



Health Care Regulation Policy Committee

**Tuesday, March 9, 2010
9:00 AM – 12:00 PM
Morris Hall (17 HOB)**

MEETING PACKET

**Larry Cretul
Speaker**

**Nick Thompson
Chair**



The Florida House of Representatives

Health Care Regulation Policy Committee

A G E N D A

March 9, 2010
9:00 AM - 12:00 PM
Morris Hall (17 HOB)

- I. Opening Remarks by Chair Thompson
- II. Consideration of the following bill(s):
 - CS/HB 325 Uniform Traffic Control by Roads, Bridges & Ports Policy Committee, Rep. Reagan
 - HB 491 Teaching Nursing Homes by Rep. Bogdanoff
 - HB 1063 Infants Born Alive by Rep. Snyder
 - HB 1143 Reduction and Simplification of Health Care Provider Regulation by Rep. Hudson
- III. Closing Remarks by Chair
- IV. Adjournment

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

According to the Department of Highway Safety and Motor Vehicles (DHSMV), in 2008 there were 76 fatalities related to motor vehicle drivers who disregarded a traffic signal in Florida.¹ This represents approximately 3 percent of all fatal accidents in 2008, the sixth-highest cause of traffic fatalities.²

Traffic Infraction Detectors

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed. Over 110 cities and towns in 20 states across the country currently participate in a red light camera program.³ Red light cameras have been used in at least 33 foreign countries since the 1970s.⁴

An Insurance Institute for Highway Safety review of international red light camera studies concluded that cameras reduce red light violations by 40-50 percent and reduce injury crashes by 25-30 percent.⁵ A 2005 study of red light camera programs in seven metropolitan communities by the Federal Highway Administration concluded that there was a 25 percent reduction in right-angle collisions, but a 15

¹ *Florida Traffic Crash Statistics Report 2008*, Department of Highway Safety and Motor Vehicles, June 30, 2009.

² Careless driving represented 20 percent of 2008 traffic fatalities; DUI, 17 percent; excessive speed, 6 percent; driving left-of-center, 6 percent; and failure to yield right of way, 6 percent.

³ National Campaign to Stop Red Light Running, http://www.stopredlightrunning.com/get_the_facts.htm

⁴ Insurance Institute for Highway Safety website (www.iihs.org/research/ganda/rlr.html) citing Blackburn, R.R. and Glibert, D.T., *Photographic enforcement of traffic laws*. Washington, DC, National Academy Press, 1995.

⁵ *Id.*, citing Retting, R.A. et al., *Effects of red light cameras on violations and crashes: a review of the international literature*, Traffic Injury Prevention 4:17-23, 2003.

percent increase in rear-end collisions.⁶ It is possible that the volume of rear-end collisions will decline as drivers get used to the idea that the vehicle in front of them will stop at a red light.⁷

Other studies, including a 7-jurisdiction study conducted by the Virginia Department of Transportation⁸ and a USDOT-funded study by the Urban Transit Institute at North Carolina A&T University,⁹ have reached conflicting results regarding crash reduction. The results of these studies are best summarized by this excerpt from the North Carolina study:

The results do not support the conventional wisdom expressed in recent literature and popular press that red light cameras reduce accidents.... Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections. We did find a decrease in accidents involving a vehicle turning left and a vehicle on the same roadway, which may have been included as an angle accident in some other studies. However, given that these left turn accidents occur only one third as often as angle accidents, and the fact that we find no benefit from decreasing severity of accidents suggests that there has been no demonstrable benefit from the RLC [red light camera] program in terms of safety. In many ways, the evidence points toward the installation of RLCs as a detriment to safety.

Critics on each side of the debate raise concerns about the scientific methodology of opposing studies and potential bias of researchers. Criticisms have focused on issues such as sample size, control of variables (weather, similarity of intersections, etc), and other possible control methods (e.g., failure to analyze intersections before and after detectors are placed).

Currently there are no recognized independent standards or certifications for the red light camera industry. The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have developed guidelines for the use of state and local agencies on the implementation and operation of red light camera systems. These guidelines were most-recently updated in January 2005.¹⁰ Although not a regulatory requirement, the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation. The guidelines present research that suggests engineering improvements, safety education and increased enforcement by law enforcement officers can significantly reduce red light violations.

