. A smoke detection system shall be installed in accordance with NFPA 72, with placement of detectors in each story in front of doors to the stairways and in the corridors of all floors occupied by the day care occupancy. Detectors also shall be installed in lounges, recreation areas and sleeping rooms in the day care occupancy.

Exception: Day care occupancies housed in one room.

436.8 Corridors. Every interior corridor shall be constructed of walls having not less than a 1-hour fire-resistance rating.

Exceptions:

1. In buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with Sections 901.6 and 903.3.1.1 corridor walls shall not be required to be rated, provided that such walls form smoke partitions in accordance with Section 710.
2. Where the corridor ceiling is an assembly having an 1-hour fire-resistance rating where tested as a wall, the corridor walls shall be permitted to terminate at the corridor ceiling.
3. Lavatories in unsprinklered buildings shall not be required to be separated from corridors, provided that they are separated from all other spaces by walls having not less than a 1-hour fire-resistance rating in accordance with Section 709.
4. Lavatories shall not be required to be separated from corridors, provided the building is protected throughout by an approved, supervised automatic sprinkler system in accordance with Sections 901.6 and 903.3.1.1.

436.9 Flexible plan and open plan buildings. Flexible plan and open plan buildings shall comply with the requirements of this chapter as modified as follows:

436.9.1 Each room occupied by more than 300 persons shall have two or more means of egress entering into separate atmospheres. Where three or more means of egress are required, not more than two of them shall enter into a common atmosphere.

436.9.2 Flexible plan buildings shall be evaluated while all folding walls are extended and in use as well as when they are in the retracted position.

436.10 Day care homes.

436.10.1 This section establishes life safety requirements for day care homes in which more than three but not more than 12 clients receive care, maintenance and supervision by other than their relative(s) or legal guardian(s) for less than 24 hours per day.

Exception: Facilities that supervise clients on a temporary basis with a parent or guardian in close proximity.

436.10.2 Definitions. For definitions, see Chapter 2.

436.10.3 Places of religious worship shall not be required to meet the provisions of this section in order to operate a nursery while services are being held in the building.

436.10.4 Occupancies that include part-day preschools, kindergartens and other schools whose purpose is primarily educational even though the children are of preschool age shall comply with the provisions for Group E occupancy.

436.10.5 Smoke detection systems.

436.10.5.1 Single-station smoke alarms installed in accordance with the household fire warning equipment requirements of Chapter 2 of NFPA 72 shall be installed within day care homes.

Exception: System smoke detectors installed in accordance with NFPA 72 and arranged to function in the same manner shall be permitted.

436.10.5.2 Where the day care home is located within a building of another occupancy, any corridors serving the day care home shall be provided with a complete smoke detection system installed in accordance with NFPA 72.

436.10.5.3 Single-station smoke alarms shall be powered by the building electrical system.

436.10.5.4 Single-station smoke alarms shall be provided in all rooms used for sleeping.

436.10.5.5 Where two or more smoke alarms are required within a living unit, suite of rooms, or similar area, they shall be arranged so that operation of any smoke alarm shall cause all smoke alarms within the living unit, suite of rooms or similar area to sound.

436.10.5.5.1 The alarms shall sound only within an individual living unit, suite of rooms or similar area and shall not actuate the building fire alarm system. Remote annunciation shall be permitted.

**SECTION 437
HOSPICE INPATIENT FACILITIES AND
UNITS AND HOSPICE RESIDENCES**

437.1 Scope. All hospice inpatient facilities and units and residences shall comply with the following design and construction standards. Enforcement and interpretation of these provisions shall be by the state agency authorized by Section 553.73, *Florida Statutes*.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: July 27, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Residential/Limited Commercial Zoning & Density Clarification

BACKGROUND/HISTORY:

This item is continued from last meeting. The Board wants to establish the criteria for R/LC so an ordinance can be drafted to amend Malabar Land Development Code to provide for R/LC for properties along Malabar Road, Babcock Street and Highway 1.

The Board consensus from the last meeting was to include language in the proposed ordinance that would reduce residential density from six (6) units per acre to four (4) units per acre.

Per Article XX, Language and Definitions, a dwelling unit constitutes a separate independent housekeeping establishment for owner occupancy or rental with independent cooking, sleeping and toilet facilities. This applies even if they are within the same structure. The definitions continue with descriptions for single family homes, mobile homes, multiple family, etc.

Limited Commercial developments within the mixed use designation of R/LC are not intended to accommodate commercial activities with a floor area larger than 4000 square feet. The commercial portion is not regulated by "units" but by *square footage*.

Per Malabar Code, any mixed-use development within the R/LC District shall be interpreted to be a "commercial" District with respect to required setbacks and other size and dimension provisions. Commercial developments can over cover 20% of the parcel with buildings which also regulates the density on a given parcel.

