

Bill No. SB 1836

Barcode 363104

586-1978-05

1 400.980, 400.9905, 400.9935, 401.23, 402.164,
2 408.033, 408.831, 409.212, 409.907, 410.031,
3 410.034, 415.1111, 430.601, 430.703, 435.03,
4 435.04, 440.13, 456.0375, 465.0235, 468.505,
5 477.025, 509.032, 509.241, 627.732, 651.011,
6 651.022, 651.023, 651.055, 651.095, 651.118,
7 765.1103, 765.205, 768.735, and 943.0585, F.S. ;
8 conforming references to changes made by the
9 act; providing a directive to the Division of
10 Statutory Revision to make necessary conforming
11 changes to the Florida Statutes; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Sections 400.401, 400.402, 400.404,
17 400.407, 400.4075, 400.408, 400.411, 400.412, 400.414,
18 400.415, 400.417, 400.4174, 400.4176, 400.4177, 400.4178,
19 400.418, 400.419, 400.4195, 400.42, 400.421, 400.422, 400.423,
20 400.424, 400.4255, 400.4256, 400.426, 400.427, 400.4275,
21 400.428, 400.429, 400.4293, 400.4294, 400.4295, 400.4296,
22 400.4297, 400.4298, 400.431, 400.434, 400.435, 400.441,
23 400.442, 400.444, 400.4445, 400.447, 400.449, 400.451,
24 400.452, 400.453, and 400.454, Florida Statutes, are
25 renumbered as sections 429.01, 429.02, 429.04, 429.07,
26 429.075, 429.08, 429.11, 429.12, 429.14, 429.15, 429.17,
27 429.174, 429.176, 429.177, 429.178, 429.18, 429.19, 429.195,
28 429.20, 429.21, 429.22, 429.23, 429.24, 429.255, 429.256,
29 429.26, 429.27, 429.275, 429.28, 429.29, 429.293, 429.294,
30 429.295, 429.296, 429.297, 429.298, 429.31, 429.34, 429.35,
31 429.41, 429.42, 429.44, 429.445, 429.47, 429.49, 429.51,

1 429.52, 429.53, and 429.54, Florida Statutes, respectively,
 2 and designated as part I of chapter 429, Florida Statutes,
 3 entitled "ASSISTED CARE COMMUNITIES."

4 Section 2. Sections 400.616, 400.617, 400.618,
 5 400.619, 400.6194, 400.6196, 400.621, 400.6211, 400.622,
 6 400.625, 400.6255, 400.628, 400.629, Florida Statutes, are
 7 renumbered as sections 429.60, 429.63, 429.65, 429.67, 429.69,
 8 429.71, 429.73, 429.75, 429.77, 429.81, 429.83, and 429.85,
 9 Florida Statutes, respectively, and designated as part II of
 10 chapter 429, Florida Statutes, entitled "ASSISTED CARE
 11 COMMUNITIES."

12 Section 3. Sections 400.55, 400.551, 400.552, 400.553,
 13 400.554, 400.555 400.556, 400.5565, 400.557, 400.5571,
 14 400.5572, 400.5575, 400.558, 400.559, 400.56, 400.562,
 15 400.563, and 400.564, Florida Statutes, are renumbered as
 16 Sections 429.90, 429.901, 429.903, 429.905, 429.907, 429.909,
 17 429.911, 429.913, 429.915, 429.917, 429.919, 429.921, 429.923,
 18 429.925, 429.927, 429.929, 429.931, and 429.933, Florida
 19 Statutes, and designated as part III of Chapter 429, Florida
 20 Statutes, entitled "ASSISTED CARE COMMUNITIES."

21 Section 4. Subsection (1) of section 101.655, Florida
 22 Statutes, is amended to read:

23 101.655 Supervised voting by absent electors in
 24 certain facilities.--

25 (1) The supervisor of elections of a county shall
 26 provide supervised voting for absent electors residing in any
 27 assisted living facility, as defined in s. 429.02 ~~400.402~~, or
 28 nursing home facility, as defined in s. 400.021, within that
 29 county at the request of any administrator of such a facility.
 30 Such request for supervised voting in the facility shall be
 31 made by submitting a written request to the supervisor of

Bill No. SB 1836

Barcode 363104

586-1978-05

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

7 Section 5. Subsection (9) of section 189.428, Florida
8 Statutes, is amended to read:

9 189.428 Special districts; oversight review process.--

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

18 Section 6. Paragraph (b) of subsection (2) of section
19 196.1975, Florida Statutes, is amended to read:

20 196.1975 Exemption for property used by nonprofit
21 homes for the aged.--Nonprofit homes for the aged are exempt
22 to the extent that they meet the following criteria:

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

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 Section 7. Paragraph (c) of subsection (4) of section
2 202.125, Florida Statutes, is amended to read:

3 202.125 Sales of communications services; specified
4 exemptions.--

5 (4) The sale of communications services to a home for
6 the aged, religious institution or educational institution
7 that is exempt from federal income tax under s. 501(c)(3) of
8 the Internal Revenue Code, or by a religious institution that
9 is exempt from federal income tax under s. 501(c)(3) of the
10 Internal Revenue Code having an established physical place for
11 worship at which nonprofit religious services and activities
12 are regularly conducted and carried on, is exempt from the
13 taxes imposed or administered pursuant to ss. 202.12 and
14 202.19. As used in this subsection, the term:

15 (c) "Home for the aged" includes any nonprofit
16 corporation:

17 1. In which at least 75 percent of the occupants are
18 62 years of age or older or totally and permanently disabled;
19 which qualifies for an ad valorem property tax exemption under
20 s. 196.196, s. 196.197, or s. 196.1975; and which is exempt
21 from the sales tax imposed under chapter 212.

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

25 Section 8. Section 205.1965, Florida Statutes, is
26 amended to read:

27 205.1965 Assisted living facilities.--A county or
28 municipality may not issue an occupational license for the
29 operation of an assisted living facility pursuant to ~~part III~~
30 ~~of chapter 429 400~~ without first ascertaining that the
31 applicant has been licensed by the Agency for Health Care

1 Administration to operate such facility at the specified
 2 location or locations. The Agency for Health Care
 3 Administration shall furnish to local agencies responsible for
 4 issuing occupational licenses sufficient instructions for
 5 making the above required determinations.

6 Section 9. Paragraph (b) of subsection (1) of section
 7 212.031, Florida Statutes, is amended to read:

8 212.031 Tax on rental or license fee for use of real
 9 property.--

10 (1)

11 (b) When a lease involves multiple use of real
 12 property wherein a part of the real property is subject to the
 13 tax herein, and a part of the property would be excluded from
 14 the tax under subparagraph (a)1., subparagraph (a)2.,
 15 subparagraph (a)3., or subparagraph (a)5., the department
 16 shall determine, from the lease or license and such other
 17 information as may be available, that portion of the total
 18 rental charge which is exempt from the tax imposed by this
 19 section. The portion of the premises leased or rented by a
 20 for-profit entity providing a residential facility for the
 21 aged will be exempt on the basis of a pro rata portion
 22 calculated by combining the square footage of the areas used
 23 for residential units by the aged and for the care of such
 24 residents and dividing the resultant sum by the total square
 25 footage of the rented premises. For purposes of this section,
 26 the term "residential facility for the aged" means a facility
 27 that is licensed or certified in whole or in part under
 28 chapter 400, chapter 429, or chapter 651; or that provides
 29 residences to the elderly and is financed by a mortgage or
 30 loan made or insured by the United States Department of
 31 Housing and Urban Development under s. 202, s. 202 with a s. 8

1 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the
 2 National Housing Act; or other such similar facility that
 3 provides residences primarily for the elderly.

4 Section 10. Paragraph (i) of subsection (7) of section
 5 212.08, Florida Statutes, is amended to read:

6 212.08 Sales, rental, use, consumption, distribution,
 7 and storage tax; specified exemptions.--The sale at retail,
 8 the rental, the use, the consumption, the distribution, and
 9 the storage to be used or consumed in this state of the
 10 following are hereby specifically exempt from the tax imposed
 11 by this chapter.

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

30 (i) Hospital meals and rooms.--Also exempt from
 31 payment of the tax imposed by this chapter on rentals and

1 meals are patients and inmates of any hospital or other
 2 physical plant or facility designed and operated primarily for
 3 the care of persons who are ill, aged, infirm, mentally or
 4 physically incapacitated, or otherwise dependent on special
 5 care or attention. Residents of a home for the aged are exempt
 6 from payment of taxes on meals provided through the
 7 facility. A home for the aged is defined as a facility that
 8 is licensed or certified in part or in whole under chapter
 9 400, chapter 429, or chapter 651, or that is financed by a
 10 mortgage loan made or insured by the United States Department
 11 of Housing and Urban Development under s. 202, s. 202 with a
 12 s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the
 13 National Housing Act, or other such similar facility designed
 14 and operated primarily for the care of the aged.

15 Section 11. Subsection (5) of section 296.02, Florida
 16 Statutes, is amended to read:

17 296.02 Definitions.--For the purposes of this part,
 18 except where the context clearly indicates otherwise:

19 (5) "Extended congregate care" has the meaning given
 20 to that term under s. 429.02 ~~400.402~~.

21 Section 12. Subsections (1) and (3) of section
 22 381.0035, Florida Statutes, are amended to read:

23 381.0035 Educational course on HIV and AIDS; employees
 24 and clients of certain health care facilities.--

25 (1) The Department of Health shall require all
 26 employees and clients of facilities licensed under chapters
 27 393, 394, and 397 and employees of facilities licensed under
 28 chapter 395, ~~and~~ parts II, ~~III~~, IV, and VI of chapter 400, and
 29 chapter 429 to complete, biennially, a continuing educational
 30 course on the modes of transmission, infection control
 31 procedures, clinical management, and prevention of human

Bill No. SB 1836

Barcode 363104

586-1978-05

1 immunodeficiency virus and acquired immune deficiency syndrome
2 with an emphasis on appropriate behavior and attitude change.
3 Such instruction shall include information on current Florida
4 law and its impact on testing, confidentiality of test
5 results, and treatment of patients and any protocols and
6 procedures applicable to human immunodeficiency counseling and
7 testing, reporting, the offering of HIV testing to pregnant
8 women, and partner notification issues pursuant to ss. 381.004
9 and 384.25.

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

15 Section 13. Subsection (10) of section 394.455,
16 Florida Statutes, is amended to read:

17 394.455 Definitions.--As used in this part, unless the
18 context clearly requires otherwise, the term:

19 (10) "Facility" means any hospital, community
20 facility, public or private facility, or receiving or
21 treatment facility providing for the evaluation, diagnosis,
22 care, treatment, training, or hospitalization of persons who
23 appear to have a mental illness or have been diagnosed as
24 having a mental illness. "Facility" does not include any
25 program or entity licensed pursuant to chapter 400 or chapter
26 429.

27 Section 14. Paragraphs (b), (c), and (e) of subsection
28 (2) of section 394.4574, Florida Statutes, are amended to
29 read:

30 394.4574 Department responsibilities for a mental
31 health resident who resides in an assisted living facility

1 that holds a limited mental health license.--

2 (2) The department must ensure that:

3 (b) A cooperative agreement, as required in s. 429.075
4 ~~400.4075~~, is developed between the mental health care services
5 provider that serves a mental health resident and the
6 administrator of the assisted living facility with a limited
7 mental health license in which the mental health resident is
8 living. Any entity that provides Medicaid prepaid health plan
9 services shall ensure the appropriate coordination of health
10 care services with an assisted living facility in cases where
11 a Medicaid recipient is both a member of the entity's prepaid
12 health plan and a resident of the assisted living facility. If
13 the entity is at risk for Medicaid targeted case management
14 and behavioral health services, the entity shall inform the
15 assisted living facility of the procedures to follow should an
16 emergent condition arise.

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

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

1 updated at least annually.

2 Section 15. Paragraph (b) of subsection (2) of section
3 394.463, Florida Statutes, is amended to read:

4 394.463 Involuntary examination.--

5 (2) INVOLUNTARY EXAMINATION.--

6 (b) A person shall not be removed from any program or
7 residential placement licensed under chapter 400 or chapter
8 429 and transported to a receiving facility for involuntary
9 examination unless an ex parte order, a professional
10 certificate, or a law enforcement officer's report is first
11 prepared. If the condition of the person is such that
12 preparation of a law enforcement officer's report is not
13 practicable before removal, the report shall be completed as
14 soon as possible after removal, but in any case before the
15 person is transported to a receiving facility. A receiving
16 facility admitting a person for involuntary examination who is
17 not accompanied by the required ex parte order, professional
18 certificate, or law enforcement officer's report shall notify
19 the Agency for Health Care Administration of such admission by
20 certified mail no later than the next working day. The
21 provisions of this paragraph do not apply when transportation
22 is provided by the patient's family or guardian.

23 Section 16. Paragraph (b) of subsection (3) of section
24 400.0063, Florida Statutes, is amended to read:

25 400.0063 Establishment of Office of State Long-Term
26 Care Ombudsman; designation of ombudsman and legal advocate.--

27 (3)

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

30 1. Assisting the ombudsman in carrying out the duties
31 of the office with respect to the abuse, neglect, or violation

1 of rights of residents of long-term care facilities.

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

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

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

12 Section 17. Subsection (3) of section 400.0069,
13 Florida Statutes, is amended to read:

14 400.0069 Local long-term care ombudsman councils;
15 duties; membership.--

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

21 Section 18. Paragraphs (c) and (f) of subsection (5)
22 and subsection (6) of section 400.0073, Florida Statutes, are
23 amended to read:

24 400.0073 State and local ombudsman council
25 investigations.--

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

28 (c) Inspections shall be conducted in a manner which
29 will impose no unreasonable burden on nursing homes or
30 long-term care facilities, consistent with the underlying
31 purposes of this part and chapter 429. Unnecessary duplication

Bill No. SB 1836

Barcode 363104

586-1978-05

1 of efforts among council members or the councils shall be
2 reduced to the extent possible.

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

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

11 Section 19. Subsection (4) of section 400.0077,
12 Florida Statutes, is amended to read:

13 400.0077 Confidentiality.--

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

18 Section 20. Subsection (1) of section 400.0239,
19 Florida Statutes, is amended to read:

20 400.0239 Quality of Long-Term Care Facility
21 Improvement Trust Fund.--

22 (1) There is created within the Agency for Health Care
23 Administration a Quality of Long-Term Care Facility
24 Improvement Trust Fund to support activities and programs
25 directly related to improvement of the care of nursing home
26 and assisted living facility residents. The trust fund shall
27 be funded through proceeds generated pursuant to ss. 400.0238
28 and 429.298 ~~400.4298~~, through funds specifically appropriated
29 by the Legislature, through gifts, endowments, and other
30 charitable contributions allowed under federal and state law,
31 and through federal nursing home civil monetary penalties

Bill No. SB 1836

Barcode 363104

586-1978-05

1 collected by the Centers for Medicare and Medicaid Services
2 and returned to the state. These funds must be utilized in
3 accordance with federal requirements.

4 Section 21. Subsections (1) and (4) of section
5 400.119, Florida Statutes, are amended to read:

6 400.119 Confidentiality of records and meetings of
7 risk management and quality assurance committees.--

8 (1) Records of meetings of the risk management and
9 quality assurance committee of a long-term care facility
10 licensed under this part or ~~part III of this~~ chapter 429, as
11 well as incident reports filed with the facility's risk
12 manager and administrator, notifications of the occurrence of
13 an adverse incident, and adverse incident reports from the
14 facility are confidential and exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution. However, if the
16 Agency for Health Care Administration has a reasonable belief
17 that conduct by a staff member or employee of a facility is
18 criminal activity or grounds for disciplinary action by a
19 regulatory board, the agency may disclose such records to the
20 appropriate law enforcement agency or regulatory board.

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

26 Section 22. Subsections (4) and (7) of section
27 400.141, Florida Statutes, are amended to read:

28 400.141 Administration and management of nursing home
29 facilities.--Every licensed facility shall comply with all
30 applicable standards and rules of the agency and shall:

31 (4) Provide for resident use of a community pharmacy

Bill No. SB 1836

Barcode 363104

586-1978-05

1 as specified in s. 400.022(1)(q). Any other law to the
2 contrary notwithstanding, a registered pharmacist licensed in
3 Florida, that is under contract with a facility licensed under
4 this chapter or chapter 429, shall repackage a nursing
5 facility resident's bulk prescription medication which has
6 been packaged by another pharmacist licensed in any state in
7 the United States into a unit dose system compatible with the
8 system used by the nursing facility, if the pharmacist is
9 requested to offer such service. In order to be eligible for
10 the repackaging, a resident or the resident's spouse must
11 receive prescription medication benefits provided through a
12 former employer as part of his or her retirement benefits, a
13 qualified pension plan as specified in s. 4972 of the Internal
14 Revenue Code, a federal retirement program as specified under
15 5 C.F.R. s. 831, or a long-term care policy as defined in s.
16 627.9404(1). A pharmacist who correctly repackages and
17 relabels the medication and the nursing facility which
18 correctly administers such repackaged medication under the
19 provisions of this subsection shall not be held liable in any
20 civil or administrative action arising from the repackaging.
21 In order to be eligible for the repackaging, a nursing
22 facility resident for whom the medication is to be repackaged
23 shall sign an informed consent form provided by the facility
24 which includes an explanation of the repackaging process and
25 which notifies the resident of the immunities from liability
26 provided herein. A pharmacist who repackages and relabels
27 prescription medications, as authorized under this subsection,
28 may charge a reasonable fee for costs resulting from the
29 implementation of this provision.