Examples of engineering improvements include:

- *Improving signal head visibility.* Signal head visibility can be improved by increasing the size of the traffic signal lamps from 8 to 12 inches. The addition of backplates can also make signals more visible.
- *All-red interval.* An all-red clearance interval, where the traffic signals on all sides are red for a period of time, provides additional time for motorists already in the intersection to proceed through the intersection on the red indication while holding cross traffic on the cross street approaches. The red clearance interval is not intended to reduce the incidence of red light running; rather it is a safety measure.
- *Appropriate yellow times.* The likelihood of a motorist running a red light increases as the yellow interval is shortened. Lengthening the yellow interval, within appropriate guidelines, has been shown to significantly reduce the number of inadvertent red light violations.

⁶ *Safety Evaluation of Red-Light Cameras*, Federal Highway Administration, Publication No. FHWA-HRT-05-048, available online here: <http://www.tfhrc.gov/safety/pubs/05048/>

⁷ *Id.*

⁸ Available online here: <http://www.thenewspaper.com/rlc/docs/05-vdot.pdf>

⁹ Available online here: <http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf>

¹⁰ U.S. Department of Transportation, *Red Light Camera Systems Operational Guidelines*, Publication No. FHWA-SA-05-002, January 2005.

- *Traffic signal coordination.* A coordinated traffic signal operation where motorists are able to move smoothly in platoons from intersection to intersection reduces the risk of red light violations and collisions.

Cameras are permitted by current Florida law to enforce violations of payment of tolls.¹¹ For example, toll facility operators use a digital camera to capture an image of the vehicle's license plate as the vehicle travels through the tolling zone. If the system receives payment from a SunPass, the image is deleted. If no payment is received, the image is processed for video tolling or is considered a toll violation and a Uniform Traffic Citation is issued.

In response to the city of Pembroke Pines' inquiry regarding the use of unmanned cameras to enforce violations of traffic signals, the Attorney General issued an advisory legal opinion on July 12, 2005.¹² The opinion concluded that it was within the local government's scope of authority "to enact an ordinance authorizing the city:

- to monitor violations of traffic signals within the city and to use unmanned cameras to monitor intersections and record traffic violations;
- to monitor violations of traffic signals within the city and to use unmanned cameras to record the license tag numbers of cars involved in such violations; and
- to advise a car owner that his or her license tag number has been recorded in a violation of the traffic laws."

The problem identified by a 1997 Attorney General opinion¹³ was whether unmanned electronic traffic infraction detectors may independently be used as the basis for issuing citations for violations of traffic laws. Current statute requires that citations be issued when an officer "observes the commission of a traffic infraction."¹⁴ The 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a photographic record of a vehicle violating traffic control laws may not be used as the basis for issuing a citation for such violations." The 2005 opinion reached the same conclusion, stating, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.

Several local governments in Florida have participated in the use of red light cameras enforcement of red light violations. Due to the Attorney General's advisory opinions, the majority of local governments have used the cameras in pilot projects solely for data collection purposes or as a warning system to motorists, by sending a letter and attaching no penalty. Sarasota County, Manatee County, Palm Beach County, Polk County, and the cities of Orlando and Melbourne are examples of local governments that have at one time participated in a red light camera pilot project. The Palm Beach County Commission reported that their two-month pilot project using traffic cameras at a test intersection in Palm Beach County showed alarming results. One fifth of those who ran a red light did so two seconds after the light had changed. On average, fifty cars a day ran the light at the test site during the first month of the pilot project. During the second month of the project, following publicity about the program, that number dropped to less than twenty.¹⁵

The city of Gulf Breeze passed a local ordinance in 2005 allowing use of red light cameras. A violation by any motor vehicle running a red light that is recorded by a traffic enforcement photographic system is a civil code violation¹⁶ and a \$100 civil fee is assessed against the motor vehicle owner. The city has installed one red light camera at Daniel Drive and U.S. 98 in front of Gulf Breeze Middle School. The Gulf Breeze City Council adopted the ordinance despite the opinion issued by the Attorney General.

¹¹ s. 316.1001(2)(d), F.S.

¹² Attorney General Opinion 05-41.

¹³ Attorney General Opinion 97-06.

¹⁴ s. 316.640(5)(a), F.S.

¹⁵ Palm Beach County Board of County Commissioners, "FY 2007 State Legislative Program", available online here:

<http://www.pbcgov.com/legislativeaffairs/pdf/LegProg.pdf>

¹⁶ Section 18-113, Code of Ordinances, City of Gulf Breeze, Florida.