The Board consensus is also to increase the minimum square footage with the R/LC Mixed Use Development for a one (1) bedroom apartment within Multiple Family construction to be 900sf. If this is the case, what does the Board want to require for two (2) bedroom and three (3) bedroom apartments? Or does the Board want to delete those references and simply require an additional 120 sf for each additional bedroom?

ATTACHMENTS:

- Article III, District Provisions, page 117- 127)
- Page 1179 from Language and Definitions related to "UNITS"

ACTION OPTIONS:

Continued Board work towards a recommendation to Council.

provides a management strategy for negotiating innovative development concepts, design amenities, and measures for protecting natural features of the land. The management process shall promote public and private coordination and cooperation. The land development code incorporates detailed regulations, standards, and procedures for implementing the planned unit development concept.

The planned unit development district shall be available as a voluntary approach for managing specific development characteristics and project amenities to be incorporated in residential, commercial, industrial or mixed use development. Developers who voluntarily participate in the process shall bind themselves as well as their successors in title to the stipulations within the development order approving the planned unit development district.

O. *R/LC "Residential and Limited Commercial."* The R/LC district is established to implement comprehensive plan policies for managing development on land specifically designated for mixed use Residential and Limited Commercial development on the Comprehensive Plan Future Land Use Map (FLUM). Such development is intended to accommodate limited commercial goods and services together with residential activities on specific sites designated "R/LC" which are situated along the west side of the US 1 corridor as delineated on the FLUM. For instance, sites within this district are intended to accommodate neighborhood shops with limited inventory or goods as well as single family and multiple family structures with a density up to ~~six (6)~~ units per acre. Commercial activities shall generally cater to the following markets:

To be changed

- Local residential markets within the town as opposed to regional markets; or
- Specialized markets with customized market demands.
- A Malabar Vernacular Style is required for all development along arterial roadways.

Areas designated for mixed use Residential and Limited Commercial development are not intended to accommodate commercial activities with a floor area in excess of four thousand (4,000) square feet, such as large-scale retail sales and/or service facilities or trade activities. These types of commercial activities generally serve regional markets and the intensity of such commercial activities is not generally compatible with residential activities located within the same structure or located at an adjacent or nearby site. Such stores would usually differ from limited commercial shops since the former would usually require a floor area larger than four thousand (4,000) square feet; would generally carry a relatively larger inventory; and require substantially greater parking area. Uses, which are not intended to be accommodated within the limited commercial area, include the following: large-scale discount stores; health spas; supermarket; department stores; large scale wholesaling and warehousing activities; general sales, services or repair of motor vehicles, heavy equipment, machinery or accessory parts, including tire and battery shops and automotive service centers; commercial amusements; and fast food establishments primarily serving in disposal containers and/or providing drive-in facilities.

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Single family or multiple family residential uses with a density no greater than six (6) units per acre may also be located in the R/LC district. Such residential uses may be located either within a freestanding structure or within a structure housing both Residential and Limited Commercial activities. The R/LC district is intended and shall be interpreted to be a "commercial" district with respect to required setbacks and other size and dimension provisions referenced by zoning district in this Code.
(Ord. No. 94-4, § 2, 4-3-95; Ord. No. 07-02, §§ 1—4, 4-2-07)

Section 1-3.2. Land use by districts.

Table 1-3.2 "Land Use by Districts" stipulates the permitted and conditional uses by district.

Permitted uses are uses allowed by right provided all applicable regulations within the land development code are satisfied as well as other applicable laws and administration regulations. Conditional uses are allowable only if approved by the Town pursuant to administrative procedures found in Article VI. The applicant requesting a conditional use must demonstrate compliance with conditional use criteria set forth in Article VI.

No permitted use or conditional use shall be approved unless a site plan for such use is first submitted by the applicant. The applicant shall bear the burden of proof in demonstrating compliance with all applicable laws and ordinances during the site plan review process. Site plan review process is set forth in Article X.

Cross reference—Alcoholic beverages, ch. 4.

TABLE 1-3.2. LAND USE BY DISTRICTS



	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
RESIDENTIAL USES														
Duplex					P	P					P			
Mobile Homes							P							
Multiple Family Dwelling					P	P					P			
Single Family Dwellings	P	P	P	P	P	P	P				P			
COMMUNITY FACILITIES														
Administrative Services (Public and Not-for-Profit)								P	P	P	P		P	
Child Care Facilities								C			C		C	
Churches, Synagogues and Other Places of Worship	C	C	C	C	C	C		P, A ¹	P	P	P		P	
Clubs and Lodges (Not-for-Profit)									P	P				
Cultural or Civic Activities								P	P	P	P		P	
Educational Institutions								C, A ¹					C	
Golf Course Facilities	C													
Group Homes					C	C		C			P		C	
Hospital and Extensive Care Fa- cilities								C					C	
Nursing Homes (Including Rest Homes and Convalescent Homes)					C	C		C			C		C	
Protective Services					C	C	C	C	C	C	C	C	C	
Public Parks and Recreation	C	C	C	C	C	C	C	C	C	C	C	C	C	
Public and Private Utilities	C	C	C	C	C	C	C	C	C	C	C	C	C	