30 (7) If the facility has a standard license or is a
31 Gold Seal facility, exceeds the minimum required hours of

Bill No. SB 1836

Barcode 363104

586-1978-05

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

30

31 Facilities that have been awarded a Gold Seal under the

Bill No. SB 1836

Barcode 363104

586-1978-05

1 program established in s. 400.235 may develop a plan to
2 provide certified nursing assistant training as prescribed by
3 federal regulations and state rules and may apply to the
4 agency for approval of their program.

5 Section 23. Subsection (1) of section 400.142, Florida
6 Statutes, is amended to read:

7 400.142 Emergency medication kits; orders not to
8 resuscitate.--

9 (1) Other provisions of this chapter or of chapter
10 429, chapter 465, chapter 499, or chapter 893 to the contrary
11 notwithstanding, each nursing home operating pursuant to a
12 license issued by the agency may maintain an emergency
13 medication kit for the purpose of storing medicinal drugs to
14 be administered under emergency conditions to residents
15 residing in such facility.

16 Section 24. Paragraph (a) of subsection (2) of section
17 400.191, Florida Statutes, is amended to read:

18 400.191 Availability, distribution, and posting of
19 reports and records.--

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

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

28 1. A list by name and address of all nursing home
29 facilities in this state.

30 2. Whether such nursing home facilities are
31 proprietary or nonproprietary.

1 3. The current owner of the facility's license and the
2 year that that entity became the owner of the license.

3 4. The name of the owner or owners of each facility
4 and whether the facility is affiliated with a company or other
5 organization owning or managing more than one nursing facility
6 in this state.

7 5. The total number of beds in each facility.

8 6. The number of private and semiprivate rooms in each
9 facility.

10 7. The religious affiliation, if any, of each
11 facility.

12 8. The languages spoken by the administrator and staff
13 of each facility.

14 9. Whether or not each facility accepts Medicare or
15 Medicaid recipients or insurance, health maintenance
16 organization, Veterans Administration, CHAMPUS program, or
17 workers' compensation coverage.

18 10. Recreational and other programs available at each
19 facility.

20 11. Special care units or programs offered at each
21 facility.

22 12. Whether the facility is a part of a retirement
23 community that offers other services pursuant to ~~part III,~~
24 part IV, or part V of this chapter or chapter 429.

25 13. Survey and deficiency information contained on the
26 Online Survey Certification and Reporting (OSCAR) system of
27 the federal Health Care Financing Administration, including
28 annual survey, revisit, and complaint survey information, for
29 each facility for the past 45 months. For noncertified
30 nursing homes, state survey and deficiency information,
31 including annual survey, revisit, and complaint survey

Bill No. SB 1836

Barcode 363104

586-1978-05

1 information for the past 45 months shall be provided.

2 14. A summary of the Online Survey Certification and
3 Reporting (OSCAR) data for each facility over the past 45
4 months. Such summary may include a score, rating, or
5 comparison ranking with respect to other facilities based on
6 the number of citations received by the facility of annual,
7 revisit, and complaint surveys; the severity and scope of the
8 citations; and the number of annual recertification surveys
9 the facility has had during the past 45 months. The score,
10 rating, or comparison ranking may be presented in either
11 numeric or symbolic form for the intended consumer audience.

12 Section 25. Paragraph (b) of subsection (2) of section
13 400.215, Florida Statutes, is amended to read:

14 400.215 Personnel screening requirement.--

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

17 (b) Employees qualified under the provisions of
18 paragraph (a) who have not maintained continuous residency
19 within the state for the 5 years immediately preceding the
20 date of request for background screening must complete level 2
21 screening, as provided in chapter 435. Such employees may work
22 in a conditional status up to 180 days pending the receipt of
23 written findings evidencing the completion of level 2
24 screening. Level 2 screening shall not be required of
25 employees or prospective employees who attest in writing under
26 penalty of perjury that they meet the residency requirement.
27 Completion of level 2 screening shall require the employee or
28 prospective employee to furnish to the nursing facility a full
29 set of fingerprints to enable a criminal background
30 investigation to be conducted. The nursing facility shall
31 submit the completed fingerprint card to the agency. The

1 agency shall establish a record of the request in the database
 2 provided for in paragraph (c) and forward the request to the
 3 Department of Law Enforcement, which is authorized to submit
 4 the fingerprints to the Federal Bureau of Investigation for a
 5 national criminal history records check. The results of the
 6 national criminal history records check shall be returned to
 7 the agency, which shall maintain the results in the database
 8 provided for in paragraph (c). The agency shall notify the
 9 administrator of the requesting nursing facility or the
 10 administrator of any other facility licensed under chapter
 11 393, chapter 394, chapter 395, chapter 397, chapter 429, or
 12 this chapter, as requested by such facility, as to whether or
 13 not the employee has qualified under level 1 or level 2
 14 screening. An employee or prospective employee who has
 15 qualified under level 2 screening and has maintained such
 16 continuous residency within the state shall not be required to
 17 complete a subsequent level 2 screening as a condition of
 18 employment at another facility.

19 Section 26. Paragraph (f) of subsection (2) of section
 20 400.23, Florida Statutes, is amended to read:

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

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

28 (f) The care, treatment, and maintenance of residents
 29 and measurement of the quality and adequacy thereof, based on
 30 rules developed under this chapter or chapter 429 and the

31 Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.

586-1978-05

1 100-203) (December 22, 1987), Title IV (Medicare, Medicaid,
2 and Other Health-Related Programs), Subtitle C (Nursing Home
3 Reform), as amended.

4 Section 27. Section 400.232, Florida Statutes, is
5 amended to read:

6 400.232 Review and approval of plans; fees and
7 costs.--The design, construction, erection, alteration,
8 modification, repair, and demolition of all public and private
9 health care facilities are governed by the Florida Building
10 Code and the Florida Fire Prevention Code under ss. 553.73 and
11 633.022. In addition to the requirements of ss. 553.79 and
12 553.80, the agency shall review the facility plans and survey
13 the construction of facilities licensed under this chapter or
14 chapter 429.

15 (1) The agency shall approve or disapprove the plans
16 and specifications within 60 days after receipt of the final
17 plans and specifications. The agency may be granted one
18 15-day extension for the review period, if the director of the
19 agency so approves. If the agency fails to act within the
20 specified time, it shall be deemed to have approved the plans
21 and specifications. When the agency disapproves plans and
22 specifications, it shall set forth in writing the reasons for
23 disapproval. Conferences and consultations may be provided as
24 necessary.

25 (2) The agency is authorized to charge an initial fee
26 of \$2,000 for review of plans and construction on all
27 projects, no part of which is refundable. The agency may also
28 collect a fee, not to exceed 1 percent of the estimated
29 construction cost or the actual cost of review, whichever is
30 less, for the portion of the review which encompasses initial
31 review through the initial revised construction document

1 review. The agency is further authorized to collect its
 2 actual costs on all subsequent portions of the review and
 3 construction inspections. Initial fee payment shall accompany
 4 the initial submission of plans and specifications. Any
 5 subsequent payment that is due is payable upon receipt of the
 6 invoice from the agency. Notwithstanding any other provisions
 7 of law to the contrary, all money received by the agency
 8 pursuant to the provisions of this section shall be deemed to
 9 be trust funds, to be held and applied solely for the
 10 operations required under this section.

11 Section 28. Section 400.401, Florida Statutes, is
 12 renumbered as section 429.01, Florida Statutes, and subsection
 13 (3) is amended to read:

14 429.01 ~~400.401~~ Popular name ~~Short title~~; purpose.--

15 (3) The principle that a license issued under this
 16 chapter part is a public trust and a privilege and is not an
 17 entitlement should guide the finder of fact or trier of law at
 18 any administrative proceeding or in a court action initiated
 19 by the Agency for Health Care Administration to enforce this
 20 chapter part.

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

24 429.02 ~~400.402~~ Definitions.--When used in this chapter
 25 part, the term:

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

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (3) "Agency" means the Agency for Health Care
2 Administration.

3 (4) "Aging in place" or "age in place" means the
4 process of providing increased or adjusted services to a
5 person to compensate for the physical or mental decline that
6 may occur with the aging process, in order to maximize the
7 person's dignity and independence and permit them to remain in
8 a familiar, noninstitutional, residential environment for as
9 long as possible. Such services may be provided by facility
10 staff, volunteers, family, or friends, or through contractual
11 arrangements with a third party.

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

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

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

28 (8) "Community living support plan" means a written
29 document prepared by a mental health resident and the
30 resident's mental health case manager in consultation with the
31 administrator of an assisted living facility with a limited

Bill No. SB 1836

Barcode 363104

586-1978-05

1 mental health license or the administrator's designee. A copy
2 must be provided to the administrator. The plan must include
3 information about the supports, services, and special needs of
4 the resident which enable the resident to live in the assisted
5 living facility and a method by which facility staff can
6 recognize and respond to the signs and symptoms particular to
7 that resident which indicate the need for professional
8 services.

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

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

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

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 residency in a facility licensed under this chapter ~~part~~.

2 (13) "Guardian" means a person to whom the law has
3 entrusted the custody and control of the person or property,
4 or both, of a person who has been legally adjudged
5 incapacitated.

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

17 (15) "Managed risk" means the process by which the
18 facility staff discuss the service plan and the needs of the
19 resident with the resident and, if applicable, the resident's
20 representative or designee or the resident's surrogate,
21 guardian, or attorney in fact, in such a way that the
22 consequences of a decision, including any inherent risk, are
23 explained to all parties and reviewed periodically in
24 conjunction with the service plan, taking into account changes
25 in the resident's status and the ability of the facility to
26 respond accordingly.

27 (16) "Mental health resident" means an individual who
28 receives social security disability income due to a mental
29 disorder as determined by the Social Security Administration
30 or receives supplemental security income due to a mental
31 disorder as determined by the Social Security Administration

Bill No. SB 1836

Barcode 363104

586-1978-05

1 and receives optional state supplementation.

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

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

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

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

28 (21) "Resident's representative or designee" means a
29 person other than the owner, or an agent or employee of the
30 facility, designated in writing by the resident, if legally
31 competent, to receive notice of changes in the contract

Bill No. SB 1836

Barcode 363104

586-1978-05

1 executed pursuant to s. 429.24 ~~400.424~~; to receive notice of
2 and to participate in meetings between the resident and the
3 facility owner, administrator, or staff concerning the rights
4 of the resident; to assist the resident in contacting the
5 ombudsman council if the resident has a complaint against the
6 facility; or to bring legal action on behalf of the resident
7 pursuant to s. 400.429.

8 (22) "Service plan" means a written plan, developed
9 and agreed upon by the resident and, if applicable, the
10 resident's representative or designee or the resident's
11 surrogate, guardian, or attorney in fact, if any, and the
12 administrator or designee representing the facility, which
13 addresses the unique physical and psychosocial needs,
14 abilities, and personal preferences of each resident receiving
15 extended congregate care services. The plan shall include a
16 brief written description, in easily understood language, of
17 what services shall be provided, who shall provide the
18 services, when the services shall be rendered, and the
19 purposes and benefits of the services.

20 (23) "Shared responsibility" means exploring the
21 options available to a resident within a facility and the
22 risks involved with each option when making decisions
23 pertaining to the resident's abilities, preferences, and
24 service needs, thereby enabling the resident and, if
25 applicable, the resident's representative or designee, or the
26 resident's surrogate, guardian, or attorney in fact, and the
27 facility to develop a service plan which best meets the
28 resident's needs and seeks to improve the resident's quality
29 of life.

30 (24) "Supervision" means reminding residents to engage
31 in activities of daily living and the self-administration of

1 medication, and, when necessary, observing or providing verbal
2 cuing to residents while they perform these activities.

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

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

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

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

27 429.04 ~~400.404~~ Facilities to be licensed;
28 exemptions.--

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

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

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

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

8 (c) Any facility licensed as an adult family-care home
9 under part VII of chapter 400.

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

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

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

31 (g) Any facility certified under chapter 651, or a

Bill No. SB 1836

Barcode 363104

586-1978-05

1 retirement community, may provide services authorized under
2 this chapter part or part IV of ~~this~~ chapter 400 to its
3 residents who live in single-family homes, duplexes,
4 quadruplexes, or apartments located on the campus without
5 obtaining a license to operate an assisted living facility if
6 residential units within such buildings are used by residents
7 who do not require staff supervision for that portion of the
8 day when personal services are not being delivered and the
9 owner obtains a home health license to provide such
10 services. However, any building or distinct part of a
11 building on the campus that is designated for persons who
12 receive personal services and require supervision beyond that
13 which is available while such services are being rendered must
14 be licensed in accordance with this chapter part. If a
15 facility provides personal services to residents who do not
16 otherwise require supervision and the owner is not licensed as
17 a home health agency, the buildings or distinct parts of
18 buildings where such services are rendered must be licensed
19 under this chapter part. A resident of a facility that obtains
20 a home health license may contract with a home health agency
21 of his or her choice, provided that the home health agency
22 provides liability insurance and workers' compensation
23 coverage for its employees. Facilities covered by this
24 exemption may establish policies that give residents the
25 option of contracting for services and care beyond that which
26 is provided by the facility to enable them to age in
27 place. For purposes of this section, a retirement community
28 consists of a facility licensed under this chapter part or
29 under part II of chapter 400, and apartments designed for
30 independent living located on the same campus.

31 (h) Any residential unit for independent living which

Bill No. SB 1836

Barcode 363104

586-1978-05

1 is located within a facility certified under chapter 651, or
2 any residential unit which is colocated with a nursing home
3 licensed under part II of chapter 400 or colocated with a
4 facility licensed under this chapter ~~part~~ in which services
5 are provided through an outpatient clinic or a nursing home on
6 an outpatient basis.

7 Section 31. Section 400.407, Florida Statutes, is
8 renumbered as section 429.07, Florida Statutes, and paragraphs
9 (a), (b), and (c) of subsection (3), paragraphs (b) and (c) of
10 subsection (4), and subsection (5) are amended to read:

11 429.07 ~~400.407~~ License required; fee, display.--

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

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

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

1 residence in a facility licensed under this chapter part.

2 1. In order for extended congregate care services to
3 be provided in a facility licensed under this chapter part,
4 the agency must first determine that all requirements
5 established in law and rule are met and must specifically
6 designate, on the facility's license, that such services may
7 be provided and whether the designation applies to all or part
8 of a facility. Such designation may be made at the time of
9 initial licensure or relicensure, or upon request in writing
10 by a licensee under this chapter part. Notification of
11 approval or denial of such request shall be made within 90
12 days after receipt of such request and all necessary
13 documentation. Existing facilities qualifying to provide
14 extended congregate care services must have maintained a
15 standard license and may not have been subject to
16 administrative sanctions during the previous 2 years, or since
17 initial licensure if the facility has been licensed for less
18 than 2 years, for any of the following reasons:

- 19 a. A class I or class II violation;
- 20 b. Three or more repeat or recurring class III
21 violations of identical or similar resident care standards as
22 specified in rule from which a pattern of noncompliance is
23 found by the agency;
- 24 c. Three or more class III violations that were not
25 corrected in accordance with the corrective action plan
26 approved by the agency;
- 27 d. Violation of resident care standards resulting in a
28 requirement to employ the services of a consultant pharmacist
29 or consultant dietitian;
- 30 e. Denial, suspension, or revocation of a license for
31 another facility under this chapter part in which the

1 applicant for an extended congregate care license has at least
2 25 percent ownership interest; or

3 f. Imposition of a moratorium on admissions or
4 initiation of injunctive proceedings.

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 monitoring visits if complaints have been made and
2 substantiated.

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

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

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

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

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

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

25 f. Implement the concept of managed risk.

26 g. Provide, either directly or through contract, the
27 services of a person licensed pursuant to part I of chapter
28 464.