The Gulf Breeze Police Chief said that after the signs went up, violations dropped from 150 a month to 95 in a little over a year.¹⁷ The camera was installed by "Traffipax." According to the police chief, the vendor paid for the initial cost of setting up the program. In return, the vendor is paid a percentage of the \$100 fine. "Peek Traffic", the vendor who donated the equipment and monitoring for Sarasota County's pilot project, states that a camera is valued at approximately \$50,000 and costs \$10,000 to install.

From 2008 to the present, approximately 50 municipalities have joined Gulf Breeze in enacting red light camera ordinances and placing cameras at intersections. The ordinances are broadly similar, and vary only in the amount of the fine (from \$50 to \$150, with some jurisdictions enacting multiple-offense increases up to \$500), the nature of required signage (none, at the entrance to the city, or at the intersection), whether or not to engage in education before "going live," variations on the notice requirements sent to the motor vehicle owner, and variations on the process whereby a motor vehicle owner may challenge the violation.

Trauma Centers

A verified trauma center (center) is a hospital with an established trauma program which includes health care practitioners who specialize in the treatment of emergent conditions and facilities appropriate to treat those patients.¹⁸ Part II of Chapter 395, F.S., provides for a tiered system of center verification within the 19 trauma service areas established in s. 395.402, F.S. The Florida Department of Health (DOH) selects hospitals for center designation through an application process. Standards for designation are based on national guidelines established by the American College of Surgeons.¹⁹ Standards for designation as a pediatric center are developed in conjunction with Children's Medical Services.²⁰ Florida's centers treat over 40,000 patients annually.²¹

There are three types of centers:

- Level I centers which have formal trauma care research and education programs; provide support to Level II and pediatric centers and general hospitals; and participate in an inclusive system of trauma care.²²
- Level II centers which serve as a resource for general hospitals and participate in an inclusive system of trauma care.²³
- Pediatric centers must be in substantial compliance with DOH rules relating to pediatric trauma center operation.²⁴

There are a total of 21 verified centers in Florida: 7 Level I; 12 Level II; and 6 Pediatric centers.²⁵ A center may have more than one designation, for example, St. Mary's Medical Center in Delray Beach carries both a Level II and a Pediatric center designation. Additionally, one provisional center exists in Ft. Pierce, Florida.

Centers are partially funded by traffic infraction fines deposited into the Administrative Trust Fund (Trust Fund) within the DOH. In particular, s. 318.18(15), F.S., requires \$65 of the \$125 traffic citation

¹⁷ Ginny Laroe, "Police Research Traffic Cameras," *Sarasota Herald Tribune*, March 26, 2007.

¹⁸ Florida Department of Health, *The Costs of Trauma Center Readiness*, July 17, 2002 (on file with the Committee).

¹⁹ s. 395.401(2), F.S. Section 395.4025, F.S., delineates the DOH verified trauma center designation process. Detailed DOH standards for designation are found in *Trauma Center Standards, Department of Health, Pamphlet 150-9, January 2008*, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TraumaCntrStandards-DOHPamphlet150-9Jan2008.pdf> (last visited March 6, 2010).

²⁰ *Id.*

²¹ Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/index.html> (last visited March 6, 2010).

²² s. 395.4001(6), F.S.

²³ s. 395.4001(7), F.S.

²⁴ s. 395.4001(9), F.S.

²⁵ Florida Department of Health, Division of Emergency medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TextEquivforTraumaCentersMap.doc> (last visited March 6, 2010).

fine for failure to stop at a traffic signal be deposited into the Trust Fund.²⁶ DOH distributes money to centers on a quarterly basis²⁷ under a formula established in s. 395.4036, F.S. The formula requires:

- Twenty percent to Centers that have a local funding contribution as of December 31. Distribution is based on a Center's trauma caseload for the most recent calendar year for which data is available.²⁸
- Twenty percent to Centers based on a Center's trauma caseload for the most recent calendar year for which data is available. The determination of caseload volume for distribution of funds is based on DOH's Trauma Registry data²⁹
- Forty percent to Centers based on the severity of a Center's caseload. Severity determination is made by DOH according to the International Classification Injury Severity Scores.³⁰

Verified trauma centers are either subject to audit under s. 215.97, F.S., the Florida Single Audit Act, or, if not subject to audit requirements, must annually attest to DOH that proceeds from distributions under 395.4036, F.S., were used in compliance with that section.³¹ Currently, traffic fine revenues do not directly fund any other type of health care facility or entity.