DISTRICT PROVISIONS

§ 1-3-2



	RR-65	RS-21	RS-15	RS-10	RM-4	RM-6	R-MH	OI	CL	CG	R/LC	IND	INS	CP
AGRICULTURAL ACTIVITIES														
Noncommercial Agricultural Operations	P													
Wholesale Agricultural Activities	P													
Commercial Stables	C													
COMMERCIAL ACTIVITIES														
Adult Activities										C				
Bars and Lounges										C				
Bed and Breakfast											P ¹			
Business and Professional Offices								P	P	P	P	P	P	
Enclosed Commercial Amusement										P				
Funeral Homes									P	P	C			
General Retail Sales and Services										P				
Hotels and Motels										P				
Limited Commercial Activities									P	P	P			
Marine Commercial Activities										C*				
Medical Services								P	P	P	P			
Mini Warehouse/Storage									C	P		P		
Parking Lots and Facilities								P	P	P	P		P	
Retail Plant Nurseries									P	P	P			
Restaurants (Except Drive-Ins and fast food service)									P	P	P			
Restaurants (Drive-ins)										P				
Service Station, Including Gasoline Sales													C*	
Trades and Skilled Services										C*			P	
Veterinary Medical Services								P	P	P	C		P	
Vehicular Sales and Services										C*			P	
Vehicular Services and Maintenance										C*			P	
Wholesale Trades and Services										C*			P	
INDUSTRIAL ACTIVITIES														
Kennels													C	
Manufacturing Activities													P	
Manufacturing Service Establishments													P	
Vehicle and Other Mechanical Repair and Services										C*			P	



	<i>RR-65</i>	<i>RS-21</i>	<i>RS-15</i>	<i>RS-10</i>	<i>RM-4</i>	<i>RM-6</i>	<i>R-MH</i>	<i>OI</i>	<i>CL</i>	<i>CG</i>	<i>R/LC</i>	<i>IND</i>	<i>INS</i>	<i>CP</i>
Warehouse, Storage and Distribution Activities												P		
WATER DEVELOPMENT NONCOMMERCIAL ACTIVITIES														
Noncommercial piers, boat slips, and docks														C

C = Conditional Use

P = Permitted Uses

A = Accessory Use

* = These uses are permitted only on sites abutting Babcock Street, US 1, and West Railroad Avenue.

1 = Allowing up to 1,000 square feet of a church or educational institution for the housing of a caretaker or security guard serving the church or educational institution. No such use shall be allowed unless administrative approval is granted by the Town.

¹ Any Bed and Breakfast which is proposed to have more than five (5) living quarters shall only be approved as a conditional use in accordance with Article VI of the Land Development Regulations.

(Ord. No. 94-4, § 3, 4-3-95; Ord. No. 97-3, § 2, 3-17-97; Ord. No. 05-01, § 1, 3-7-05; Ord. No. 06-19, § 1, 1-11-07)

Section 1-3.3. Size and dimension criteria.

A. *Minimum Lot or Site Requirements for All Uses.* Table 1-3.3(A) incorporates required size and dimension regulations which shall be applicable within each respective zoning district. All developments shall have a total land area sufficient to satisfy all standards stipulated within the land development code, including but not limited to:

- Setback requirements;
- Open space, buffers, and landscaping;
- Surface water management;
- Water and wastewater services;
- Access, internal circulation and off-street parking;
- Wetland protection; and
- Soil erosion and sedimentation control standards.

Conventional single family lots shall be required pursuant to square footage requirements stipulated in Table 1-3.3(A). Similarly, more intense development within multiple family residential districts and other specified nonresidential districts shall maintain sites having minimum acreage requirements stipulated in Table 1-3.3(A).

TABLE 1-3.3(A). SIZE AND DIMENSION REGULATIONS

Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.)	Setback (R.1)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (I)	Side (C)				
Rural Residential Development													
RR-65	65,340	150	250	35/3	1,500	40	30	30	30	20	N/A	80	0.66
Traditional Single Family Residential Development													
RS-21	21,780	120	150	35/3	1,800	35	20	15	15	35	N/A	65	2.00
RS-15	15,000	100	120	35/3	1,500	30	20	15	15	45	N/A	55	2.004
RS-10	10,000	75	100	35/3	1,200	25	20	10	10	50	N/A	50	4.00
Multiple Family Residential Development													
RM-4	5 Acres Minimum Site	200	200	35/3	1 Bedroom: 900 2 Bedroom: 1100 3 Bedroom: 1300 Each Additional Bedroom: 120	60	40	40	40	50	N/A	50	4.00
RM-6	5 acres Minimum Site	200	200	35/3	Single Family:	25	20	10	10	50	n/a	50	6
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	60	40	40	40	50	n/a	50	6
Mixed Use Development													
R/LC	20,000	100	150	35/3	Single Family:	25	20	10	10	50	n/a	50	4
					Multiple Family: 1 Bedroom: 500 2 Bedroom: 700 3 Bedroom: 900 Each Additional Bedroom: 120	50	25	10 ⁴	20	65	n/a	35	6
					Commercial: Min. Area: 900 Max. Area 4,000						0.20		
Mobile Home Residential Development													
R-MH	Site: 5 Acres Lot: 7000					10	8	8	10	50	N/A	50	6.00
Office Development													