29 h. In addition to the training mandated in s. 429.52
30 ~~400.452~~, provide specialized training as defined by rule for
31 facility staff.

Bill No. SB 1836

Barcode 363104

586-1978-05

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

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

20 6. Before admission of an individual to a facility
21 licensed to provide extended congregate care services, the
22 individual must undergo a medical examination as provided in
23 s. 429.26 ~~400.426~~(4) and the facility must develop a
24 preliminary service plan for the individual.

25 7. When a facility can no longer provide or arrange
26 for services in accordance with the resident's service plan
27 and needs and the facility's policy, the facility shall make
28 arrangements for relocating the person in accordance with s.
29 429.28 ~~400.428~~(1)(k).

30 8. Failure to provide extended congregate care
31 services may result in denial of extended congregate care

Bill No. SB 1836

Barcode 363104

586-1978-05

1 license renewal.

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

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

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

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

17 d. An analysis of deficiencies cited during licensure
18 inspections.

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

22 f. Recommendations for statutory or regulatory
23 changes.

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

29 h. Such other information as the department considers
30 appropriate.

31 (c) A limited nursing services license shall be issued

Bill No. SB 1836

Barcode 363104

586-1978-05

1 to a facility that provides services beyond those authorized
2 in paragraph (a) and as specified in this paragraph.

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

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

1 inspects such facility.

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

10 (4)

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

22 (c) In addition to the total fee assessed under
23 paragraph (a), the agency shall require facilities that are
24 licensed to provide limited nursing services under this
25 chapter part to pay an additional fee per licensed
26 facility. The amount of the biennial fee shall be \$250 per
27 license, with an additional fee of \$10 per resident based on
28 the total licensed resident capacity of the facility. No part
29 of this fee shall be returned to the facility. The agency may
30 adjust the per bed license fee and the biennial license fee
31 once each year by not more than the average rate of inflation

1 for the 12 months immediately preceding the increase.

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

5 Section 32. Section 400.408, Florida Statutes, is
6 renumbered as section 429.08, Florida Statutes, and paragraphs
7 (a), (d), (e), (f), and (g) of subsection (1) and paragraph
8 (f) of subsection (2) are amended to read:

9 429.08 ~~400.408~~ Unlicensed facilities; referral of
10 person for residency to unlicensed facility; penalties;
11 verification of licensure status.--

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

15 (d) Any person who owns, operates, or maintains an
16 unlicensed assisted living facility due to a change in this
17 chapter part or a modification in department rule within 6
18 months after the effective date of such change and who, within
19 10 working days after receiving notification from the agency,
20 fails to cease operation or apply for a license under this
21 chapter part commits a felony of the third degree, punishable
22 as provided in s. 775.082, s. 775.083, or s. 775.084. Each day
23 of continued operation is a separate offense.

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

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 | unlicensed facility is licensed or ceases operation.

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

9 | (2) It is unlawful to knowingly refer a person for
10 | residency to an unlicensed assisted living facility; to an
11 | assisted living facility the license of which is under denial
12 | or has been suspended or revoked; or to an assisted living
13 | facility that has a moratorium on admissions. Any person who
14 | violates this subsection commits a noncriminal violation,
15 | punishable by a fine not exceeding \$500 as provided in s.
16 | 775.083.

17 | (f) At least annually, the agency shall notify, in
18 | appropriate trade publications, physicians licensed under
19 | chapter 458 or chapter 459, hospitals licensed under chapter
20 | 395, nursing home facilities licensed under part II of ~~this~~
21 | chapter 400, and employees of the agency or the department, or
22 | the Department of Children and Family Services, who are
23 | responsible for referring persons for residency, that it is
24 | unlawful to knowingly refer a person for residency to an
25 | unlicensed assisted living facility and shall notify them of
26 | the penalty for violating such prohibition. The department and
27 | the Department of Children and Family Services shall, in turn,
28 | notify service providers under contract to the respective
29 | departments who have responsibility for resident referrals to
30 | facilities. Further, the notice must direct each noticed
31 | facility and individual to contact the appropriate agency

Bill No. SB 1836

Barcode 363104

586-1978-05

1 office in order to verify the licensure status of any facility
2 prior to referring any person for residency. Each notice must
3 include the name, telephone number, and mailing address of the
4 appropriate office to contact.

5 Section 33. Section 400.411, Florida Statutes, is
6 renumbered as section 429.11, Florida Statutes, and paragraph
7 (c) of subsection (3) and subsections (4), (11), and (13) are
8 amended to read:

9 429.11 ~~400.411~~ Initial application for license;
10 provisional license.--

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

13 (c) The name and address of any long-term care
14 facility with which the applicant, administrator, or financial
15 officer has been affiliated through ownership or employment
16 within 5 years of the date of this license application; and a
17 signed affidavit disclosing any financial or ownership
18 interest that the applicant, or any person listed in paragraph
19 (a), holds or has held within the last 5 years in any facility
20 licensed under this chapter part, or in any other entity
21 licensed by this state or another state to provide health or
22 residential care, which facility or entity closed or ceased to
23 operate as a result of financial problems, or has had a
24 receiver appointed or a license denied, suspended or revoked,
25 or was subject to a moratorium on admissions, or has had an
26 injunctive proceeding initiated against it.

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (11) The applicant must furnish proof of compliance
2 with level 2 background screening as required under s. 429.174
3 ~~400.4174~~.

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

12 Section 34. Section 400.412, Florida Statutes, is
13 renumbered as section 429.12, Florida Statutes, and subsection
14 (1) is amended to read:

15 429.12 ~~400.412~~ Sale or transfer of ownership of a
16 facility.--It is the intent of the Legislature to protect the
17 rights of the residents of an assisted living facility when
18 the facility is sold or the ownership thereof is transferred.
19 Therefore, whenever a facility is sold or the ownership
20 thereof is transferred, including leasing:

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

25 Section 35. Section 400.414, Florida Statutes, is
26 renumbered as section 429.14, Florida Statutes, and
27 subsections (1), (3), and (5) are amended to read:

28 429.14 ~~400.414~~ Denial, revocation, or suspension of
29 license; imposition of administrative fine; grounds.--

30 (1) The agency may deny, revoke, or suspend any
31 license issued under this chapter part, or impose an

Bill No. SB 1836

Barcode 363104

586-1978-05

1 administrative fine in the manner provided in chapter 120, for
2 any of the following actions by an assisted living facility,
3 for the actions of any person subject to level 2 background
4 screening under s. 429.174 ~~400.4174~~, or for the actions of any
5 facility employee:

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

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

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

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

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

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

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

1 agency.

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

10 (h) Violation of a moratorium.

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

16 (j) A fraudulent statement or omission of any material
 17 fact on an application for a license or any other document
 18 required by the agency, including the submission of a license
 19 application that conceals the fact that any board member,
 20 officer, or person owning 5 percent or more of the facility
 21 may not meet the background screening requirements of s.
 22 429.174 ~~400.4174~~, or that the applicant has been excluded,
 23 permanently suspended, or terminated from the Medicaid or
 24 Medicare programs.

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

31 (l) Exclusion, permanent suspension, or termination

Bill No. SB 1836

Barcode 363104

586-1978-05

1 from the Medicare or Medicaid programs.

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

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

7
8 Administrative proceedings challenging agency action under
9 this subsection shall be reviewed on the basis of the facts
10 and conditions that resulted in the agency action.

11 (3) The agency may deny a license to any applicant or
12 to any officer or board member of an applicant who is a firm,
13 corporation, partnership, or association or who owns 5 percent
14 or more of the facility, if the applicant, officer, or board
15 member has or had a 25-percent or greater financial or
16 ownership interest in any other facility licensed under this
17 chapter part, or in any entity licensed by this state or
18 another state to provide health or residential care, which
19 facility or entity during the 5 years prior to the application
20 for a license closed due to financial inability to operate;
21 had a receiver appointed or a license denied, suspended, or
22 revoked; was subject to a moratorium on admissions; had an
23 injunctive proceeding initiated against it; or has an
24 outstanding fine assessed under this chapter or chapter 400.

25 (5) An action taken by the agency to suspend, deny, or
26 revoke a facility's license under this chapter part, in which
27 the agency claims that the facility owner or an employee of
28 the facility has threatened the health, safety, or welfare of
29 a resident of the facility be heard by the Division of
30 Administrative Hearings of the Department of Management
31 Services within 120 days after receipt of the facility's

Bill No. SB 1836

Barcode 363104

586-1978-05

1 request for a hearing, unless that time limitation is waived
2 by both parties. The administrative law judge must render a
3 decision within 30 days after receipt of a proposed
4 recommended order.

5 Section 36. Section 400.415, Florida Statutes, is
6 renumbered as section 429.15, Florida Statutes, and subsection
7 (1) is amended to read:

8 429.15 ~~400.415~~ Moratorium on admissions; notice.--The
9 agency may impose an immediate moratorium on admissions to any
10 assisted living facility if the agency determines that any
11 condition in the facility presents a threat to the health,
12 safety, or welfare of the residents in the facility.

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

18 Section 37. Section 400.417, Florida Statutes, is
19 renumbered as section 429.17, Florida Statutes, and
20 subsections (2) and (3) are amended to read:

21 429.17 ~~400.417~~ Expiration of license; renewal;
22 conditional license.--

23 (2) A license shall be renewed within 90 days upon the
24 timely filing of an application on forms furnished by the
25 agency and the provision of satisfactory proof of ability to
26 operate and conduct the facility in accordance with the
27 requirements of this chapter ~~part~~ and adopted rules, including
28 proof that the facility has received a satisfactory firesafety
29 inspection, conducted by the local authority having
30 jurisdiction or the State Fire Marshal, within the preceding
31 12 months and an affidavit of compliance with the background

Bill No. SB 1836

Barcode 363104

586-1978-05

1 screening requirements of s. 429.174 ~~400.4174~~.

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

21 Section 38. Section 400.4174, Florida Statutes, is
22 renumbered as section 429.174, Florida Statutes, and
23 subsection (2) is amended to read:

24 429.174 ~~400.4174~~ Background screening; exemptions.--

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 requirement if:

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

8 (b) The person required to be screened has been
9 continuously employed in the same type of occupation for which
10 the person is seeking employment without a breach in service
11 which exceeds 180 days, and proof of compliance with the level
12 1 screening requirement which is no more than 2 years old is
13 provided. Proof of compliance shall be provided directly from
14 one employer or contractor to another, and not from the person
15 screened. Upon request, a copy of screening results shall be
16 provided by the employer retaining documentation of the
17 screening to the person screened.

18 (c) The person required to be screened is employed by
19 a corporation or business entity or related corporation or
20 business entity that owns, operates, or manages more than one
21 facility or agency licensed under this chapter or chapter 400,
22 and for whom a level 1 screening was conducted by the
23 corporation or business entity as a condition of initial or
24 continued employment.

25 Section 39. Section 400.4176, Florida Statutes, is
26 renumbered as section 429.176, Florida Statutes, and amended
27 to read:

28 429.176 ~~400.4176~~ Notice of change of
29 administrator.--If, during the period for which a license is
30 issued, the owner changes administrators, the owner must
31 notify the agency of the change within 10 days and provide

Bill No. SB 1836

Barcode 363104

586-1978-05

1 documentation within 90 days that the new administrator has
2 completed the applicable core educational requirements under
3 s. 429.52 ~~400.452~~. Background screening shall be completed on
4 any new administrator as specified in s. 429.174 ~~400.4174~~.

5 Section 40. Section 400.4177, Florida Statutes, is
6 renumbered as section 429.177, Florida Statutes, and amended
7 to read:

8 429.177 ~~400.4177~~ Patients with Alzheimer's disease or
9 other related disorders; certain disclosures.--A facility
10 licensed under this chapter ~~part~~ which claims that it provides
11 special care for persons who have Alzheimer's disease or other
12 related disorders must disclose in its advertisements or in a
13 separate document those services that distinguish the care as
14 being especially applicable to, or suitable for, such
15 persons. The facility must give a copy of all such
16 advertisements or a copy of the document to each person who
17 requests information about programs and services for persons
18 with Alzheimer's disease or other related disorders offered by
19 the facility and must maintain a copy of all such
20 advertisements and documents in its records. The agency shall
21 examine all such advertisements and documents in the
22 facility's records as part of the license renewal procedure.

23 Section 41. Section 400.4178, Florida Statutes, is
24 renumbered as section 429.178, Florida Statutes, and
25 paragraphs (a) and (b) of subsection (2) are amended to read:

26 429.178 ~~400.4178~~ Special care for persons with
27 Alzheimer's disease or other related disorders.--

28 (2)(a) An individual who is employed by a facility
29 that provides special care for residents with Alzheimer's
30 disease or other related disorders, and who has regular
31 contact with such residents, must complete up to 4 hours of

Bill No. SB 1836

Barcode 363104

586-1978-05

1 initial dementia-specific training developed or approved by
2 the department. The training shall be completed within 3
3 months after beginning employment and shall satisfy the core
4 training requirements of s. 429.52 ~~400.452~~(2)(g).

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

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

16 429.18 ~~400.418~~ Disposition of fees and administrative
17 fines.--

18 (1) Income from license fees, inspection fees, late
19 fees, and administrative fines generated pursuant to ss.
20 429.07, 429.08, 429.17, 429.19, and 429.31 ~~400.407, 400.408,~~
21 ~~400.417, 400.419, and 400.431~~ shall be deposited in the Health
22 Care Trust Fund administered by the agency. Such funds shall
23 be directed to and used by the agency for the following
24 purposes:

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

31 (b) An amount of \$5,000 of the trust funds accrued

Bill No. SB 1836

Barcode 363104

586-1978-05

1 each year under this chapter part shall be allocated to pay
2 for inspection-related physical and mental health examinations
3 requested by the agency pursuant to s. 429.26 ~~400.426~~ for
4 residents who are either recipients of supplemental security
5 income or have monthly incomes not in excess of the maximum
6 combined federal and state cash subsidies available to
7 supplemental security income recipients, as provided for in s.
8 409.212. Such funds shall only be used where the resident is
9 ineligible for Medicaid.

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

18 (2) Income from fees generated pursuant to s. 429.41
19 ~~400.441~~(5) shall be deposited in the Health Care Trust Fund
20 and used to offset the costs of printing and postage.

21 Section 43. Section 400.419, Florida Statutes, is
22 renumbered as section 429.19, Florida Statutes, and
23 subsections (1), (2), (9), (10), (11), and (12) are amended to
24 read:

25 429.19 ~~400.419~~ Violations; imposition of
26 administrative fines; grounds.--

27 (1) The agency shall impose an administrative fine in
28 the manner provided in chapter 120 for any of the actions or
29 violations as set forth within this section by an assisted
30 living facility, for the actions of any person subject to
31 level 2 background screening under s. 429.174 ~~400.4174~~, for

Bill No. SB 1836

Barcode 363104

586-1978-05

1 the actions of any facility employee, or for an intentional or
2 negligent act seriously affecting the health, safety, or
3 welfare of a resident of the facility.

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

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

22 (b) Class "II" violations are those conditions or
23 occurrences related to the operation and maintenance of a
24 facility or to the personal care of residents which the agency
25 determines directly threaten the physical or emotional health,
26 safety, or security of the facility residents, other than
27 class I violations. The agency shall impose an administrative
28 fine for a cited class II violation in an amount not less than
29 \$1,000 and not exceeding \$5,000 for each violation. A fine
30 shall be levied notwithstanding the correction of the
31 violation.

Bill No. SB 1836

Barcode 363104

586-1978-05

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

14 (d) Class "IV" violations are those conditions or
15 occurrences related to the operation and maintenance of a
16 building or to required reports, forms, or documents that do
17 not have the potential of negatively affecting residents.
18 These violations are of a type that the agency determines do
19 not threaten the health, safety, or security of residents of
20 the facility. The agency shall impose an administrative fine
21 for a cited class IV violation in an amount not less than \$100
22 and not exceeding \$200 for each violation. A citation for a
23 class IV violation must specify the time within which the
24 violation is required to be corrected. If a class IV violation
25 is corrected within the time specified, no fine shall be
26 imposed. Any class IV violation that is corrected during the
27 time an agency survey is being conducted will be identified as
28 an agency finding and not as a violation.

29 (9) Any facility whose owner fails to apply for a
30 change-of-ownership license in accordance with s. 429.12
31 ~~400.412~~ and operates the facility under the new ownership is

Bill No. SB 1836

Barcode 363104

586-1978-05

1 subject to a fine of \$5,000.

2 (10) In addition to any administrative fines imposed,
3 the agency may assess a survey fee, equal to the lesser of one
4 half of the facility's biennial license and bed fee or \$500,
5 to cover the cost of conducting initial complaint
6 investigations that result in the finding of a violation that
7 was the subject of the complaint or monitoring visits
8 conducted under s. 429.28 ~~400.428~~(3) (c) to verify the
9 correction of the violations.