Disproportionate Share Hospitals

The Florida Disproportionate Share Hospital (DSH) program is a Medicaid-financed method of making supplemental payments to hospitals providing a disproportionate share of Medicaid and charity care.³² Payments are made according to statutory formulae. Currently, disproportionate share hospitals criteria are not used to determine traffic fine revenue distribution.

Effect of Proposed Changes

Local Ordinance Authorization

The bill creates the "Mark Wandall Traffic Safety Act." The bill creates s. 316.0083, F.S., authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifies the required content of the ordinance. The traffic infraction detector must conform to the contract specifications adopted by FDOT. The bill specifies that each local ordinance must:

- provide for the use of a traffic infraction detector to enforce s. 316.075(1)(c), F.S., which requires the driver of a motor vehicle to stop when facing a traffic signal steady red light on the streets and highways under the jurisdiction of the county or municipality;
- authorize an infraction enforcement officer or a code enforcement officer to issue a ticket for violation of s. 316.075(1)(c), F.S., and to enforce the payment of tickets for such violation;
- require signs to be posted at locations designated by the county or municipality providing notification that a traffic infraction detector may be in use;
- require the county or municipality to make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program; and
- establish a fine of \$155 to be assessed against the owner of a motor vehicle whose vehicle fails to stop when facing a red light, as determined through use of a traffic infraction detector.

The ordinance must allow the city to operate a traffic infraction detector within the right-of-way owned by the county or FDOT. The county or the FDOT is required to issue permits for installation, including

²⁶ s. 316.074(1) and s. 316.075(1)(c)1, F.S.

²⁷ Rule 64J-2.019(2), F.A.C.

²⁸ s. 395.4036(1)(a)1, F.S.

²⁹ s. 395.4036(1)(a)2, F.S.

³⁰ s. 395.4036(1)(a)3, F.S. The International Classification Injury Severity Score (ICISS) is a mathematical ratio used to predict and score patient survival from severe injuries. Rule 64J-2.019, F.A.C., provides for classifications of trauma patients based on the ICISS scoring system.

³¹ s. 395.4036(2), F.S., and Rule 64J-2.019(3), F.A.C.

³² s. 409.911, F.S.

access to FDOT right-of-way, according to the established permitting process. Furthermore, placement and installation of traffic infraction detectors is allowed on the State Highway System, county roads, and city streets pursuant to specifications developed by FDOT, so long as the safety and operation of the road facility is not impaired.

Fines and Revenue Distribution

The fine imposed by the local ordinance is done in the same manner and is subject to the same limitations as provided for parking violations under s. 316.1967, F.S. DHSMV's authority to suspend or revoke a license (contained in Chapter 318 and s. 322.27, F.S.) is not applicable to a violation of a traffic infraction detector ordinance enacted under s. 316.0083, F.S. A violation is not a conviction of the operator, may not be made a part of the operator's driving record, may not be used for purposes of setting motor vehicle insurance rates, and may not result in points assessed against the operator's driver's license.

Fines assessed under the ordinance are disbursed as follows:

- \$75 retained by the county or municipality enforcing the ordinance;
- \$55 to the General Revenue Fund; and
- \$25 to be deposited in the DOH Administrative Trust Fund

The bill expands the types of entities that directly receive traffic fine revenues beyond verified trauma centers. Of the fine funds deposited in the DOH Administrative Trust Fund pursuant to the bill:

- \$5 of each fine collected is distributed equally among all children's crisis stabilization units and rural health initiatives.
- Fourteen percent of the remaining funds (that is, the \$20 remaining from each fine after the \$5 distribution above) are distributed to the Miami Project to Cure Paralysis for brain and spinal cord injury.
- Three percent of the remaining funds are distributed equally to community-based support programs that provide support and services for individuals who have sustained a traumatic brain injury.
- Eighteen percent of the remaining funds are distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds shall be based on trauma caseload volume for the most recent calendar year available.
- Thirty percent of the remaining funds are distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of shall be based on DOH's Trauma Registry data.
- Thirty-two percent of the total remaining funds are distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution shall be based on DOH's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by DOH by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by DOH by rule.
- Three percent of the remaining funds shall be distributed to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits on an annual basis. Currently, four hospitals would qualify for this distribution: Bay Medical Center; Northwest Florida Community Hospital; Citrus Memorial Hospital; and Doctors' Memorial Hospital (Bonifay).