DISTRICT PROVISIONS

§ 1-3.3



Zoning District	Minimum Lot (1)			Maximum Height (ft./ stories)	Minimum Living Area (sq. ft.)	Setback (ft.)(2)				Maximum Impervious Surface Ratio (%)	Maximum Building Coverage	Minimum Open Space (%)	Maximum Density (units per acre) with Central Water and Wastewater
	Size (sq. ft.)	Width (ft.)	Depth (ft.)			Front	Rear	Side (1)	Side (C)				
OI	20,000	100	150	35/3	Minimum Floor Area: 1000	35/60	25	20	25	65	20	35	N/A
Commercial Development													
CL	20,000	100	150	35/3	Minimum Floor Area: 900 Min. Area: 900 Max. Area 4,000	50	25	10 ⁴ 15 ³	20	65	0.20	35	N/A
CG	20,000	100	150	35/3	Minimum Floor Area: 1200 Minimum Hotel/ Motel Area: 300 Each Unit	50	25	20 ⁴ 15 ³	30	65	0.20	35	N/A
Industrial Development													
IND	20,000	100	150	35/3	Minimum Floor Area: 1200	50 100 ⁵	25 100 ⁵	20 100 ⁵	30 100 ⁶	70	0.42	30	N/A
Institutional Development													
INS	20,000	100	150	35/3	Minimum Floor Area: 1200	50	25	20	30	60	0.20 0.10 ⁶	40	N/A
Coastal Preservation													
CP	No Size or Dimension Standards Adopted												

¹Minimum size sites and lots include one-half of adjacent public right-of-way.

²Minimum setbacks determined from the existing right-of-way line where the yard abuts a public street pursuant to the above cited standards or from the center of the right-of-way pursuant to Table 1-3.3(E) whichever is most restrictive.

³Setback where rear lot line abuts an alley.

⁴Setback shall be greater where side property line abuts a district requiring a larger setback on the abutting yard. In such case the more restrictive abutting setback shall apply.

⁵Where any yard of industrial zoned property abuts a residential district, the building setback for such yard shall be 100 feet.

⁶Recreation activities maximum FAR shall be .10.

B. *Area requirements for uses not served by central water and wastewater services.* All proposed development within areas not served by central water and wastewater services shall comply with the septic permitting requirements of Brevard County.

C. *Impervious Surface Requirements (ISR) for All Uses.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface.

1. *Calculation of ISR.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. Water bodies are impervious but shall not be included as such in the ISR calculation.

Cluster development or other site design alternatives may result in individual lots exceeding the ISR, while other lots may be devoted entirely to open space. The Town may require, as a condition of approval, deed restrictions or covenants which guarantee the maintenance of such open space in perpetuity. The ISR requirement shall not be bypassed or reduced. However, the intent is to allow maximum flexibility through calculating ISR on the gross site, and not on a lot-by-lot basis.

2. *Use of Porous Material.* Porous concrete, asphalt, porous turf block, or similar materials may be used subject to approval of the Town Engineer.
3. *Compliance with ISR Stipulated in Table 1-3.3(A).* All proposed development shall comply with the standards given in the table of impervious surface ratios in Table 1-3.3(A).

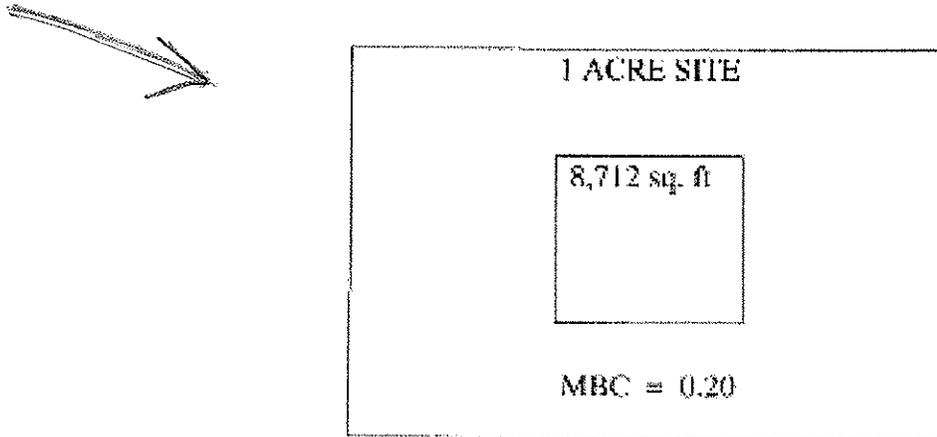
Where a proposed development is donating or dedicating land based on a plan approved by the Town, the gross site before dedication or donation shall be used to calculate ISR. This does not relieve the applicant from providing all required on-site buffers, landscaping, stormwater management areas, setbacks, and other required project amenities.