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

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

24 Section 44. Section 400.4195, Florida Statutes, is
25 renumbered as section 429.195, Florida Statutes, and
26 subsection (1) is amended to read:

27 429.195 ~~400.4195~~ Rebates prohibited; penalties.--

28 (1) It is unlawful for any assisted living facility
29 licensed under this chapter part to contract or promise to pay
30 or receive any commission, bonus, kickback, or rebate or
31 engage in any split-fee arrangement in any form whatsoever

Bill No. SB 1836

Barcode 363104

586-1978-05

1 with any physician, surgeon, organization, agency, or person,
2 either directly or indirectly, for residents referred to an
3 assisted living facility licensed under this chapter part. A
4 facility may employ or contract with persons to market the
5 facility, provided the employee or contract provider clearly
6 indicates that he or she represents the facility. A person or
7 agency independent of the facility may provide placement or
8 referral services for a fee to individuals seeking assistance
9 in finding a suitable facility; however, any fee paid for
10 placement or referral services must be paid by the individual
11 looking for a facility, not by the facility.

12 Section 45. Section 400.42, Florida Statutes, is
13 renumbered as section 429.20, Florida Statutes, and
14 subsection (3) is amended to read:

15 429.20 ~~400.42~~ Certain solicitation prohibited;
16 third-party supplementation.--

17 (3) The admission or maintenance of assisted living
18 facility residents whose care is supported, in whole or in
19 part, by state funds may not be conditioned upon the receipt
20 of any manner of contribution or donation from any person. The
21 solicitation or receipt of contributions in violation of this
22 subsection is grounds for denial, suspension, or revocation of
23 license, as provided in s. 429.14 ~~400.414~~, for any assisted
24 living facility by or on behalf of which such contributions
25 were solicited.

26 Section 46. Section 400.421, Florida Statutes, is
27 renumbered as section 429.21, Florida Statutes, and
28 subsection (1) is amended to read:

29 429.21 ~~400.421~~ Injunctive proceedings.--

30 (1) The agency may institute injunctive proceedings in
31 a court of competent jurisdiction to:

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (a) Enforce the provisions of this chapter part or any
2 minimum standard, rule, or order issued or entered into
3 pursuant thereto when the attempt by the agency to correct a
4 violation through administrative fines has failed or when the
5 violation materially affects the health, safety, or welfare of
6 residents; or

7 (b) Terminate the operation of a facility when
8 violations of any provisions of this chapter part or of any
9 standard or rule promulgated pursuant thereto exist which
10 materially affect the health, safety, or welfare of residents.

11 Section 47. Section 400.422, Florida Statutes, is
12 renumbered as section 429.22, Florida Statutes, and paragraph
13 (a) of subsection (1) and subsection (9) are amended to read:

14 429.22 ~~400.422~~ Receivership proceedings.--

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

20 (a) The facility is operating without a license and
21 refuses to make application for a license as required by ss.
22 429.07 ~~400.407~~ and 429.08 ~~400.408~~.

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

26 Section 48. Section 400.423, Florida Statutes, is
27 renumbered as section 429.23, Florida Statutes, and
28 subsections (1), (2), (5), and (8) are amended to read:

29 429.23 ~~400.423~~ Internal risk management and quality
30 assurance program; adverse incidents and reporting
31 requirements.--

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (1) Every facility licensed under this chapter part
2 may, as part of its administrative functions, voluntarily
3 establish a risk management and quality assurance program, the
4 purpose of which is to assess resident care practices,
5 facility incident reports, deficiencies cited by the agency,
6 adverse incident reports, and resident grievances and develop
7 plans of action to correct and respond quickly to identify
8 quality differences.

9 (2) Every facility licensed under this chapter part is
10 required to maintain adverse incident reports. For purposes of
11 this section, the term, "adverse incident" means:

12 (a) An event over which facility personnel could
13 exercise control rather than as a result of the resident's
14 condition and results in:

- 15 1. Death;
- 16 2. Brain or spinal damage;
- 17 3. Permanent disfigurement;
- 18 4. Fracture or dislocation of bones or joints;
- 19 5. Any condition that required medical attention to
20 which the resident has not given his or her consent, including
21 failure to honor advanced directives;
- 22 6. Any condition that requires the transfer of the
23 resident from the facility to a unit providing more acute care
24 due to the incident rather than the resident's condition
25 before the incident.

26 (b) Abuse, neglect, or exploitation as defined in s.
27 415.102;

28 (c) Events reported to law enforcement; or

29 (d) Elopement.

30 (5) Each facility shall report monthly to the agency
31 any liability claim filed against it. The report must include

Bill No. SB 1836

Barcode 363104

586-1978-05

1 the name of the resident, the dates of the incident leading to
2 the claim, if applicable, and the type of injury or violation
3 of rights alleged to have occurred. This report is not
4 discoverable in any civil or administrative action, except in
5 such actions brought by the agency to enforce the provisions
6 of this chapter part.

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

13 Section 49. Section 400.424, Florida Statutes, is
14 renumbered as section 429.24, Florida Statutes, and
15 subsection (2), paragraph (a) of subsection (3), and
16 subsection (5) are amended to read:

17 429.24 ~~400.424~~ Contracts.--

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

28 (a) Such funds shall be deposited in a banking
29 institution in this state that is located, if possible, in the
30 same community in which the facility is located; shall be kept
31 separate from the funds and property of the facility; may not

1 be represented as part of the assets of the facility on
 2 financial statements; and shall be used, or otherwise
 3 expended, only for the account of the resident.

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

11 (3) (a) The contract shall include a refund policy to
 12 be implemented at the time of a resident's transfer,
 13 discharge, or death. The refund policy shall provide that the
 14 resident or responsible party is entitled to a prorated refund
 15 based on the daily rate for any unused portion of payment
 16 beyond the termination date after all charges, including the
 17 cost of damages to the residential unit resulting from
 18 circumstances other than normal use, have been paid to the
 19 licensee. For the purpose of this paragraph, the termination
 20 date shall be the date the unit is vacated by the resident and
 21 cleared of all personal belongings. If the amount of
 22 belongings does not preclude renting the unit, the facility
 23 may clear the unit and charge the resident or his or her
 24 estate for moving and storing the items at a rate equal to the
 25 actual cost to the facility, not to exceed 20 percent of the
 26 regular rate for the unit, provided that 14 days' advance
 27 written notification is given. If the resident's possessions
 28 are not claimed within 45 days after notification, the
 29 facility may dispose of them. The contract shall also specify
 30 any other conditions under which claims will be made against
 31 the refund due the resident. Except in the case of death or a

1 discharge due to medical reasons, the refunds shall be
 2 computed in accordance with the notice of relocation
 3 requirements specified in the contract. However, a resident
 4 may not be required to provide the licensee with more than 30
 5 days' notice of termination. If after a contract is
 6 terminated, the facility intends to make a claim against a
 7 refund due the resident, the facility shall notify the
 8 resident or responsible party in writing of the claim and
 9 shall provide said party with a reasonable time period of no
 10 less than 14 calendar days to respond. The facility shall
 11 provide a refund to the resident or responsible party within
 12 45 days after the transfer, discharge, or death of the
 13 resident. The agency shall impose a fine upon a facility that
 14 fails to comply with the refund provisions of the paragraph,
 15 which fine shall be equal to three times the amount due to the
 16 resident. One-half of the fine shall be remitted to the
 17 resident or his or her estate, and the other half to the
 18 Health Care Trust Fund to be used for the purpose specified in
 19 s. 429.18 ~~400.418~~.

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

24 Section 50. Section 400.4255, Florida Statutes, is
 25 renumbered as section 429.255, Florida Statutes, and
 26 paragraphs (a) and (b) of subsection (1) and subsection (2)
 27 are amended to read:

28 429.255 ~~400.4255~~ Use of personnel; emergency care.--
 29 (1)(a) Persons under contract to the facility,
 30 facility staff, or volunteers, who are licensed according to
 31 part I of chapter 464, or those persons exempt under s.

Bill No. SB 1836

Barcode 363104

586-1978-05

1 464.022(1), and others as defined by rule, may administer
2 medications to residents, take residents' vital signs, manage
3 individual weekly pill organizers for residents who
4 self-administer medication, give prepackaged enemas ordered by
5 a physician, observe residents, document observations on the
6 appropriate resident's record, report observations to the
7 resident's physician, and contract or allow residents or a
8 resident's representative, designee, surrogate, guardian, or
9 attorney in fact to contract with a third party, provided
10 residents meet the criteria for appropriate placement as
11 defined in s. 429.26 ~~400.426~~. Nursing assistants certified
12 pursuant to part II of chapter 464 may take residents' vital
13 signs as directed by a licensed nurse or physician.

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

22 (2) In facilities licensed to provide extended
23 congregate care, persons under contract to the facility,
24 facility staff, or volunteers, who are licensed according to
25 part I of chapter 464, or those persons exempt under s.
26 464.022(1), or those persons certified as nursing assistants
27 pursuant to part II of chapter 464, may also perform all
28 duties within the scope of their license or certification, as
29 approved by the facility administrator and pursuant to this
30 chapter part.

31 Section 51. Section 400.4256, Florida Statutes, is

Bill No. SB 1836

Barcode 363104

586-1978-05

1 renumbered as section 429.256, Florida Statutes, and paragraph
2 (b) of subsection (1) is amended to read:

3 429.256 ~~400.4256~~ Assistance with self-administration
4 of medication.--

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

6 (b) "Unlicensed person" means an individual not
7 currently licensed to practice nursing or medicine who is
8 employed by or under contract to an assisted living facility
9 and who has received training with respect to assisting with
10 the self-administration of medication in an assisted living
11 facility as provided under s. 429.52 ~~400.452~~ prior to
12 providing such assistance as described in this section.

13 Section 52. Section 400.426, Florida Statutes, is
14 renumbered as section 429.26, Florida Statutes, and
15 subsections (1), (4), (5), (9), and (12) are amended to read:

16 429.26 ~~400.426~~ Appropriateness of placements;
17 examinations of residents.--

18 (1) The owner or administrator of a facility is
19 responsible for determining the appropriateness of admission
20 of an individual to the facility and for determining the
21 continued appropriateness of residence of an individual in the
22 facility. A determination shall be based upon an assessment of
23 the strengths, needs, and preferences of the resident, the
24 care and services offered or arranged for by the facility in
25 accordance with facility policy, and any limitations in law or
26 rule related to admission criteria or continued residency for
27 the type of license held by the facility under this chapter
28 ~~part~~. A resident may not be moved from one facility to another
29 without consultation with and agreement from the resident or,
30 if applicable, the resident's representative or designee or
31 the resident's family, guardian, surrogate, or attorney in

Bill No. SB 1836

Barcode 363104

586-1978-05

1 fact. In the case of a resident who has been placed by the
2 department or the Department of Children and Family Services,
3 the administrator must notify the appropriate contact person
4 in the applicable department.

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

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

31 (9) If, at any time after admission to a facility, a

Bill No. SB 1836

Barcode 363104

586-1978-05

1 resident appears to need care beyond that which the facility
2 is licensed to provide, the agency shall require the resident
3 to be physically examined by a licensed physician or licensed
4 nurse practitioner. This examination shall, to the extent
5 possible, be performed by the resident's preferred physician
6 or nurse practitioner and shall be paid for by the resident
7 with personal funds, except as provided in s. 429.18
8 ~~400.418~~(1)(b). Following this examination, the examining
9 physician or licensed nurse practitioner shall complete and
10 sign a medical form provided by the agency. The completed
11 medical form shall be submitted to the agency within 30 days
12 after the date the facility owner or administrator is notified
13 by the agency that the physical examination is required. After
14 consultation with the physician or licensed nurse practitioner
15 who performed the examination, a medical review team
16 designated by the agency shall then determine whether the
17 resident is appropriately residing in the facility. The
18 medical review team shall base its decision on a comprehensive
19 review of the resident's physical and functional status,
20 including the resident's preferences, and not on an isolated
21 health-related problem. In the case of a mental health
22 resident, if the resident appears to have needs in addition to
23 those identified in the community living support plan, the
24 agency may require an evaluation by a mental health
25 professional, as determined by the Department of Children and
26 Family Services. A facility may not be required to retain a
27 resident who requires more services or care than the facility
28 is able to provide in accordance with its policies and
29 criteria for admission and continued residency. Members of the
30 medical review team making the final determination may not
31 include the agency personnel who initially questioned the

Bill No. SB 1836

Barcode 363104

586-1978-05

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

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

15 Section 53. Section 400.427, Florida Statutes, is
16 renumbered as section 429.27, Florida Statutes, and paragraph
17 (a) of subsection (6) is amended to read:

18 429.27 ~~400.427~~ Property and personal affairs of
19 residents.--

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

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

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

31

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

3 Section 54. Section 400.4275, Florida Statutes, is
4 renumbered as section 429.275, Florida Statutes, and
5 subsection (2) is amended to read:

6 429.275 ~~400.4275~~ Business practice; personnel records;
7 liability insurance.--The assisted living facility shall be
8 administered on a sound financial basis that is consistent
9 with good business practices.

10 (2) The administrator or owner of a facility shall
11 maintain personnel records for each staff member which
12 contain, at a minimum, documentation of background screening,
13 if applicable, documentation of compliance with all training
14 requirements of this chapter part or applicable rule, and a
15 copy of all licenses or certification held by each staff who
16 performs services for which licensure or certification is
17 required under this chapter part or rule.

18 Section 55. Section 400.428, Florida Statutes, is
19 renumbered as section 429.28, Florida Statutes, and paragraph
20 (f) of subsection (1), subsection (2), paragraph (e) of
21 subsection (3), paragraph (c) of subsection (5), and
22 subsection (7) are amended to read:

23 429.28 ~~400.428~~ Resident bill of rights.--

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

29 (f) Manage his or her financial affairs unless the
30 resident or, if applicable, the resident's representative,
31 designee, surrogate, guardian, or attorney in fact authorizes

Bill No. SB 1836

Barcode 363104

586-1978-05

1 the administrator of the facility to provide safekeeping for
2 funds as provided in s. 429.27 ~~400.427~~.

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

16 (3)

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

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

24 (c) Files a civil action alleging a violation of the
25 provisions of this chapter part or notifies a state attorney
26 or the Attorney General of a possible violation of such
27 provisions.

28 (7) Any person who submits or reports a complaint
29 concerning a suspected violation of the provisions of this
30 chapter part or concerning services and conditions in
31 facilities, or who testifies in any administrative or judicial

1 proceeding arising from such a complaint, shall have immunity
 2 from any civil or criminal liability therefor, unless such
 3 person has acted in bad faith or with malicious purpose or the
 4 court finds that there was a complete absence of a justiciable
 5 issue of either law or fact raised by the losing party.

6 Section 56. Section 400.429, Florida Statutes, is
 7 renumbered as section 429.29, Florida Statutes, and
 8 subsections (1), (2), and (7) are amended to read:

9 429.29 ~~400.429~~ Civil actions to enforce rights.--

10 (1) Any person or resident whose rights as specified
 11 in this chapter ~~part~~ are violated shall have a cause of
 12 action. The action may be brought by the resident or his or
 13 her guardian, or by a person or organization acting on behalf
 14 of a resident with the consent of the resident or his or her
 15 guardian, or by the personal representative of the estate of a
 16 deceased resident regardless of the cause of death. If the
 17 action alleges a claim for the resident's rights or for
 18 negligence that caused the death of the resident, the claimant
 19 shall be required to elect either survival damages pursuant to
 20 s. 46.021 or wrongful death damages pursuant to s. 768.21. If
 21 the action alleges a claim for the resident's rights or for
 22 negligence that did not cause the death of the resident, the
 23 personal representative of the estate may recover damages for
 24 the negligence that caused injury to the resident. The action
 25 may be brought in any court of competent jurisdiction to
 26 enforce such rights and to recover actual damages, and
 27 punitive damages for violation of the rights of a resident or
 28 negligence. Any resident who prevails in seeking injunctive
 29 relief or a claim for an administrative remedy is entitled to
 30 recover the costs of the action and a reasonable attorney's
 31 fee assessed against the defendant not to exceed \$25,000. Fees

Bill No. SB 1836

Barcode 363104

586-1978-05

1 shall be awarded solely for the injunctive or administrative
2 relief and not for any claim or action for damages whether
3 such claim or action is brought together with a request for an
4 injunction or administrative relief or as a separate action,
5 except as provided under s. 768.79 or the Florida Rules of
6 Civil Procedure. Sections 429.29-429.298 ~~400.429-400.4303~~
7 provide the exclusive remedy for a cause of action for
8 recovery of damages for the personal injury or death of a
9 resident arising out of negligence or a violation of rights
10 specified in s. 429.28 ~~400.428~~. This section does not preclude
11 theories of recovery not arising out of negligence or s.
12 429.28 ~~400.428~~ which are available to a resident or to the
13 agency. The provisions of chapter 766 do not apply to any
14 cause of action brought under ss. 429.29-429.298
15 ~~400.429-400.4303~~.