Procedure for Issuance and Contest of Tickets

The bill cites current statutory procedures addressing liability for payment of parking ticket violations and other parking violations³³ and applies those procedures to violations of traffic infraction detector ordinances created under s. 316.0083, F.S., with the following additional requirements regarding the information which must be included in the ticket:

- the name and address of the person alleged to be liable as the registered owner or operator of the vehicle involved in the violation;
- the tag number of the vehicle;
- the violation charged;
- a photographic image evidencing the violation;
- the location where the violation occurred;
- the date and time of the violation;
- a signed statement by a specifically trained technician employed by the agency or its contractor that, based on inspection of recorded images, the motor vehicle was being operated in violation of s. 316.075(1)(c), F.S.;
- the amount of the fine;
- the date by which the fine must be paid;
- the procedure for contesting the violation alleged in the ticket; and
- a warning that failure to contest the violation in the manner and time provided is deemed an admission of the liability and that a default may be entered thereon.

The violation is processed by the county or municipality that has jurisdiction over the street or highway where the violation occurred or by any entity authorized by the county or municipality to prepare and mail the ticket. The ticket must be sent by first-class or certified mail to the owner of the vehicle involved in the violation, postmarked no later than 30 days after obtaining the name and address of the registered owner, but in no event later than 60 days after the violation.

The owner is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, reported as stolen; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation.

The owner of the vehicle must, within 30 days, furnish an affidavit to the county or municipality that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen), or a copy of the UTC, if issued.

A person may elect to contest the determination that they failed to stop at a red light as evidenced by the traffic infraction detector by electing to appear before a judge or other locally-designated official authorized to adjudicate traffic infractions. If the person elects to appear before the court, they are deemed to have waived the limitation of civil penalties imposed for the violation and the court may impose a civil penalty not to exceed \$155 plus court costs. The court may take appropriate measures to enforce collection of any penalty not paid within the time permitted by the court.

A certificate sworn to or affirmed by a person authorized under s. 316.0083, F.S., who is employed by or under contract with the county or municipality where the infraction occurred, or a fax of such a certificate, that is based upon inspection of photographs or other recorded images produced by the traffic infraction detector, is considered evidence of the facts contained in the certificate. A photograph or other recorded image evidencing a violation must be available for inspection in any proceeding to adjudicate liability for violation of an ordinance enacted under s. 316.0083, F.S.

³³ Section 316.1967(2)-(5), F.S.

The bill authorizes counties and municipalities to provide the names of those who have one or more outstanding violations, as recorded by traffic infraction detectors, to DHSMV. Pursuant to s. 320.03(8), F.S., if a person's name appears on DHSMV's list, a license plate or revalidation sticker may not be issued until the fine has been paid.

Oversight and Accountability

Any traffic infraction detector installed on the state's streets or highways must meet contract specifications established by FDOT and must be tested at regular intervals according to procedures prescribed by FDOT. The bill creates a new s. 316.0776, F.S., providing that FDOT will develop traffic infraction detector specifications as part of its handbook addressing material and equipment connections to state electrical signal boxes.

The bill provides a 'grandfather clause' for a period of one year after these specifications are finalized (or July 1, 2015, if the specifications are still unfinished), for jurisdictions that have already instituted a traffic infraction detector program. The bill also validates and ratifies infraction enforcement actions taken by cities and counties for the period of the grandfather clause.

The bill provides for a complaint process for complaints that a county or municipality is employing traffic infraction detectors for purposes other than the promotion of public health, welfare, and safety or in a manner inconsistent with the law. A complaint may be submitted to the governing board of the county or municipality.

Each county or municipality that operates a traffic infraction detector is required to submit a biannual report to FDOT, which must contain:

- the complaints received, along with any investigation and corrective action taken by the governing body;
- the results of using the traffic infraction detector; and
- the procedures for enforcement.

FDOT must submit a biannual summary report to the Governor and Legislature which must contain:

- a review of the information received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

The first report must be submitted on or before December 1 of each even-numbered year. After reviewing the report, the Legislature may exclude a county or municipality from further participation in the program.