 D. *Maximum Building Coverage.* The term "maximum building coverage" is defined as a measurement of the intensity of development on a site. For purposes of this Code, maximum building coverage (MBC) is used to regulate nonresidential development.

1. *Calculation of MBC.* The MBC is the relationship between the total building coverage on a site and the gross site area. The MBC is calculated by adding together the total building coverage of a site and dividing this total by the gross site area. See figure 1-3.3(D) for a graphic illustration of this concept.

All proposed nonresidential development shall comply with the MBC requirements stipulated in Table 1-3.3(A) for the zoning district in which the development is located.

FIGURE 1-3.3(D). MAXIMUM BUILDING COVERAGE ILLUSTRATION



Maximum building coverage for a MBC of 0.20 = 8,712 sq. ft.

$$\text{MBC} = \frac{\text{Total Building Coverage}}{\text{Total Lot Area}}$$

E. *Building Setbacks.* Table 1-3.3(A) provides building setbacks for conventional single family lots as well as for multiple family residential and nonresidential sites. In addition to these setbacks the following building setbacks from thoroughfares shall be enforced. The required minimum setback from the thoroughfare shall be measured from the centerline of the right-of-way. The thoroughfare system is illustrated on the Future Traffic Circulation System: 2010 Map located within the traffic circulation element of the Town of Malabar comprehensive plan. The below cited table identifies rights-of-way within the Town and stipulates minimum required building setbacks from these roadways.

TABLE 1-3.3(E). ADDITIONAL BUILDING SETBACKS FROM STREETS AND ROADS

<i>Transportation Facility</i>	<i>Building Setback (feet)</i>
Arterial Roadways (150 feet R/W)	100
US 1 Highway	
Malabar Road (SR 514)	
Babcock Street (SR 507)	
Major Collector Streets (100 feet R/W)	85
Corey Road	
Weber Road	
Marie Street	
Briar Creek	
Jordan Blvd.	
Local Streets (50—60 feet R/W)	65

Minor Collector Streets (80 feet R/W)

75

Atz Blvd.

Hall Road

Old Mission Road

Benjamin (Reese) Road

F. *Minimum Distance Between Principal Buildings.* The minimum distance between principal buildings shall be twenty (20) feet. The distance shall be measured at the narrowest space between buildings and shall not include roof overhang.

(Ord. No. 92-8, § 1(B), (D), (J), 8-18-92; Ord. No. 94-4, § 4, 4-3-95; Ord. No. 96-1, § 1, 3-4-96; Ord. No. 97-5, § 1, 3-17-97; Ord. No. 02-03, § 1, 8-5-02; Ord. No. 03-02, § 1, 2-24-03; Ord. No. 04-08, §§ 1, 2, 7-12-04; Ord. No. 06-05, § 1, 2-6-06; Ord. No. 06-16, §§ 1, 2, 10-2-06)

Dormitory. A building intended or used principally for sleeping accommodations where such building is related to an education or public institution including religious institutions.

Drive-in Establishment. An establishment, which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in motor vehicle.

Duplex. See Dwelling, Two Family.

Dwelling. A structure or portion thereof which is used expressly for human habitation.

Dwelling, Attached. A one-family dwelling attached to two or more one family dwellings by common vertical walls.

Dwelling, Detached. A dwelling which is not attached to any other dwelling by any structural means.

Dwelling, Multiple Family. A residential building designed for or occupied by two or more families living independently of each other.

Dwelling, Single Family. A residential building containing only one (1) dwelling unit and occupied exclusively by one (1) family as a single housekeeping unit.

Dwelling, Triplex. A dwelling containing three (3) dwelling units, each of which has direct access to the outdoors or to a common hall.

Dwelling, Two Family. A residential building containing only two (2) dwelling units and not occupied by more than two (2) families.

Dwelling Unit. One room or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be the same structure, and containing independent cooking, sleeping, and toilet facilities.

Dwelling Unit, Single-Family. A detached residential dwelling unit other than a mobile home, designed for and occupied by one (1) family.

Dwelling Unit, Two Family. A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling Unit, Mobile Home. A detached residential dwelling unit designed for transportation after fabrication, on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling unit completed and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like.