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

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

27
28 Nothing in this chapter part shall be interpreted to create
29 strict liability. A violation of the rights set forth in s.
30 429.28 ~~400.428~~ or in any other standard or guidelines
31 specified in this chapter part or in any applicable

Bill No. SB 1836

Barcode 363104

586-1978-05

1 administrative standard or guidelines of this state or a
2 federal regulatory agency shall be evidence of negligence but
3 shall not be considered negligence per se.

4 (7) The resident or the resident's legal
5 representative shall serve a copy of any complaint alleging in
6 whole or in part a violation of any rights specified in this
7 chapter part to the Agency for Health Care Administration at
8 the time of filing the initial complaint with the clerk of the
9 court for the county in which the action is pursued. The
10 requirement of providing a copy of the complaint to the agency
11 does not impair the resident's legal rights or ability to seek
12 relief for his or her claim.

13 Section 57. Section 400.4293, Florida Statutes, is
14 renumbered as section 429.293, Florida Statutes, and paragraph
15 (a) of subsection (1) and subsections (2) and (10) are amended
16 to read:

17 429.293 ~~400.4293~~ Presuit notice; investigation;
18 notification of violation of residents' rights or alleged
19 negligence; claims evaluation procedure; informal discovery;
20 review; settlement offer; mediation.--

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

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

27 (2) Prior to filing a claim for a violation of a
28 resident's rights or a claim for negligence, a claimant
29 alleging injury to or the death of a resident shall notify
30 each prospective defendant by certified mail, return receipt
31 requested, of an asserted violation of a resident's rights

Bill No. SB 1836

Barcode 363104

586-1978-05

1 provided in s. 429.28 ~~400.428~~ or deviation from the standard
2 of care. Such notification shall include an identification of
3 the rights the prospective defendant has violated and the
4 negligence alleged to have caused the incident or incidents
5 and a brief description of the injuries sustained by the
6 resident which are reasonably identifiable at the time of
7 notice. The notice shall contain a certificate of counsel that
8 counsel's reasonable investigation gave rise to a good faith
9 belief that grounds exist for an action against each
10 prospective defendant.

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

15 Section 58. Section 400.4294, Florida Statutes, is
16 renumbered as section 429.294, Florida Statutes, and
17 subsection (1) is amended to read:

18 429.294 ~~400.4294~~ Availability of facility records for
19 investigation of resident's rights violations and defenses;
20 penalty.--

21 (1) Failure to provide complete copies of a resident's
22 records, including, but not limited to, all medical records
23 and the resident's chart, within the control or possession of
24 the facility within 10 days, in accordance with the provisions
25 of s. 400.145, shall constitute evidence of failure of that
26 party to comply with good faith discovery requirements and
27 shall waive the good faith certificate and presuit notice
28 requirements under this chapter ~~part~~ by the requesting party.

29 Section 59. Section 400.4295, Florida Statutes, is
30 renumbered as section 429.295, Florida Statutes, and amended
31 to read:

Bill No. SB 1836

Barcode 363104

586-1978-05

1 429.295 ~~400.4295~~ Certain provisions not applicable to
2 actions under this chapter ~~part~~.--An action under this chapter
3 ~~part~~ for a violation of rights or negligence recognized herein
4 is not a claim for medical malpractice, and the provisions of
5 s. 768.21(8) do not apply to a claim alleging death of the
6 resident.

7 Section 60. Section 400.4296, Florida Statutes, is
8 renumbered as section 429.296, Florida Statutes, and
9 subsection (1) is amended to read:

10 429.296 ~~400.4296~~ Statute of limitations.--

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

19 Section 61. Section 400.4297, Florida Statutes, is
20 renumbered as section 429.297, Florida Statutes, and
21 subsection (1) is amended to read:

22 429.297 ~~400.4297~~ Punitive damages; pleading; burden of
23 proof.--

24 (1) In any action for damages brought under this
25 chapter ~~part~~, no claim for punitive damages shall be permitted
26 unless there is a reasonable showing by evidence in the record
27 or proffered by the claimant which would provide a reasonable
28 basis for recovery of such damages. The claimant may move to
29 amend her or his complaint to assert a claim for punitive
30 damages as allowed by the rules of civil procedure. The rules
31 of civil procedure shall be liberally construed so as to allow

Bill No. SB 1836

Barcode 363104

586-1978-05

1 the claimant discovery of evidence which appears reasonably
2 calculated to lead to admissible evidence on the issue of
3 punitive damages. No discovery of financial worth shall
4 proceed until after the pleading concerning punitive damages
5 is permitted.

6 Section 62. Section 400.431, Florida Statutes, is
7 renumbered as section 429.31, Florida Statutes, and
8 subsections (1) and (5) are amended to read:

9 429.31 ~~400.431~~ Closing of facility; notice; penalty.--

10 (1) Whenever a facility voluntarily discontinues
11 operation, it shall inform the agency in writing at least 90
12 days prior to the discontinuance of operation. The facility
13 shall also inform each resident or the next of kin, legal
14 representative, or agency acting on each resident's behalf, of
15 the fact and the proposed time of such discontinuance,
16 following the notification requirements provided in s. 429.28
17 ~~400.428~~ (1) (k). In the event a resident has no person to
18 represent him or her, the facility shall be responsible for
19 referral to an appropriate social service agency for
20 placement.

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

Bill No. SB 1836

Barcode 363104

586-1978-05

1 Section 63. Section 400.434, Florida Statutes, is
2 renumbered as section 429.34, Florida Statutes, and amended to
3 read:

4 429.34 ~~400.434~~ Right of entry and inspection.--Any
5 duly designated officer or employee of the department, the
6 Department of Children and Family Services, the agency, the
7 Medicaid Fraud Control Unit of the Department of Legal
8 Affairs, the state or local fire marshal, or a member of the
9 state or local long-term care ombudsman council shall have the
10 right to enter unannounced upon and into the premises of any
11 facility licensed pursuant to this chapter part in order to
12 determine the state of compliance with the provisions of this
13 chapter part and of rules or standards in force pursuant
14 thereto. The right of entry and inspection shall also extend
15 to any premises which the agency has reason to believe is
16 being operated or maintained as a facility without a license;
17 but no such entry or inspection of any premises may be made
18 without the permission of the owner or person in charge
19 thereof, unless a warrant is first obtained from the circuit
20 court authorizing such entry. The warrant requirement shall
21 extend only to a facility which the agency has reason to
22 believe is being operated or maintained as a facility without
23 a license. Any application for a license or renewal thereof
24 made pursuant to this chapter part shall constitute permission
25 for, and complete acquiescence in, any entry or inspection of
26 the premises for which the license is sought, in order to
27 facilitate verification of the information submitted on or in
28 connection with the application; to discover, investigate, and
29 determine the existence of abuse or neglect; or to elicit,
30 receive, respond to, and resolve complaints. Any current valid
31 license shall constitute unconditional permission for, and

Bill No. SB 1836

Barcode 363104

586-1978-05

1 complete acquiescence in, any entry or inspection of the
2 premises by authorized personnel. The agency shall retain the
3 right of entry and inspection of facilities that have had a
4 license revoked or suspended within the previous 24 months, to
5 ensure that the facility is not operating unlawfully. However,
6 before entering the facility, a statement of probable cause
7 must be filed with the director of the agency, who must
8 approve or disapprove the action within 48 hours. Probable
9 cause shall include, but is not limited to, evidence that the
10 facility holds itself out to the public as a provider of
11 personal care services or the receipt of a complaint by the
12 long-term care ombudsman council about the facility. Data
13 collected by the state or local long-term care ombudsman
14 councils or the state or local advocacy councils may be used
15 by the agency in investigations involving violations of
16 regulatory standards.

17 Section 64. Section 400.441, Florida Statutes, is
18 renumbered as section 429.41, Florida Statutes, and
19 subsections (1) and (2), paragraph (b) of subsection (3), and
20 subsection (5) are amended to read:

21 429.41 ~~400.441~~ Rules establishing standards.--

22 (1) It is the intent of the Legislature that rules
23 published and enforced pursuant to this section shall include
24 criteria by which a reasonable and consistent quality of
25 resident care and quality of life may be ensured and the
26 results of such resident care may be demonstrated. Such rules
27 shall also ensure a safe and sanitary environment that is
28 residential and noninstitutional in design or nature. It is
29 further intended that reasonable efforts be made to
30 accommodate the needs and preferences of residents to enhance
31 the quality of life in a facility. In order to provide safe

Bill No. SB 1836

Barcode 363104

586-1978-05

1 and sanitary facilities and the highest quality of resident
2 care accommodating the needs and preferences of residents, the
3 department, in consultation with the agency, the Department of
4 Children and Family Services, and the Department of Health,
5 shall adopt rules, policies, and procedures to administer this
6 chapter part, which must include reasonable and fair minimum
7 standards in relation to:

8 (a) The requirements for and maintenance of
9 facilities, not in conflict with the provisions of chapter
10 553, relating to plumbing, heating, cooling, lighting,
11 ventilation, living space, and other housing conditions, which
12 will ensure the health, safety, and comfort of residents and
13 protection from fire hazard, including adequate provisions for
14 fire alarm and other fire protection suitable to the size of
15 the structure. Uniform firesafety standards shall be
16 established and enforced by the State Fire Marshal in
17 cooperation with the agency, the department, and the
18 Department of Health.

19 1. Evacuation capability determination.--

20 a. The provisions of the National Fire Protection
21 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
22 for determining the ability of the residents, with or without
23 staff assistance, to relocate from or within a licensed
24 facility to a point of safety as provided in the fire codes
25 adopted herein. An evacuation capability evaluation for
26 initial licensure shall be conducted within 6 months after the
27 date of licensure. For existing licensed facilities that are
28 not equipped with an automatic fire sprinkler system, the
29 administrator shall evaluate the evacuation capability of
30 residents at least annually. The evacuation capability
31 evaluation for each facility not equipped with an automatic

Bill No. SB 1836

Barcode 363104

586-1978-05

1 fire sprinkler system shall be validated, without liability,
2 by the State Fire Marshal, by the local fire marshal, or by
3 the local authority having jurisdiction over firesafety,
4 before the license renewal date. If the State Fire Marshal,
5 local fire marshal, or local authority having jurisdiction
6 over firesafety has reason to believe that the evacuation
7 capability of a facility as reported by the administrator may
8 have changed, it may, with assistance from the facility
9 administrator, reevaluate the evacuation capability through
10 timed exiting drills. Translation of timed fire exiting drills
11 to evacuation capability may be determined:

12 (I) Three minutes or less: prompt.

13 (II) More than 3 minutes, but not more than 13
14 minutes: slow.

15 (III) More than 13 minutes: impractical.

16 b. The Office of the State Fire Marshal shall provide
17 or cause the provision of training and education on the proper
18 application of Chapter 5, NFPA 101A, 1995 edition, to its
19 employees, to staff of the Agency for Health Care
20 Administration who are responsible for regulating facilities
21 under this chapter part, and to local governmental inspectors.
22 The Office of the State Fire Marshal shall provide or cause
23 the provision of this training within its existing budget, but
24 may charge a fee for this training to offset its costs. The
25 initial training must be delivered within 6 months after July
26 1, 1995, and as needed thereafter.

27 c. The Office of the State Fire Marshal, in
28 cooperation with provider associations, shall provide or cause
29 the provision of a training program designed to inform
30 facility operators on how to properly review bid documents
31 relating to the installation of automatic fire sprinklers. The

Bill No. SB 1836

Barcode 363104

586-1978-05

1 Office of the State Fire Marshal shall provide or cause the
2 provision of this training within its existing budget, but may
3 charge a fee for this training to offset its costs. The
4 initial training must be delivered within 6 months after July
5 1, 1995, and as needed thereafter.

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

9 2. Firesafety requirements.--

10 a. Except for the special applications provided
11 herein, effective January 1, 1996, the provisions of the
12 National Fire Protection Association, Life Safety Code, NFPA
13 101, 1994 edition, Chapter 22 for new facilities and Chapter
14 23 for existing facilities shall be the uniform fire code
15 applied by the State Fire Marshal for assisted living
16 facilities, pursuant to s. 633.022.

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

29 c. Notwithstanding any provision of s. 633.022 or of
30 the National Fire Protection Association, NFPA 101A, Chapter
31 5, 1995 edition, to the contrary, any existing facility

1 housing eight or fewer residents is not required to install an
 2 automatic fire sprinkler system, nor to comply with any other
 3 requirement in Chapter 23, NFPA 101, 1994 edition, that
 4 exceeds the firesafety requirements of NFPA 101, 1988 edition,
 5 that applies to this size facility, unless the facility has
 6 been classified as impractical to evacuate. Any existing
 7 facility housing eight or fewer residents that is classified
 8 as impractical to evacuate must install an automatic fire
 9 sprinkler system within the timeframes granted in this
 10 section.

11 d. Any existing facility that is required to install
 12 an automatic fire sprinkler system under this paragraph need
 13 not meet other firesafety requirements of Chapter 23, NFPA
 14 101, 1994 edition, which exceed the provisions of NFPA 101,
 15 1988 edition. The mandate contained in this paragraph which
 16 requires certain facilities to install an automatic fire
 17 sprinkler system supersedes any other requirement.

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

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

23 g. A local government may charge fees only in an
 24 amount not to exceed the actual expenses incurred by local
 25 government relating to the installation and maintenance of an
 26 automatic fire sprinkler system in an existing and properly
 27 licensed assisted living facility structure as of January 1,
 28 1996.

29 h. If a licensed facility undergoes major
 30 reconstruction or addition to an existing building on or after
 31 January 1, 1996, the entire building must be equipped with an

Bill No. SB 1836

Barcode 363104

586-1978-05

1 automatic fire sprinkler system. Major reconstruction of a
2 building means repair or restoration that costs in excess of
3 50 percent of the value of the building as reported on the tax
4 rolls, excluding land, before reconstruction. Multiple
5 reconstruction projects within a 5-year period the total costs
6 of which exceed 50 percent of the initial value of the
7 building at the time the first reconstruction project was
8 permitted are to be considered as major reconstruction.
9 Application for a permit for an automatic fire sprinkler
10 system is required upon application for a permit for a
11 reconstruction project that creates costs that go over the
12 50-percent threshold.

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

18 (I) Impractical evacuation capability, 24 months.

19 (II) Slow evacuation capability, 48 months.

20 (III) Prompt evacuation capability, 60 months.

21

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

29 j. It is recognized that the installation of an
30 automatic fire sprinkler system may create financial hardship
31 for some facilities. The appropriate local fire official

Bill No. SB 1836

Barcode 363104

586-1978-05

1 shall, without liability, grant two 1-year extensions to the
2 timeframes for installation established herein, if an
3 automatic fire sprinkler installation cost estimate and proof
4 of denial from two financial institutions for a construction
5 loan to install the automatic fire sprinkler system are
6 submitted. However, for any facility with a class I or class
7 II, or a history of uncorrected class III, firesafety
8 deficiencies, an extension must not be granted. The local fire
9 official shall send a copy of the document granting the time
10 extension to the Agency for Health Care Administration.

11 k. A facility owner whose facility is required to be
12 equipped with an automatic fire sprinkler system under Chapter
13 23, NFPA 101, 1994 edition, as adopted herein, must disclose
14 to any potential buyer of the facility that an installation of
15 an automatic fire sprinkler requirement exists. The sale of
16 the facility does not alter the timeframe for the installation
17 of the automatic fire sprinkler system.

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

27 m. Except in cases of life-threatening fire hazards,
28 if an existing facility experiences a change in the evacuation
29 capability, or if the local authority having jurisdiction
30 identifies a construction-type restriction, such that an
31 automatic fire sprinkler system is required, it shall be

Bill No. SB 1836

Barcode 363104

586-1978-05

1 afforded time for installation as provided in this
2 subparagraph.

3
4 Facilities that are fully sprinkled and in compliance with
5 other firesafety standards are not required to conduct more
6 than one of the required fire drills between the hours of 11
7 p.m. and 7 a.m., per year. In lieu of the remaining drills,
8 staff responsible for residents during such hours may be
9 required to participate in a mock drill that includes a review
10 of evacuation procedures. Such standards must be included or
11 referenced in the rules adopted by the State Fire Marshal.
12 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the
13 final administrative authority for firesafety standards
14 established and enforced pursuant to this section. All
15 licensed facilities must have an annual fire inspection
16 conducted by the local fire marshal or authority having
17 jurisdiction.