The bill provides a severability clause and is effective upon becoming law.

B. SECTION DIRECTORY:

- Section 1.** Citing the act as the "Mark Wandall Traffic Safety Act."
Section 2. Amending s. 316.003, F.S.; defining the term "traffic infraction detector."
Section 3. Creating s. 316.0083, F.S.; creating the "Mark Wandall Traffic Safety Program" to be administered by FDOT; authorizing counties and municipalities to enact ordinances permitting the use of traffic infraction detectors and specifying the requirements of an ordinance; requiring access to county or FDOT right-of-way; exempting emergency vehicles from an ordinance enacted under this section; providing penalties for traffic control signal violations detected by traffic infraction detectors; providing for the issuance, challenge, and disposition of tickets; providing for disposition of fine revenue; providing a process for complaints that a county or municipality is employing detectors in a manner inconsistent with this section; and requiring FDOT to submit a report to the Governor and Legislature.

- Section 4.** Amending s. 316.0745(6), F.S.; requiring traffic infraction detectors to meet certain specifications.
- Section 5.** Creating s. 316.07456, F.S.; providing a grandfather clause for existing municipal equipment and programs.
- Section 6.** Creating s. 316.0776, F. S.; allowing placement and installation of traffic infraction detectors on the State Highway System, county roads, and city streets pursuant to specifications developed by FDOT, so long as the safety and operation of the road facility is not impaired.
- Section 7.** Amending s. 316.1967, F.S., adding red-light camera ordinance violations to the violations list reported to DHSMV.
- Section 8.** Amending s. 395.4036, F.S., providing direction for the distribution of funds collected by the DOH Administrative Trust Fund.
- Section 9.** Recognizing and ratifying enforcement actions by local governments using traffic cameras prior to the effective date of this act.
- Section 10.** Providing a severability clause.
- Section 11.** Providing that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
See Fiscal Comments, below.
- 2. Expenditures:
See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
See Fiscal Comments, below.
- 2. Expenditures:
See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of red light violations, therefore increasing the possibility of a motor vehicle owner receiving a ticket for a red light violation. The fine for the ordinance violation, as determined by a traffic infraction detector, is \$155. If a person chooses to contest the ticket, they may appear before a judge, but they are deemed to have waived the limitation of civil penalties imposed for the violation and, if the ticket is upheld by the judge, may be charged the \$155 fine plus court costs.

There are a number of providers of traffic infraction detectors in Florida. These providers and others may realize a significant positive fiscal impact, depending on how each provider structures its services and negotiates with a given the county or municipality.³⁴ The fine for a violation of current municipal traffic infraction detector ordinances in Florida ranges from \$50 to \$150. The amount of the fine

³⁴ A 2002 audit by the California State Auditor noted that "[t]he fees and fee structures that local governments pay their vendors differ significantly." The audit indicated that some cities paid anywhere from \$25 to \$106 per citation to the vendor, with larger cities like San Francisco and Los Angeles paying additional flat fees to cover certain costs. The audit suggested that "[t]hese variances may be due to the relative size differences among the programs and each local government's negotiating ability." *Red Light Camera Programs: Although They Have Contributed to a Reduction in Accidents, Operational Weaknesses Exist at the Local Level*, Report No. 2001-125, California State Auditor, Bureau of State Audits, July 2002.

received by the vendor varies based on negotiations between the vendor and the local government. Two important factors in the negotiation are whether the vendor will bear the up-front installation costs of the equipment, and the eventual ownership of the equipment. In the case where the vendor bears the costs of the initial installation, that vendor may receive a large percentage of the fine during the early years of the contract, in order to recoup its initial outlay. The local government may receive a larger share in later years, and will also ultimately own the equipment outright. Other jurisdictions may elect to negotiate a different arrangement whereby the vendor retains ownership of the equipment, and receives a fixed percentage of the fine over the course of the contract. A third arrangement involves a relatively large flat-fee monthly payment to the vendor, and a larger percentage of the fine retained by the local government.³⁵

During the 2008 Legislative session, a bill similar to CS/HB 325 provided that local governments would receive \$30 per violation instead of the \$75 per violation allowed by CS/HB 325.³⁶ The Florida League of Cities noted at the time that "capital and maintenance costs of these camera systems are significant and there are few, if any, vendors that would be able to provide the systems at this price."³⁷

FISCAL COMMENTS:

In 2009, the Revenue Estimating Conference estimated that a substantially similar bill would have a recurring positive indeterminate impact on state revenues and a recurring indeterminate impact on local governments. There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to the provisions of this bill becoming effective.