Dwelling Unit, Multiple-Family. A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

TOWN OF MALABAR

PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 5

Meeting Date: July 27, 2011

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Definition of Light Industrial

BACKGROUND/HISTORY:

This item is continued from last meeting from the discussion of the proposed land use changes on the FLUM. The 500' strip of land to the west of the railroad tracks is currently designated CG. The P&Z Board proposed making it CL. At the last meeting, the Board read from District II and District III on what such a designation allows. The Board directed staff to provide a definition for "light Industrial" which would more likely match what the Board intended for this area.

If the Board supports creating a new land use and zoning classification as "Light Industrial" (LI) staff would include the new designation in the ordinance proposing the other changes to the FLUM. The proposed recommendations to Council regarding the FLUM can all be dealt with in one ordinance, both maps and text.

We have received definitions from four municipalities and may have more before the P&Z meeting on July 27, 2011.

Such a use may fit better along the portion of the west side of the railroad tracks and in some areas that abut I-95 off of Babcock Street.

ATTACHMENTS:

- Memo 2011-TC/T-088 with attachments

ACTION OPTIONS:

Continued Board work towards a recommendation to Council.

TOWN OF MALABAR

MEMORANDUM

Date: July 19, 2011 2011-TC/T-088
To: Planning & Zoning Board
From: Debby K. Franklin, Town Clerk/Treasurer
Ref: Definition of Light Industrial

At the last P&Z meeting, the Board requested a definition for Light Industrial Zoning District that other communities use.

I was able to get one from the City of Melbourne and it reads as follows:
Area intended to have close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing; warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial area and to eliminate unnecessary industrial traffic through non-industrial areas.

West Melbourne's is very similar. I have attached it as it also lists the principal uses..

Cocoa considers Light Industrial as M1 (Light Manufacturing) and C-W (Wholesale Commercial). I have attached the two pages from Cocoa's Code for your review.

The City of Indian Harbor Beach has a similar definition as Melbourne and West Melbourne but provides specific use information that seems to coincide with what P&Z was discussing at the last meeting. I have attached one page from their Code.

Melbourne's definition of Light Industrial

M-1 — Light Industrial District. The provisions of this district are intended to apply to an area located in close proximity to rail, air or major roadway facilities and which can serve intensive commercial uses and light manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby non-industrial areas and to eliminate unnecessary industrial traffic through non-industrial areas.

W. Melb

**West Melbourne, Florida, Code of Ordinances >> Subpart B - LAND DEVELOPMENT REGULATIONS
>> Chapter 98 - ZONING >> ARTICLE III. - DISTRICTS >> DIVISION 12. - M-1 LIGHT INDUSTRIAL AND
WAREHOUSING DISTRICT >>**

Copy link to clipboard

Sec. 98-521. - Intent.

Sec. 98-522. - Principal uses and structures.

Sec. 98-523. - Accessory uses and structures.

Sec. 98-524. - Conditional uses.

Sec. 98-525. - Prohibited uses and structures.

Sec. 98-526. - Lot and structure requirements.

Secs. 98-527—98-560. - Reserved.

Sec. 98-521. - Intent.

The M-1 light industrial and warehousing district is intended to apply to an area located in close proximity to transportation facilities and which can serve manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city and the region. Restrictions in this division are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(Ord. No. 45, art. VI, § 9, 8-4-1970; Ord. No. 85-3, § 5, 11-8-1984; Ord. No. 92-12, §§ 1, 2, 7-7-1992; Ord. No. 95-20, § 4, 9-5-1995)

Sec. 98-522. - Principal uses and structures.

In the M-1 light industrial and warehousing district, the following uses and structures are permitted, provided any use or group of uses that is developed, either separately or if developed as a unit with certain site improvements shared in common, is developed on a site of five acres or less:

- (1) Warehousing and wholesaling in enclosed structures, including refrigerated storage.
- (2) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants, welding shops, taxidermists and similar uses.
- (3) Light manufacturing, processing and assembly, such as precision manufacturing, electrical machinery, instrumentation, bottling plants, dairy products plants, bakeries, fruit packing and similar uses.
- (4) Building materials supply and storage; contractors' storage yards except scrap materials. Outside storage areas shall be effectively walled on all sides to avoid any deleterious effect on adjacent property.
- (5) Automotive, major recreational equipment and mobile home sales, storage and repair establishments, such as body shops, dry docking facilities, tire recapping, paint shops, upholstery shops and the like.
- (6) Freight handling facilities; transportation terminals.
- (7) Vocational and trade schools, including those of an industrial nature.
- (8) Veterinary hospitals and clinics.
- (9) Telephone switching stations, electrical, substations and similar operational equipment used by public utilities. Where such a use is housed in a new structure specifically constructed for such use, the following shall apply:
 - a. Setbacks other than required elsewhere in this district:
 1. Front: Ten feet from the property line.
 2. Rear: Ten feet from the property line.
 3. Side, interior: None, except where the use borders a single-family residential district, in which case the setback shall be ten feet.
 4. Side, corner: Ten feet from the property line.
 - b. Landscaping: The site shall be sodded, and a continuous hedge of ligustrum, viburnum or eleagnus, a minimum of five feet in height upon planting, shall be provided around the entire perimeter of the site. An automated sprinkler system shall be installed to provide adequate irrigation for all plant materials on the site.
 - c. Minimum lot size: 1,200 feet; minimum lot width: 30 feet; minimum lot depth: 40 feet.
 - d. Maximum building size: 200 square feet.