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

27 (b) The preparation and annual update of a
28 comprehensive emergency management plan. Such standards must
29 be included in the rules adopted by the department after
30 consultation with the Department of Community Affairs. At a
31 minimum, the rules must provide for plan components that

Bill No. SB 1836

Barcode 363104

586-1978-05

1 address emergency evacuation transportation; adequate
2 sheltering arrangements; postdisaster activities, including
3 provision of emergency power, food, and water; postdisaster
4 transportation; supplies; staffing; emergency equipment;
5 individual identification of residents and transfer of
6 records; communication with families; and responses to family
7 inquiries. The comprehensive emergency management plan is
8 subject to review and approval by the local emergency
9 management agency. During its review, the local emergency
10 management agency shall ensure that the following agencies, at
11 a minimum, are given the opportunity to review the plan: the
12 Department of Elderly Affairs, the Department of Health, the
13 Agency for Health Care Administration, and the Department of
14 Community Affairs. Also, appropriate volunteer organizations
15 must be given the opportunity to review the plan. The local
16 emergency management agency shall complete its review within
17 60 days and either approve the plan or advise the facility of
18 necessary revisions.

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

25 (d) All sanitary conditions within the facility and
26 its surroundings which will ensure the health and comfort of
27 residents. The rules must clearly delineate the
28 responsibilities of the agency's licensure and survey staff,
29 the county health departments, and the local authority having
30 jurisdiction over fire safety and ensure that inspections are
31 not duplicative. The agency may collect fees for food service

Bill No. SB 1836

Barcode 363104

586-1978-05

1 inspections conducted by the county health departments and
2 transfer such fees to the Department of Health.

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

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

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

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

- 15 1. The supervision of residents;
- 16 2. The provision of personal services;
- 17 3. The provision of, or arrangement for, social and
18 leisure activities;
- 19 4. The arrangement for appointments and transportation
20 to appropriate medical, dental, nursing, or mental health
21 services, as needed by residents;
- 22 5. The management of medication;
- 23 6. The nutritional needs of residents;
- 24 7. Resident records; and
- 25 8. Internal risk management and quality assurance.

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

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

Bill No. SB 1836

Barcode 363104

586-1978-05

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

- 12 1. The continued need for the medication.
- 13 2. The level of the medication in the resident's
14 blood.
- 15 3. The need for adjustments in the prescription.

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

21 (2) In adopting any rules pursuant to this chapter
22 ~~part~~, the department, in conjunction with the agency, shall
23 make distinct standards for facilities based upon facility
24 size; the types of care provided; the physical and mental
25 capabilities and needs of residents; the type, frequency, and
26 amount of services and care offered; and the staffing
27 characteristics of the facility. Rules developed pursuant to
28 this section shall not restrict the use of shared staffing and
29 shared programming in facilities that are part of retirement
30 communities that provide multiple levels of care and otherwise
31 meet the requirements of law and rule. Except for uniform

1 firesafety standards, the department shall adopt by rule
 2 separate and distinct standards for facilities with 16 or
 3 fewer beds and for facilities with 17 or more beds. The
 4 standards for facilities with 16 or fewer beds shall be
 5 appropriate for a noninstitutional residential environment,
 6 provided that the structure is no more than two stories in
 7 height and all persons who cannot exit the facility unassisted
 8 in an emergency reside on the first floor. The department, in
 9 conjunction with the agency, may make other distinctions among
 10 types of facilities as necessary to enforce the provisions of
 11 this chapter part. Where appropriate, the agency shall offer
 12 alternate solutions for complying with established standards,
 13 based on distinctions made by the department and the agency
 14 relative to the physical characteristics of facilities and the
 15 types of care offered therein.

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

21 (b) The agency, in consultation with the department,
 22 may waive rules promulgated pursuant to this chapter part in
 23 order to demonstrate and evaluate innovative or cost-effective
 24 congregate care alternatives which enable individuals to age
 25 in place. Such waivers may be granted only in instances where
 26 there is reasonable assurance that the health, safety, or
 27 welfare of residents will not be endangered. To apply for a
 28 waiver, the licensee shall submit to the agency a written
 29 description of the concept to be demonstrated, including
 30 goals, objectives, and anticipated benefits; the number and
 31 types of residents who will be affected, if applicable; a

Bill No. SB 1836

Barcode 363104

586-1978-05

1 brief description of how the demonstration will be evaluated;
2 and any other information deemed appropriate by the
3 agency. Any facility granted a waiver shall submit a report
4 of findings to the agency and the department within 12
5 months. At such time, the agency may renew or revoke the
6 waiver or pursue any regulatory or statutory changes necessary
7 to allow other facilities to adopt the same practices. The
8 department may by rule clarify terms and establish waiver
9 application procedures, criteria for reviewing waiver
10 proposals, and procedures for reporting findings, as necessary
11 to implement this subsection.

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

16 Section 65. Section 400.442, Florida Statutes, is
17 renumbered as section 429.42, Florida Statutes, and
18 subsections (1) and (3) are amended to read:

19 429.42 ~~400.442~~ Pharmacy and dietary services.--

20 (1) Any assisted living facility in which the agency
21 has documented a class I or class II deficiency or uncorrected
22 class III deficiencies regarding medicinal drugs or
23 over-the-counter preparations, including their storage, use,
24 delivery, or administration, or dietary services, or both,
25 during a biennial survey or a monitoring visit or an
26 investigation in response to a complaint, shall, in addition
27 to or as an alternative to any penalties imposed under s.
28 429.19 ~~400.419~~, be required to employ the consultant services
29 of a licensed pharmacist, a licensed registered nurse, or a
30 registered or licensed dietitian, as applicable. The
31 consultant shall, at a minimum, provide onsite quarterly

1 consultation until the inspection team from the agency
2 determines that such consultation services are no longer
3 required.

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

10 Section 66. Section 400.444, Florida Statutes, is
11 renumbered as section 429.44, Florida Statutes, and subsection
12 (2) is amended to read:

13 429.44 ~~400.444~~ Construction and renovation;
14 requirements.--

15 (2) Upon notification by the local authority having
16 jurisdiction over life-threatening violations which seriously
17 threaten the health, safety, or welfare of a resident of a
18 facility, the agency shall take action as specified in s.
19 429.14 ~~400.414~~.

20 Section 67. Section 400.4445, Florida Statutes, is
21 renumbered as section 429.445, Florida Statutes, and amended
22 to read:

23 429.445 ~~400.4445~~ Compliance with local zoning
24 requirements.--No facility licensed under this chapter part
25 may commence any construction which will expand the size of
26 the existing structure unless the licensee first submits to
27 the agency proof that such construction will be in compliance
28 with applicable local zoning requirements. Facilities with a
29 licensed capacity of less than 15 persons shall comply with
30 the provisions of chapter 419.

31 Section 68. Section 400.447, Florida Statutes, is

1 renumbered as section 429.47, Florida Statutes, and
2 subsections (2), (5), and (7) are amended to read:

3 429.47 ~~400.447~~ Prohibited acts; penalties for
4 violation.--

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

14 (5) A freestanding facility shall not advertise or
15 imply that any part of it is a nursing home. For the purpose
16 of this subsection, "freestanding facility" means a facility
17 that is not operated in conjunction with a nursing home to
18 which residents of the facility are given priority when
19 nursing care is required. A person who violates this
20 subsection is subject to fine as specified in s. 429.19
21 ~~400.419~~.

22 (7) A facility licensed under this chapter ~~part~~ which
23 is not part of a facility authorized under chapter 651 shall
24 include the facility's license number as given by the agency
25 in all advertising. A company or person owning more than one
26 facility shall include at least one license number per
27 advertisement. All advertising shall include the term
28 "assisted living facility" before the license number.

29 Section 69. Section 400.451, Florida Statutes, is
30 renumbered as section 429.51, Florida Statutes, and amended to
31 read:

Bill No. SB 1836

Barcode 363104

586-1978-05

1 429.51 ~~400.451~~ Existing facilities to be given
2 reasonable time to comply with rules and standards.--Any
3 facility as defined in this chapter part which is in operation
4 at the time of promulgation of any applicable rules or
5 standards adopted or amended pursuant to this chapter part may
6 be given a reasonable time, not to exceed 6 months, within
7 which to comply with such rules and standards.

8 Section 70. Section 400.452, Florida Statutes, is
9 renumbered as section 429.52, Florida Statutes, and
10 subsections (3) and (5) are amended to read:

11 429.52 ~~400.452~~ Staff training and educational
12 programs; core educational requirement.--

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

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

30 Section 71. Section 400.453, Florida Statutes, is
31 renumbered as section 429.53, Florida Statutes, and paragraph

1 (b) of subsection (1) and paragraphs (a), (e), and (f) of
 2 subsection (2) are amended to read:

3 429.53 ~~400.453~~ Consultation by the agency.--

4 (1) The area offices of licensure and certification of
 5 the agency shall provide consultation to the following upon
 6 request:

7 (b) A person interested in obtaining a license to
 8 operate a facility under this chapter ~~part~~.

9 (2) As used in this section, "consultation" includes:

10 (a) An explanation of the requirements of this chapter
 11 ~~part~~ and rules adopted pursuant thereto;

12 (e) Any other information which the agency deems
 13 necessary to promote compliance with the requirements of this
 14 chapter ~~part~~; and

15 (f) A preconstruction review of a facility to ensure
 16 compliance with agency rules and this chapter ~~part~~.

17 Section 72. Subsections (1), (7), and (15) of section
 18 400.462, Florida Statutes, are amended to read:

19 400.462 Definitions.--As used in this part, the term:

20 (1) "Administrator" means a direct employee of the
 21 home health agency or a related organization, or of a
 22 management company that has a contract to manage the home
 23 health agency, to whom the governing body has delegated the
 24 responsibility for day-to-day administration of the home
 25 health agency. The administrator must be a licensed
 26 physician, physician assistant, or registered nurse licensed
 27 to practice in this state or an individual having at least 1
 28 year of supervisory or administrative experience in home
 29 health care or in a facility licensed under chapter 395, ~~or~~
 30 under part II ~~or part III~~ of this chapter, or under chapter
 31 429. An administrator may manage a maximum of five licensed

Bill No. SB 1836

Barcode 363104

586-1978-05

1 home health agencies located within one agency service
2 district or within an immediately contiguous county. If the
3 home health agency is licensed under this chapter and is part
4 of a retirement community that provides multiple levels of
5 care, an employee of the retirement community may administer
6 the home health agency and up to a maximum of four entities
7 licensed under this chapter or chapter 429 that are owned,
8 operated, or managed by the same corporate entity. An
9 administrator shall designate, in writing, for each licensed
10 entity, a qualified alternate administrator to serve during
11 absences.

12 (7) "Director of nursing" means a registered nurse and
13 direct employee of the agency or related business entity who
14 is a graduate of an approved school of nursing and is licensed
15 in this state; who has at least 1 year of supervisory
16 experience as a registered nurse in a licensed home health
17 agency, a facility licensed under chapter 395, or a facility
18 licensed under part II ~~or part III~~ of this chapter or under
19 chapter 429; and who is responsible for overseeing the
20 professional nursing and home health aid delivery of services
21 of the agency. An employee may be the director of nursing of a
22 maximum of five licensed home health agencies operated by a
23 related business entity and located within one agency service
24 district or within an immediately contiguous county. If the
25 home health agency is licensed under this chapter and is part
26 of a retirement community that provides multiple levels of
27 care, an employee of the retirement community may serve as the
28 director of nursing of the home health agency and of up to
29 four entities licensed under this chapter or chapter 429 which
30 are owned, operated, or managed by the same corporate entity.

31 A director of nursing shall designate, in writing, for each

1 licensed entity, a qualified alternate registered nurse to
2 serve during the absence of the director of nursing.

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

13 Section 73. Paragraph (h) of subsection (5) of section
14 400.464, Florida Statutes, is amended to read:

15 400.464 Home health agencies to be licensed;
16 expiration of license; exemptions; unlawful acts; penalties.--

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

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

23 Section 74. Subsection (2) of section 400.497, Florida
24 Statutes, is amended to read:

25 400.497 Rules establishing minimum standards.--The
26 agency shall adopt, publish, and enforce rules to implement
27 this part, including, as applicable, ss. 400.506 and 400.509,
28 which must provide reasonable and fair minimum standards
29 relating to:

30 (2) Shared staffing. The agency shall allow shared
31 staffing if the home health agency is part of a retirement

Bill No. SB 1836

Barcode 363104

586-1978-05

1 community that provides multiple levels of care, is located on
2 one campus, is licensed under this chapter or chapter 429, and
3 otherwise meets the requirements of law and rule.

4 Section 75. Paragraph (c) of subsection (2) of section
5 400.556, Florida Statutes, is amended to read:

6 400.556 Denial, suspension, revocation of license;
7 administrative fines; investigations and inspections.--

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

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

19 Section 76. Paragraph (c) of subsection (2) of section
20 400.5572, Florida Statutes, is amended to read:

21 400.5572 Background screening.--

22 (2) The owner or administrator of an adult day care
23 center must conduct level 1 background screening as set forth
24 in chapter 435 on all employees hired on or after October 1,
25 1998, who provide basic services or supportive and optional
26 services to the participants. Such persons satisfy this
27 requirement if:

28 (c) The person required to be screened is employed by
29 a corporation or business entity or related corporation or
30 business entity that owns, operates, or manages more than one
31 facility or agency licensed under this chapter or chapter 429,

1 and for whom a level 1 screening was conducted by the
 2 corporation or business entity as a condition of initial or
 3 continued employment.

4 Section 77. Subsection (5) of section 400.601, Florida
 5 Statutes, is amended to read:

6 400.601 Definitions.--As used in this part, the term:

7 (5) "Hospice residential unit" means a homelike living
 8 facility, other than a facility licensed under other parts of
 9 this chapter, ~~or~~ under chapter 395, or under chapter 429, that
 10 is operated by a hospice for the benefit of its patients and
 11 is considered by a patient who lives there to be his or her
 12 primary residence.

13 Section 78. Paragraph (c) of subsection (2) of section
 14 400.618, Florida Statutes, is amended to read:

15 400.618 Definitions.--As used in this part, the term:

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

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

25 Section 79. Paragraph (f) of subsection (1) of section
 26 400.628, Florida Statutes, is amended to read:

27 400.628 Residents' bill of rights.--

28 (1) A resident of an adult family-care home may not be
 29 deprived of any civil or legal rights, benefits, or privileges
 30 guaranteed by law, the State Constitution, or the Constitution
 31 of the United States solely by reason of status as a resident

1 of the home. Each resident has the right to:

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

6 Section 80. Paragraph (c) of subsection (5) of section
7 400.93, Florida Statutes, is amended to read:

8 400.93 Licensure required; exemptions; unlawful acts;
9 penalties.--

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

16 (c) Assisted living facilities licensed under chapter
17 429 ~~part III~~, when serving their residents.

18 Section 81. Subsection (3) and paragraph (c) of
19 subsection (10) of section 400.962, Florida Statutes, are
20 amended to read:

21 400.962 License required; license application.--

22 (3) The basic license fee collected shall be deposited
23 in the Health Care Trust Fund, established for carrying out
24 the purposes of this chapter or chapter 429.

25 (10)

26 (c) Proof of compliance with the level 2 background
27 screening requirements of chapter 435 which has been submitted
28 within the previous 5 years in compliance with any other
29 licensure requirements under this chapter or chapter 429
30 satisfies the requirements of paragraph (a). Proof of
31 compliance with background screening which has been submitted

Bill No. SB 1836

Barcode 363104

586-1978-05

1 within the previous 5 years to fulfill the requirements of the
2 Financial Services Commission and the Office of Insurance
3 Regulation under chapter 651 as part of an application for a
4 certificate of authority to operate a continuing care
5 retirement community satisfies the requirements for the
6 Department of Law Enforcement and Federal Bureau of
7 Investigation background checks.

8 Section 82. Paragraph (b) of subsection (1) of section
9 400.980, Florida Statutes, is amended to read:

10 400.980 Health care services pools.--

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

12 (b) "Health care services pool" means any person,
13 firm, corporation, partnership, or association engaged for
14 hire in the business of providing temporary employment in
15 health care facilities, residential facilities, and agencies
16 for licensed, certified, or trained health care personnel
17 including, without limitation, nursing assistants, nurses'
18 aides, and orderlies. However, the term does not include
19 nursing registries, a facility licensed under this chapter or
20 chapter 429 ~~400~~, a health care services pool established
21 within a health care facility to provide services only within
22 the confines of such facility, or any individual contractor
23 directly providing temporary services to a health care
24 facility without use or benefit of a contracting agent.