There may be an increase in fine revenue for the local governments that choose to enact ordinances permitting the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior. There may be a decrease in fine revenues to local governments who are now collecting fines from traffic infraction detector ordinances adopted prior to this bill becoming effective.

The bill provides that half of the revenue generated by the tickets is retained by the local jurisdiction (\$75 from each fine). As a result, there may be an increase in fine revenue for any local governments that choose to enact ordinances permitting the use of traffic infraction detectors. The amount of revenue is indeterminate, as the number of ordinance violations to be issued is unknown and depends on driver awareness and future behavior.

The DOH Administrative Trust Fund will receive approximately 15 percent of all revenue generated by the bill (\$25 from each fine). Of this revenue, twenty percent (\$5) will be distributed to children's crisis-stabilization units and rural health initiatives. The remaining eighty percent (\$20) of the revenue directed to the Trust Fund is distributed as follows:

- Fourteen percent to the Miami Project to Cure Paralysis for brain and spinal cord injury,
- Three percent directed to community-based support programs that support services and individuals who have sustained a traumatic brain injury,
- Eighteen percent to verified trauma centers having a local funding contribution,
- Thirty percent to verified trauma centers based on trauma caseload volume,
- Thirty-two percent to verified trauma centers based on severity of trauma patients, and

³⁵ The California audit cited in Footnote 19 summarizes the varying business cases as follows: "The advantage of paying a fee for each paid citation is that the local government does not have to pay a large amount all at once. The downside of this method is that increasing profits by maximizing the number of citations issued might become an incentive for vendors—and create a poor perception of the red light camera program by the public. Conversely, paying the vendor a flat fee removes any incentive to maximize the number of citations issued to bolster profits but makes the local government susceptible to the risk that, should the number of citations issued decrease, it would not receive enough revenue to pay the vendor."

³⁶ Committee Substitute for House Bill 351 (2008) by the Economic Expansion & Infrastructure Council and Reagan.

³⁷ *League of Cities, Inc. Legislative Briefs - Traffic Enforcement*, Scott Dudley, March 21, 2008.

- Three percent to public hospitals that qualify for disproportionate share dollars and that are not verified trauma centers but are located in trauma service areas that do not have a verified trauma center based on their proportionate number of emergency room visits.

The remaining 35 percent of the revenue collected (\$55 from each fine) is deposited into the General Revenue Fund.

To the extent local governments choose to enact ordinances to permit the use of traffic infraction detectors there may be a fiscal impact to the local governments for the cost of the acquisition, installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement between the local government and any private vendor providing the equipment and service. The price of a traffic infraction detector ranges from \$50,000 to \$100,000. There may also be installation, maintenance and monitoring fees, based on the negotiated agreement.

Local court systems may see a caseload increase, in the event that vehicle operators choose to contest tickets as permitted under the bill. Although the bill permits the court to impose a penalty "not to exceed \$155 plus court costs," there may be an indeterminate cost to the local court system.

The state will incur minor administrative expenses as a result of this legislation. The bill requires FDOT to collect reports from municipalities and to prepare a biannual report for the Legislature. The bill also requires FDOT to prepare standards for traffic infraction detectors.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; or reduce the percentage of a state tax shared with cities or counties.

Article VII, section 18, paragraph (b) of the Florida Constitution states that the Legislature must pass by a two-thirds vote any general law that will "reduce the authority that municipalities and counties have to raise revenues in the aggregate...." Paragraph (d) states that laws "creating, modifying, or repealing noncriminal infractions are exempt from the requirements of this section."