Cocoa

1 of 2

more inoperative motor vehicles unless where otherwise specifically permitted but does not include uses established entirely within enclosed buildings.

LARGE RETAIL PROJECT. Any new commercial retail project, whose total gross building area equals or exceeds sixty thousand (60,000) square feet, specifically mercantile uses, and/or shopping center uses. For the purpose of determining building area, multiple buildings located on a single lot and closer than twenty (20) feet together shall be considered one (1) building.

LIGHT FIXTURE, FULL-CUTOFF. A light fixture designed such that no light is projected at or above a ninety (90) degree plane running through the lowest point on the fixture where the light is emitted; and less than ten percent (10%) of the rated lumens are projected between ninety degrees (90°) and eighty degrees (80°).

LIGHT FIXTURE, OUTDOOR. An outdoor illuminating device, reflective surface, lamp and other device, either permanently installed or portable, which is used for illumination or advertisement. Such device shall include, but is not limited to, a searchlight, spotlight and floodlight for:

1. Buildings and structures;
2. Recreational areas;
3. Parking lot lighting;
4. Landscape lighting;
5. Billboards and other signs;
6. Street lighting;
7. Product display lighting;
8. Building overhangs and open canopies.

LIGHT FIXTURE, SEMI-CUTOFF. A fixture that projects no more than five percent (5%) of the rated lumens above a ninety (90) degree plane running through the lowest point on the fixture where the light is emitted; and less than twenty percent (20%) of the rated lumens are projected between ninety degrees (90°) and eighty degrees (80°).

LIGHT MANUFACTURING USES (INCLUDING INCIDENTAL). This shall include light assembly and fabrication that is predominantly for retail sales on premises. This use shall be compatible with the general character of the area and the surrounding uses. Off-street parking and loading requirements shall be adhered to as indicated in article XII, section 1, (b), (8) of the Zoning Code. Such light manufacturing uses shall not create any nuisance in the form of noise, dust, smoke, or odor and shall be subject to the Performance Standards as outlined in article XXV. This definition shall apply to the Central Business District only, given the special character of the area.

LIGHT SOURCE. A complete lighting unit consisting of a lamp and all necessary mechanical, electrical and decorative parts, such as reflectors (mirrored enclosures surrounding the lamp), refractors (glass or plastic enclosures surrounding the lamp) and lenses, designed to direct light rays.

LIVING AREA. See Floor Area.

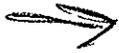
LOADING SPACE, OFF-STREET. Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space (refer to article XII).

LOT. For purposes of this ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

- (a) A single lot of record;
- (b) A portion of a lot of record;
- (c) A combination of complete lots of record, and portions of lots of record, or of portions of lots of record;
- (d) A parcel of land described by metes and bounds; provided that in no case of division of combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

LOT COVERAGE. The percentage of the lot or parcel of land that is covered or occupied by all principal and accessory structures. Fences, driveways, swimming pools, pavers, and decks less than thirty (30) inches in height shall not be included in the computing of lot coverage.

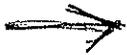
2/2 Cocoa

**Sec. 15. - District and intent—C-W, Wholesale Commercial District.**

The provisions of this district are intended to apply to an area in close proximity to transportation facilities and which can serve warehousing, distribution, wholesaling and other related functions of the city and region.

(A) PRINCIPAL USES AND STRUCTURES.

- (1) All uses allowed in section 12, general commercial district except uses specifically prohibited.
- (2) Warehousing and wholesaling in enclosed structures, enclosed refrigerated storage.
- (3) Service and repair establishments, dry cleaning; and laundry plants, business services, printing plants, welding shops, taxidermists and similar uses.
- (4) Building materials supply and storage, contractor's storage yard, except scrap materials. Outside storage areas shall be effectively walled on all sides to avoid any deleterious effect on adjacent properties.
- (5) Automotive, major recreational equipment, mobile home and marine, storage and repair establishments such as body shops, tire recapping, paint shops and the like.
- (6) Freight-handling facilities, transportation terminals.
- (7) Vocational and trade schools, including those of an industrial nature.
- (8) Veterinary hospitals and clinics.
- (9) *Reserved.*
- (10) Low intensity industrial uses, such as the manufacturing and assembly of various items, which include scientific, electrical, optical and precision instruments or equipment, within an enclosed structure.
- (11) Television dish receivers and antennae as regulated by article XIII, section 21, Television dish receivers and antennae.
- (12) Electronic communication/transmission facilities and exchanges.
- (13) Service stations, subject to the provisions of article XI, section 12, C-G (General Commercial District), subsection (C)(2).
- (14) Retail automotive gasoline/fuel sales as an accessory use to convenience stores subject to the following provisions:
 - a. Access: Convenience stores selling gasoline/fuel shall be located on arterial roadways or on corner lots at intersections of collector roads or roads of higher functional classification (as identified in the City of Cocoa Comprehensive Plan). No driveway or point of access shall be permitted within one hundred (100) feet of an intersection of collector roads or roads of higher functional classification.
 - b. Minimum street frontage: One hundred fifty (150) feet on each abutting street.
 - c. Location of facilities: Gasoline/fuel pumps and other service island equipment shall be set back at least twenty (20) feet from all property lines, fifteen (15) feet from any building, and one hundred (100) feet from the nearest residentially zoned land. In addition, pumps and other service island equipment shall not interfere with the safe and orderly movement of traffic in parking and other vehicular use areas.
 - d. Tank storage: Underground storage is required for all receptacles for combustible materials in excess of two hundred (200) gallons.