25 Section 83. Paragraphs (a), (b), (c), and (d) of
26 subsection (4) of section 400.9905, Florida Statutes, are
27 amended to read:

28 400.9905 Definitions.--

29 (4) "Clinic" means an entity at which health care
30 services are provided to individuals and which tenders charges
31 for reimbursement for such services, including a mobile clinic

Bill No. SB 1836

Barcode 363104

586-1978-05

1 and a portable equipment provider. For purposes of this part,
2 the term does not include and the licensure requirements of
3 this part do not apply to:

4 (a) Entities licensed or registered by the state under
5 chapter 395; or entities licensed or registered by the state
6 and providing only health care services within the scope of
7 services authorized under their respective licenses granted
8 under ss. 383.30-383.335, chapter 390, chapter 394, chapter
9 397, this chapter except part XIII, chapter 429, chapter 463,
10 chapter 465, chapter 466, chapter 478, part I of chapter 483,
11 chapter 484, or chapter 651; end-stage renal disease providers
12 authorized under 42 C.F.R. part 405, subpart U; or providers
13 certified under 42 C.F.R. part 485, subpart B or subpart H; or
14 any entity that provides neonatal or pediatric hospital-based
15 health care services by licensed practitioners solely within a
16 hospital licensed under chapter 395.

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

Bill No. SB 1836

Barcode 363104

586-1978-05

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

16 (d) Entities that are under common ownership, directly
17 or indirectly, with an entity licensed or registered by the
18 state pursuant to chapter 395; or entities that are under
19 common ownership, directly or indirectly, with an entity
20 licensed or registered by the state and providing only health
21 care services within the scope of services authorized pursuant
22 to their respective licenses granted under ss. 383.30-383.335,
23 chapter 390, chapter 394, chapter 397, this chapter except
24 part XIII, chapter 429, chapter 463, chapter 465, chapter 466,
25 chapter 478, part I of chapter 483, chapter 484, or chapter
26 651; end-stage renal disease providers authorized under 42
27 C.F.R. part 405, subpart U; or providers certified under 42
28 C.F.R. part 485, subpart B or subpart H; or any entity that
29 provides neonatal or pediatric hospital-based health care
30 services by licensed practitioners solely within a hospital
31 licensed under chapter 395.

1 Section 84. Subsection (6) of section 400.9935,
2 Florida Statutes, is amended to read:

3 400.9935 Clinic responsibilities.--

4 (6) Any licensed health care provider who violates
5 this part is subject to discipline in accordance with this
6 chapter or chapter 429 and his or her respective practice act.

7 Section 85. Subsection (12) of section 401.23, Florida
8 Statutes, is amended to read:

9 401.23 Definitions.--As used in this part, the term:

10 (12) "Interfacility transfer" means the transportation
11 by ambulance of a patient between two facilities licensed
12 under chapter 393, chapter 395, ~~or~~ chapter 400, or chapter
13 429, pursuant to this part.

14 Section 86. Paragraph (b) of subsection (2) of section
15 402.164, Florida Statutes, is amended to read:

16 402.164 Legislative intent; definitions.--

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

18 (b) "Client" means a client as defined in s. 393.063,
19 s. 394.67, s. 397.311, or s. 400.960, a forensic client or
20 client as defined in s. 916.106, a child or youth as defined
21 in s. 39.01, a child as defined in s. 827.01, a family as
22 defined in s. 414.0252, a participant as defined in s.
23 400.551, a resident as defined in s. 429.02 ~~400.402~~, a
24 Medicaid recipient or recipient as defined in s. 409.901, a
25 child receiving child care as defined in s. 402.302, a
26 disabled adult as defined in s. 410.032 or s. 410.603, or a
27 victim as defined in s. 39.01 or s. 415.102 as each definition
28 applies within its respective chapter.

29 Section 87. Paragraph (b) of subsection (2) of section
30 408.033, Florida Statutes, is amended to read:

31 408.033 Local and state health planning.--

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (2) FUNDING.--

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

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

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

13 Section 88. Subsection (3) of section 408.831, Florida
14 Statutes, is amended to read:

15 408.831 Denial, suspension, or revocation of a
16 license, registration, certificate, or application.--

17 (3) This section provides standards of enforcement
18 applicable to all entities licensed or regulated by the Agency
19 for Health Care Administration. This section controls over any
20 conflicting provisions of chapters 39, 381, 383, 390, 391,
21 393, 394, 395, 400, 408, 429, 468, 483, and 641 or rules
22 adopted pursuant to those chapters.

23 Section 89. Subsection (2) of section 409.212, Florida
24 Statutes, is amended to read:

25 409.212 Optional supplementation.--

26 (2) The base rate of payment for optional state
27 supplementation shall be established by the department within
28 funds appropriated. Additional amounts may be provided for
29 mental health residents in facilities designed to provide
30 limited mental health services as provided for in s. 429.075
31 ~~400.4075~~. The base rate of payment does not include the

Bill No. SB 1836

Barcode 363104

586-1978-05

1 personal needs allowance.

2 Section 90. Subsection (7) and paragraph (a) of
3 subsection (8) of section 409.907, Florida Statutes, are
4 amended to read:

5 409.907 Medicaid provider agreements.--The agency may
6 make payments for medical assistance and related services
7 rendered to Medicaid recipients only to an individual or
8 entity who has a provider agreement in effect with the agency,
9 who is performing services or supplying goods in accordance
10 with federal, state, and local law, and who agrees that no
11 person shall, on the grounds of handicap, race, color, or
12 national origin, or for any other reason, be subjected to
13 discrimination under any program or activity for which the
14 provider receives payment from the agency.

15 (7) The agency may require, as a condition of
16 participating in the Medicaid program and before entering into
17 the provider agreement, that the provider submit information,
18 in an initial and any required renewal applications,
19 concerning the professional, business, and personal background
20 of the provider and permit an onsite inspection of the
21 provider's service location by agency staff or other personnel
22 designated by the agency to perform this function. The agency
23 shall perform a random onsite inspection, within 60 days after
24 receipt of a fully complete new provider's application, of the
25 provider's service location prior to making its first payment
26 to the provider for Medicaid services to determine the
27 applicant's ability to provide the services that the applicant
28 is proposing to provide for Medicaid reimbursement. The agency
29 is not required to perform an onsite inspection of a provider
30 or program that is licensed by the agency, that provides
31 services under waiver programs for home and community-based

Bill No. SB 1836

Barcode 363104

586-1978-05

1 services, or that is licensed as a medical foster home by the
2 Department of Children and Family Services. As a continuing
3 condition of participation in the Medicaid program, a provider
4 shall immediately notify the agency of any current or pending
5 bankruptcy filing. Before entering into the provider
6 agreement, or as a condition of continuing participation in
7 the Medicaid program, the agency may also require that
8 Medicaid providers reimbursed on a fee-for-services basis or
9 fee schedule basis which is not cost-based, post a surety bond
10 not to exceed \$50,000 or the total amount billed by the
11 provider to the program during the current or most recent
12 calendar year, whichever is greater. For new providers, the
13 amount of the surety bond shall be determined by the agency
14 based on the provider's estimate of its first year's billing.
15 If the provider's billing during the first year exceeds the
16 bond amount, the agency may require the provider to acquire an
17 additional bond equal to the actual billing level of the
18 provider. A provider's bond shall not exceed \$50,000 if a
19 physician or group of physicians licensed under chapter 458,
20 chapter 459, or chapter 460 has a 50 percent or greater
21 ownership interest in the provider or if the provider is an
22 assisted living facility licensed under ~~part III of~~ chapter
23 429 ~~400~~. The bonds permitted by this section are in addition
24 to the bonds referenced in s. 400.179(4)(d). If the provider
25 is a corporation, partnership, association, or other entity,
26 the agency may require the provider to submit information
27 concerning the background of that entity and of any principal
28 of the entity, including any partner or shareholder having an
29 ownership interest in the entity equal to 5 percent or
30 greater, and any treating provider who participates in or
31 intends to participate in Medicaid through the entity. The

1 information must include:

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

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

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

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

24 (8)(a) Each provider, or each principal of the
25 provider if the provider is a corporation, partnership,
26 association, or other entity, seeking to participate in the
27 Medicaid program must submit a complete set of his or her
28 fingerprints to the agency for the purpose of conducting a
29 criminal history record check. Principals of the provider
30 include any officer, director, billing agent, managing
31 employee, or affiliated person, or any partner or shareholder

Bill No. SB 1836

Barcode 363104

586-1978-05

1 who has an ownership interest equal to 5 percent or more in
2 the provider. However, a director of a not-for-profit
3 corporation or organization is not a principal for purposes of
4 a background investigation as required by this section if the
5 director: serves solely in a voluntary capacity for the
6 corporation or organization, does not regularly take part in
7 the day-to-day operational decisions of the corporation or
8 organization, receives no remuneration from the not-for-profit
9 corporation or organization for his or her service on the
10 board of directors, has no financial interest in the
11 not-for-profit corporation or organization, and has no family
12 members with a financial interest in the not-for-profit
13 corporation or organization; and if the director submits an
14 affidavit, under penalty of perjury, to this effect to the
15 agency and the not-for-profit corporation or organization
16 submits an affidavit, under penalty of perjury, to this effect
17 to the agency as part of the corporation's or organization's
18 Medicaid provider agreement application. Notwithstanding the
19 above, the agency may require a background check for any
20 person reasonably suspected by the agency to have been
21 convicted of a crime. This subsection shall not apply to:

- 22 1. A hospital licensed under chapter 395;
- 23 2. A nursing home licensed under chapter 400;
- 24 3. A hospice licensed under chapter 400;
- 25 4. An assisted living facility licensed under chapter
26 429 ~~400~~.

27 5. A unit of local government, except that
28 requirements of this subsection apply to nongovernmental
29 providers and entities when contracting with the local
30 government to provide Medicaid services. The actual cost of
31 the state and national criminal history record checks must be

1 borne by the nongovernmental provider or entity; or

2 6. Any business that derives more than 50 percent of
3 its revenue from the sale of goods to the final consumer, and
4 the business or its controlling parent either is required to
5 file a form 10-K or other similar statement with the
6 Securities and Exchange Commission or has a net worth of \$50
7 million or more.

8 Section 91. Section 410.031, Florida Statutes, is
9 amended to read:

10 410.031 Legislative intent.--It is the intent of the
11 Legislature to encourage the provision of care for disabled
12 adults in family-type living arrangements in private homes as
13 an alternative to institutional or nursing home care for such
14 persons. The provisions of ss. 410.031-410.036 are intended to
15 be supplemental to the provisions of chapters ~~chapter~~ 400 and
16 429, relating to the licensing and regulation of nursing homes
17 and assisted living facilities, and do not exempt any person
18 who is otherwise subject to regulation under chapter 400 or
19 chapter 429.

20 Section 92. Section 410.034, Florida Statutes, is
21 amended to read:

22 410.034 Department determination of fitness to provide
23 home care.--In accordance with s. 429.02 ~~400.402~~, a person
24 caring for an adult who is related to such person by blood or
25 marriage is not subject to the Assisted Living Facilities Act.
26 If, however, the person who plans to provide home care under
27 this act is found by the department to be unable to provide
28 this care, the department shall notify the person wishing to
29 provide home care of this determination, and the person shall
30 not be eligible for subsidy payments under ss.

31 410.031-410.036.

Bill No. SB 1836

Barcode 363104

586-1978-05

1 Section 93. Section 415.1111, Florida Statutes, is
2 amended to read:

3 415.1111 Civil actions.--A vulnerable adult who has
4 been abused, neglected, or exploited as specified in this
5 chapter has a cause of action against any perpetrator and may
6 recover actual and punitive damages for such abuse, neglect,
7 or exploitation. The action may be brought by the vulnerable
8 adult, or that person's guardian, by a person or organization
9 acting on behalf of the vulnerable adult with the consent of
10 that person or that person's guardian, or by the personal
11 representative of the estate of a deceased victim without
12 regard to whether the cause of death resulted from the abuse,
13 neglect, or exploitation. The action may be brought in any
14 court of competent jurisdiction to enforce such action and to
15 recover actual and punitive damages for any deprivation of or
16 infringement on the rights of a vulnerable adult. A party who
17 prevails in any such action may be entitled to recover
18 reasonable attorney's fees, costs of the action, and damages.
19 The remedies provided in this section are in addition to and
20 cumulative with other legal and administrative remedies
21 available to a vulnerable adult. Notwithstanding the
22 foregoing, any civil action for damages against any licensee
23 or entity who establishes, controls, conducts, manages, or
24 operates a facility licensed under part II of chapter 400
25 relating to its operation of the licensed facility shall be
26 brought pursuant to s. 400.023, or against any licensee or
27 entity who establishes, controls, conducts, manages, or
28 operates a facility licensed under ~~part III of chapter 429~~ 400
29 relating to its operation of the licensed facility shall be
30 brought pursuant to s. 429.29 ~~400.429~~. Such licensee or entity
31 shall not be vicariously liable for the acts or omissions of

Bill No. SB 1836

Barcode 363104

586-1978-05

1 its employees or agents or any other third party in an action
2 brought under this section.

3 Section 94. Section 430.601, Florida Statutes, is
4 amended to read:

5 430.601 Home care for the elderly; legislative
6 intent.--It is the intent of the Legislature to encourage the
7 provision of care for the elderly in family-type living
8 arrangements in private homes as an alternative to
9 institutional or nursing home care for such persons. The
10 provisions of ss. 430.601-430.606 are intended to be
11 supplemental to the provisions of chapters ~~chapter~~ 400 and
12 429, relating to the licensing and regulation of nursing homes
13 and assisted living facilities, and do not exempt any person
14 who is otherwise subject to regulation under those chapters
15 ~~the provisions of that chapter.~~

16 Section 95. Subsection (7) of section 430.703, Florida
17 Statutes, is amended to read:

18 430.703 Definitions.--As used in this act, the term:

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

24 Section 96. Paragraph (a) of subsection (3) of section
25 435.03, Florida Statutes, is amended to read:

26 435.03 Level 1 screening standards.--

27 (3) Standards must also ensure that the person:

28 (a) For employees and employers licensed or registered
29 pursuant to chapter 400 or chapter 429, and for employees and
30 employers of developmental services institutions as defined in
31 s. 393.063, intermediate care facilities for the

1 developmentally disabled as defined in s. 393.063, and mental
2 health treatment facilities as defined in s. 394.455, meets
3 the requirements of this chapter.

4 Section 97. Paragraph (a) of subsection (4) of section
5 435.04, Florida Statutes, is amended to read:

6 435.04 Level 2 screening standards.--

7 (4) Standards must also ensure that the person:

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

13 Section 98. Paragraph (g) of subsection (1) of section
14 440.13, Florida Statutes, is amended to read:

15 440.13 Medical services and supplies; penalty for
16 violations; limitations.--

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

18 (g) "Health care facility" means any hospital licensed
19 under chapter 395 and any health care institution licensed
20 under chapter 400 or chapter 429.

21 Section 99. Paragraph (b) of subsection (1) of section
22 456.0375, Florida Statutes, is amended to read:

23 456.0375 Registration of certain clinics;
24 requirements; discipline; exemptions.--

25 (1)

26 (b) For purposes of this section, the term "clinic"
27 does not include and the registration requirements herein do
28 not apply to:

29 1. Entities licensed or registered by the state
30 pursuant to chapter 390, chapter 394, chapter 395, chapter
31 397, chapter 400, chapter 429, chapter 463, chapter 465,

Bill No. SB 1836

Barcode 363104

586-1978-05

1 chapter 466, chapter 478, chapter 480, chapter 484, or chapter
2 651.

3 2. Entities that own, directly or indirectly, entities
4 licensed or registered by the state pursuant to chapter 390,
5 chapter 394, chapter 395, chapter 397, chapter 400, chapter
6 429, chapter 463, chapter 465, chapter 466, chapter 478,
7 chapter 480, chapter 484, or chapter 651.

8 3. Entities that are owned, directly or indirectly, by
9 an entity licensed or registered by the state pursuant to
10 chapter 390, chapter 394, chapter 395, chapter 397, chapter
11 400, chapter 429, chapter 463, chapter 465, chapter 466,
12 chapter 478, chapter 480, chapter 484, or chapter 651.

13 4. Entities that are under common ownership, directly
14 or indirectly, with an entity licensed or registered by the
15 state pursuant to chapter 390, chapter 394, chapter 395,
16 chapter 397, chapter 400, chapter 429, chapter 463, chapter
17 465, chapter 466, chapter 478, chapter 480, chapter 484, or
18 chapter 651.

19 5. Entities exempt from federal taxation under 26
20 U.S.C. s. 501(c)(3) and community college and university
21 clinics.

22 6. Sole proprietorships, group practices,
23 partnerships, or corporations that provide health care
24 services by licensed health care practitioners pursuant to
25 chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484,
26 486, 490, 491, or part I, part III, part X, part XIII, or part
27 XIV of chapter 468, or s. 464.012, which are wholly owned by
28 licensed health care practitioners or the licensed health care
29 practitioner and the spouse, parent, or child of a licensed
30 health care practitioner, so long as one of the owners who is
31 a licensed health care practitioner is supervising the

1 services performed therein and is legally responsible for the
 2 entity's compliance with all federal and state laws. However,
 3 no health care practitioner may supervise services beyond the
 4 scope of the practitioner's license.

5 7. Clinical facilities affiliated with an accredited
 6 medical school at which training is provided for medical
 7 students, residents, or fellows.

8 Section 100. Subsection (1) of section 465.0235,
 9 Florida Statutes, is amended to read:

10 465.0235 Automated pharmacy systems used by long-term
 11 care facilities, hospices, or state correctional
 12 institutions.--

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

19 Section 101. Paragraph (k) of subsection (1) of
 20 section 468.505, Florida Statutes, is amended to read:

21 468.505 Exemptions; exceptions.--

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

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

1 Section 102. Subsection (11) of section 477.025,
2 Florida Statutes, is amended to read:

3 477.025 Cosmetology salons; specialty salons;
4 requisites; licensure; inspection; mobile cosmetology
5 salons.--

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

11 Section 103. Paragraph (a) of subsection (2) of
12 section 509.032, Florida Statutes, is amended to read:

13 509.032 Duties.--

14 (2) INSPECTION OF PREMISES.--

15 (a) The division has responsibility and jurisdiction
16 for all inspections required by this chapter. The division
17 has responsibility for quality assurance. Each licensed
18 establishment shall be inspected at least biannually, except
19 for transient and nontransient apartments, which shall be
20 inspected at least annually, and shall be inspected at such
21 other times as the division determines is necessary to ensure
22 the public's health, safety, and welfare. The division shall
23 establish a system to determine inspection frequency. Public
24 lodging units classified as resort condominiums or resort
25 dwellings are not subject to this requirement, but shall be
26 made available to the division upon request. If, during the
27 inspection of a public lodging establishment classified for
28 renting to transient or nontransient tenants, an inspector
29 identifies vulnerable adults who appear to be victims of
30 neglect, as defined in s. 415.102, or, in the case of a
31 building that is not equipped with automatic sprinkler

Bill No. SB 1836

Barcode 363104

586-1978-05

1 systems, tenants or clients who may be unable to self-preserve
2 in an emergency, the division shall convene meetings with the
3 following agencies as appropriate to the individual situation:
4 the Department of Health, the Department of Elderly Affairs,
5 the area agency on aging, the local fire marshal, the landlord
6 and affected tenants and clients, and other relevant
7 organizations, to develop a plan which improves the prospects
8 for safety of affected residents and, if necessary, identifies
9 alternative living arrangements such as facilities licensed
10 under part II ~~or part III~~ of chapter 400 or under chapter 429.

11 Section 104. Subsection (1) of section 509.241,
12 Florida Statutes, is amended to read:

13 509.241 Licenses required; exceptions.--

14 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
15 establishment and public food service establishment shall
16 obtain a license from the division. Such license may not be
17 transferred from one place or individual to another. It shall
18 be a misdemeanor of the second degree, punishable as provided
19 in s. 775.082 or s. 775.083, for such an establishment to
20 operate without a license. Local law enforcement shall provide
21 immediate assistance in pursuing an illegally operating
22 establishment. The division may refuse a license, or a renewal
23 thereof, to any establishment that is not constructed and
24 maintained in accordance with law and with the rules of the
25 division. The division may refuse to issue a license, or a
26 renewal thereof, to any establishment an operator of which,
27 within the preceding 5 years, has been adjudicated guilty of,
28 or has forfeited a bond when charged with, any crime
29 reflecting on professional character, including soliciting for
30 prostitution, pandering, letting premises for prostitution,
31 keeping a disorderly place, or illegally dealing in controlled

1 substances as defined in chapter 893, whether in this state or
 2 in any other jurisdiction within the United States, or has had
 3 a license denied, revoked, or suspended pursuant to s. 429.14
 4 ~~400.414~~. Licenses shall be renewed annually, and the division
 5 shall adopt a rule establishing a staggered schedule for
 6 license renewals. If any license expires while administrative
 7 charges are pending against the license, the proceedings
 8 against the license shall continue to conclusion as if the
 9 license were still in effect.

10 Section 105. Subsection (1) of section 627.732,
 11 Florida Statutes, is amended to read:

12 627.732 Definitions.--As used in ss. 627.730-627.7405,
 13 the term:

14 (1) "Broker" means any person not possessing a license
 15 under chapter 395, chapter 400, chapter 429, chapter 458,
 16 chapter 459, chapter 460, chapter 461, or chapter 641 who
 17 charges or receives compensation for any use of medical
 18 equipment and is not the 100-percent owner or the 100-percent
 19 lessee of such equipment. For purposes of this section, such
 20 owner or lessee may be an individual, a corporation, a
 21 partnership, or any other entity and any of its
 22 100-percent-owned affiliates and subsidiaries. For purposes of
 23 this subsection, the term "lessee" means a long-term lessee
 24 under a capital or operating lease, but does not include a
 25 part-time lessee. The term "broker" does not include a
 26 hospital or physician management company whose medical
 27 equipment is ancillary to the practices managed, a debt
 28 collection agency, or an entity that has contracted with the
 29 insurer to obtain a discounted rate for such services; nor
 30 does the term include a management company that has contracted
 31 to provide general management services for a licensed

Bill No. SB 1836

Barcode 363104

586-1978-05

1 physician or health care facility and whose compensation is
2 not materially affected by the usage or frequency of usage of
3 medical equipment or an entity that is 100-percent owned by
4 one or more hospitals or physicians. The term "broker" does
5 not include a person or entity that certifies, upon request of
6 an insurer, that:

7 (a) It is a clinic registered under s. 456.0375 or
8 licensed under ss. 400.990-400.995;

9 (b) It is a 100-percent owner of medical equipment;
10 and

11 (c) The owner's only part-time lease of medical
12 equipment for personal injury protection patients is on a
13 temporary basis not to exceed 30 days in a 12-month period,
14 and such lease is solely for the purposes of necessary repair
15 or maintenance of the 100-percent-owned medical equipment or
16 pending the arrival and installation of the newly purchased or
17 a replacement for the 100-percent-owned medical equipment, or
18 for patients for whom, because of physical size or
19 claustrophobia, it is determined by the medical director or
20 clinical director to be medically necessary that the test be
21 performed in medical equipment that is open-style. The leased
22 medical equipment cannot be used by patients who are not
23 patients of the registered clinic for medical treatment of
24 services. Any person or entity making a false certification
25 under this subsection commits insurance fraud as defined in s.
26 817.234. However, the 30-day period provided in this paragraph
27 may be extended for an additional 60 days as applicable to
28 magnetic resonance imaging equipment if the owner certifies
29 that the extension otherwise complies with this paragraph.

30 Section 106. Subsection (2) of section 651.011,
31 Florida Statutes, is amended to read:

Bill No. SB 1836

Barcode 363104

586-1978-05

1 651.011 Definitions.--For the purposes of this
2 chapter, the term:

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

15 Section 107. Paragraph (c) of subsection (2) of
16 section 651.022, Florida Statutes, is amended to read:

17 651.022 Provisional certificate of authority;
18 application.--

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

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

30 2. Evidence satisfactory to the office of the ability
31 of the applicant to comply with the provisions of this chapter

Bill No. SB 1836

Barcode 363104

586-1978-05

1 and with rules adopted by the commission pursuant to this
2 chapter.

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

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

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

19
20 The statement shall set forth the court or agency, the date of
21 conviction or judgment, and the penalty imposed or damages
22 assessed, or the date, nature, and issuer of the
23 order. Before determining whether a provisional certificate
24 of authority is to be issued, the office may make an inquiry
25 to determine the accuracy of the information submitted
26 pursuant to subparagraphs 1. and 2.

27 Section 108. Subsection (6) of section 651.023,
28 Florida Statutes, is amended to read:

29 651.023 Certificate of authority; application.--

30 (6) The timeframes provided under s. 651.022(5) and
31 (6) apply to applications submitted under s. 651.021(2). The

Bill No. SB 1836

Barcode 363104

586-1978-05

1 office may not issue a certificate of authority under this
2 chapter to any facility which does not have a component which
3 is to be licensed pursuant to part II ~~or part III~~ of chapter
4 400 or to chapter 429 or which will not offer personal
5 services or nursing services through written contractual
6 agreement. Any written contractual agreement must be disclosed
7 in the continuing care contract and is subject to the
8 provisions of s. 651.1151, relating to administrative, vendor,
9 and management contracts.

10 Section 109. Subsection (8) of section 651.055,
11 Florida Statutes, is amended to read:

12 651.055 Contracts; right to rescind.--

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

16 Section 110. Subsection (5) of section 651.095,
17 Florida Statutes, is amended to read:

18 651.095 Advertisements; requirements; penalties.--

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

22 Section 111. Subsections (1), (4), (6), and (8) of
23 section 651.118, Florida Statutes, are amended to read:

24 651.118 Agency for Health Care Administration;
25 certificates of need; sheltered beds; community beds.--

26 (1) The provisions of this section shall control in
27 the case of conflict with the provisions of the Health
28 Facility and Services Development Act, ss. 408.031-408.045;
29 the provisions of chapter 395; ~~or~~ the provisions of part II
30 ~~parts II and III~~ of chapter 400; or the provisions of chapter
31 429.

Bill No. SB 1836

Barcode 363104

586-1978-05

1 (4) The Agency for Health Care Administration shall
2 approve one sheltered nursing home bed for every four proposed
3 residential units, including those that are licensed under
4 chapter 429 ~~part III of chapter 400~~, in the continuing care
5 facility unless the provider demonstrates the need for a
6 lesser number of sheltered nursing home beds based on proposed
7 utilization by prospective residents or demonstrates the need
8 for additional sheltered nursing home beds based on actual
9 utilization and demand by current residents.

10 (6) Unless the provider already has a component that
11 is to be a part of the continuing care facility and that is
12 licensed under chapter 395, ~~or part II or part III~~ of chapter
13 400, or chapter 429 at the time of construction of the
14 continuing care facility, the provider must construct the
15 nonnursing home portion of the facility and the nursing home
16 portion of the facility at the same time. If a provider
17 constructs less than the number of residential units approved
18 in the certificate of authority, the number of licensed
19 sheltered nursing home beds shall be reduced by a
20 proportionate share.

21 (8) A provider may petition the Agency for Health Care
22 Administration to use a designated number of sheltered nursing
23 home beds to provide extended congregate care as defined in s.
24 429.02 ~~400.402~~ if the beds are in a distinct area of the
25 nursing home which can be adapted to meet the requirements for
26 extended congregate care. The provider may subsequently use
27 such beds as sheltered beds after notifying the agency of the
28 intended change. Any sheltered beds used to provide extended
29 congregate care pursuant to this subsection may not qualify
30 for funding under the Medicaid waiver. Any sheltered beds used
31 to provide extended congregate care pursuant to this

Bill No. SB 1836

Barcode 363104

586-1978-05

1 subsection may share common areas, services, and staff with
2 beds designated for nursing home care, provided that all of
3 the beds are under common ownership. For the purposes of this
4 subsection, fire and life safety codes applicable to nursing
5 home facilities shall apply.

6 Section 112. Subsection (2) of section 765.1103,
7 Florida Statutes, is amended to read:

8 765.1103 Pain management and palliative care.--

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

19 Section 113. Subsection (2) of section 765.205,
20 Florida Statutes, is amended to read:

21 765.205 Responsibility of the surrogate.--

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

28 Section 114. Subsection (1) of section 768.735,
29 Florida Statutes, is amended to read:

30 768.735 Punitive damages; exceptions; limitation.--

31 (1) Sections 768.72(2)-(4), 768.725, and 768.73 do not

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

6 Section 115. Paragraph (a) of subsection (4) of
 7 section 943.0585, Florida Statutes, is amended to read:

8 943.0585 Court-ordered expunction of criminal history
 9 records.--The courts of this state have jurisdiction over
 10 their own procedures, including the maintenance, expunction,
 11 and correction of judicial records containing criminal history
 12 information to the extent such procedures are not inconsistent
 13 with the conditions, responsibilities, and duties established
 14 by this section. Any court of competent jurisdiction may order
 15 a criminal justice agency to expunge the criminal history
 16 record of a minor or an adult who complies with the
 17 requirements of this section. The court shall not order a
 18 criminal justice agency to expunge a criminal history record
 19 until the person seeking to expunge a criminal history record
 20 has applied for and received a certificate of eligibility for
 21 expunction pursuant to subsection (2). A criminal history
 22 record that relates to a violation of s. 393.135, s. 394.4593,
 23 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
 24 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
 25 s. 847.0145, s. 893.135, s. 916.1075, or a violation
 26 enumerated in s. 907.041 may not be expunged, without regard
 27 to whether adjudication was withheld, if the defendant was
 28 found guilty of or pled guilty or nolo contendere to the
 29 offense, or if the defendant, as a minor, was found to have
 30 committed, or pled guilty or nolo contendere to committing,
 31 the offense as a delinquent act. The court may only order

Bill No. SB 1836

Barcode 363104

586-1978-05

1 expunction of a criminal history record pertaining to one
2 arrest or one incident of alleged criminal activity, except as
3 provided in this section. The court may, at its sole
4 discretion, order the expunction of a criminal history record
5 pertaining to more than one arrest if the additional arrests
6 directly relate to the original arrest. If the court intends
7 to order the expunction of records pertaining to such
8 additional arrests, such intent must be specified in the
9 order. A criminal justice agency may not expunge any record
10 pertaining to such additional arrests if the order to expunge
11 does not articulate the intention of the court to expunge a
12 record pertaining to more than one arrest. This section does
13 not prevent the court from ordering the expunction of only a
14 portion of a criminal history record pertaining to one arrest
15 or one incident of alleged criminal activity. Notwithstanding
16 any law to the contrary, a criminal justice agency may comply
17 with laws, court orders, and official requests of other
18 jurisdictions relating to expunction, correction, or
19 confidential handling of criminal history records or
20 information derived therefrom. This section does not confer
21 any right to the expunction of any criminal history record,
22 and any request for expunction of a criminal history record
23 may be denied at the sole discretion of the court.

24 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
25 criminal history record of a minor or an adult which is
26 ordered expunged by a court of competent jurisdiction pursuant
27 to this section must be physically destroyed or obliterated by
28 any criminal justice agency having custody of such record;
29 except that any criminal history record in the custody of the
30 department must be retained in all cases. A criminal history
31 record ordered expunged that is retained by the department is

1 confidential and exempt from the provisions of s. 119.07(1)
 2 and s. 24(a), Art. I of the State Constitution and not
 3 available to any person or entity except upon order of a court
 4 of competent jurisdiction. A criminal justice agency may
 5 retain a notation indicating compliance with an order to
 6 expunge.

7 (a) The person who is the subject of a criminal
 8 history record that is expunged under this section or under
 9 other provisions of law, including former s. 893.14, former s.
 10 901.33, and former s. 943.058, may lawfully deny or fail to
 11 acknowledge the arrests covered by the expunged record, except
 12 when the subject of the record:

- 13 1. Is a candidate for employment with a criminal
- 14 justice agency;
- 15 2. Is a defendant in a criminal prosecution;
- 16 3. Concurrently or subsequently petitions for relief
- 17 under this section or s. 943.059;
- 18 4. Is a candidate for admission to The Florida Bar;
- 19 5. Is seeking to be employed or licensed by or to
- 20 contract with the Department of Children and Family Services
- 21 or the Department of Juvenile Justice or to be employed or
- 22 used by such contractor or licensee in a sensitive position
- 23 having direct contact with children, the developmentally
- 24 disabled, the aged, or the elderly as provided in s.
- 25 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
- 26 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
- 27 916.106(10) and (13), s. 985.407, ~~or~~ chapter 400, or chapter
- 28 429; or

29 6. Is seeking to be employed or licensed by the
 30 Department of Education, any district school board, any
 31 university laboratory school, any charter school, any private

1 or parochial school, or any local governmental entity that
2 licenses child care facilities.

3 Section 116. The Division of Statutory Revision of the
4 Office of Legislative Services shall prepare a reviser's bill
5 for introduction at a subsequent session of the Legislature to
6 conform the Florida Statutes to changes made by this act.

7 Section 117. This act shall take effect July 1, 2005.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31