**(B) ACCESSORY USES AND STRUCTURES.**

- (1) Customary accessory uses clearly incidental and subordinate to the principal use and in keeping with the character of the district.

(C) SPECIAL EXCEPTIONS.

- (1) Planned industrial development on a minimum sized parcel of five (5) acres, subject to the conditions set forth in article XIII, section 3, Supplementary District Regulations.
- (2) Any other use in keeping with the character of the district.
- (3) Churches, rectories, parish houses, temples, synagogues, and associated buildings, including educational and recreational facilities.
- (4) Mortuaries and funeral homes.
- (5) Security mobile home or facility located upon public or private property.
- (6) Half-way houses.
- (7) Telecommunication towers and antennas, pursuant to article XIII, section 26

(D) PROHIBITED USES AND STRUCTURES.

- (1) Residential uses including hotels and motels.
- (2) Automobile wrecking yards, junkyards, scrap and salvage yards for secondhand building material.
- (3) Any use deemed objectionable by the standards established in Article XIV, Performance Standards.
- (4) Any other use not specifically or provisionally permitted herein.

ART. XII, § 7 INDIAN HARBOUR BEACH CODE

Side, corner 20 feet. (Ord. No. 83-1, §§ 1, 2, 8-23-83; Ord. No. 86-6, § 2, 4-8-86; Ord. No. 89-4, § 1, 6-27-89; Ord. No. 94-6, § 1, 1-10-95; Ord. No. 96-7, § 1, 1-14-97; Ord. No. 99-5, § 1, 6-8-99)

Sec. 8. District and intent: M-1, Light Industrial District.

The uses in this district are intended to be located in close proximity to transportation facilities and serving as the manufacturing, warehousing, distribution, wholesaling and other industrial functions of the city. Restrictions herein are intended to minimize adverse influences of the industrial activities on nearby nonindustrial areas.

(1) Principal uses and structures:

- (A) Warehousing and wholesaling carried on solely within an enclosed structure.
(B) Service and repair establishments, dry cleaning and laundry plants, business services, printing plants and welding shops.
(C) Light manufacturing processing and assembly, such as precision manufacturing of electrical machinery and instrumentation.
(D) Building materials supply and storage; contractor's storage yard, except scrap materials.
(E) Marine sales, storage and repair establishments, and automotive repair, paint and body shops.
(F) Vocational and trade schools.
(2) Accessory uses:
(A) Retail sales of products manufactured, processed or stored on the premises.
(B) Customary accessory uses of one or more of the principal uses, clearly incidental and subordinate to the principal use in keeping with the industrial character of the district.

APPENDIX A—ZONING

ART. XII, § 9A

IHB 10/1

- (3) Conditional land uses permissible by city council: None.
(4) Special exceptions permissible by the zoning board of appeals: None.

(5) Prohibited uses and structures: All uses not specifically or provisionally permitted herein, and not in keeping with the industrial character of the district.

(6) Minimum lot dimensions and floor area and maximum height:

Table with 5 columns: Minimum Lot Area, Minimum Lot Width, Minimum Lot Depth, Minimum Floor Area, Maximum Height. Values: 9,000 sq. ft., 90 ft., 100 ft., 600 sq. ft., 35 ft.

(7) Minimum yard requirements:

- Front 25 feet.
Rear 20 feet; 15 feet when abutting an alley.
Side, interior None, except where use borders a zoning district requiring setbacks, in which case said required setbacks shall also apply in this district.

Side, corner 20 feet.

Sec. 9A. District and intent: P-1 Institutional.

The provisions of this district are intended to apply to an area which can serve the needs of the community for public utility facilities, correctional facilities and in-patient mental health facilities, which facilities by their nature require substantial security and aesthetic buffers in order to protect the health and welfare of the city. Since the site and building requirements for such uses vary with the size and type of use, a review and approval of a site plan shall be a prerequisite for approval of any change of zoning to the P-1 Institutional classification.