If a municipality enacted a traffic infraction detector ordinance prior to this legislation becoming effective, and if the local ordinance allows the local government to retain a greater portion of the fine than allowed under this bill, then it could be argued that the bill reduces the authority that the municipality has to raise revenues in the aggregate. However, the bill creates a noncriminal infraction which counties and cities may choose to enforce by enacting a local ordinance; therefore the bill is exempt from the mandate provisions.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rule-making authority to implement provision of CS/HB 325.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 9 of the bill "recognizes, validates, and ratifies any enforcement action" taken by a local government using a previously installed traffic infraction detector. There are pending lawsuits in multiple jurisdictions regarding the legality of municipal ordinances permitting traffic infraction detectors.³⁸ It is

³⁸ "West Palm Beach attorney Jason Weisser [will] sue the city. It would be the lawyer's ninth such suit against cities throughout Florida using red-light cameras, including Orlando, Miami Gardens and Aventura." *Bradenton facing red-light camera lawsuit*, Bradenton
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unclear how the parties to these lawsuits, or the courts hearing the lawsuits, will react to the retroactive statutory "validation" and "ratification" of previously-issued citations for violating traffic infraction detector ordinances.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 13, 2010, the Roads, Bridges and Ports Policy Committee favorably adopted a strike-all amendment. The strike-all:

- Increases the amount of the fine from \$150 to \$155;
- Includes "leased" properties of a municipality or county as allowable locations to install traffic infraction detectors;
- Replaces the word "person" with "registered owner," in the appeals provision;
- Clarifies that cities are not responsible for payments to the state when the fine is not actually collected from the motor vehicle owner;
- Removes an explicit exception for medical emergencies, and subsequent language requiring affidavits from health care providers in the event a medical emergency is claimed;
- Modifies the revenue amounts received by certain health care providers, and adds both the "Miami Project to Cure Paralysis," and children's crisis-stabilization units to the groups receiving revenue under the bill;
- Clarifies that reports from local governments to FDOT are due biannually, not annually;
- Clarifies language regarding DOH funds to ensure that funding is available to both trauma center public hospitals and nontrauma center public hospitals; and
- Provides that the healthcare funds in the bill are not subject to s. 215.97, the Florida Single Audit Act, and that DOH, in conjunction with the Agency for Health Care Administration, "shall maximize resources for trauma services whenever possible."

The strike-all was amended to clarify that the ratification and validation in Section 9 applies to traffic infraction detectors 'grandfathered in' by Section 5 of the bill.

The bill as amended was reported favorably as a committee substitute.

Herald, August 25, 2009. See also, *Pembroke Pines sued over red light cameras*, Sun-Sentinel, November 14, 2009 (A class-action suit with "roughly two dozen drivers," also represented by Weisser); *Lawsuit filed against city's red-light camera program*, Tampa Tribune, Aug. 7, 2009 (driver suing Temple Terrace);

1 A bill to be entitled
 2 An act relating to uniform traffic control; creating the
 3 "Mark Wandall Traffic Safety Act"; amending s. 316.003,
 4 F.S.; defining the term "traffic infraction detector";
 5 creating s. 316.0083, F.S.; creating the Mark Wandall
 6 Traffic Safety Program to be administered by the
 7 Department of Transportation; requiring a county or
 8 municipality to enact an ordinance in order to use a
 9 traffic infraction detector to identify a motor vehicle
 10 that fails to stop at a traffic control signal steady red
 11 light; requiring such detectors to meet department
 12 contract specifications; requiring authorization of a
 13 traffic infraction enforcement officer or a code
 14 enforcement officer to issue and enforce a ticket for such
 15 violation; requiring signage; requiring certain public
 16 awareness procedures; requiring the ordinance to establish
 17 a fine of a certain amount; requiring the ordinance to
 18 provide for installing, maintaining, and operating such
 19 detectors on a right-of-way owned or maintained by the
 20 Department of Transportation or on a right-of-way or area
 21 owned, leased, or maintained by the county or municipality
 22 in which the traffic infraction detector is to be
 23 installed; prohibiting additional charges; exempting
 24 emergency vehicles; providing that the registered owner of
 25 the motor vehicle involved in the violation is responsible
 26 and liable for payment of the fine assessed; providing
 27 exceptions; providing procedures for disposition and
 28 enforcement of tickets; providing for a person to contest

29 such ticket; providing for disposition of revenue
 30 collected; providing complaint procedures; providing for
 31 the Legislature to exclude a county or municipality from
 32 the program; requiring reports from participating
 33 municipalities and counties to the department; requiring
 34 the department to make reports to the Governor and the
 35 Legislature; amending s. 316.0745, F.S.; providing that
 36 traffic infraction detectors must meet certain
 37 specifications; creating s. 316.07456, F.S.; providing for
 38 preexisting equipment; requiring counties and
 39 municipalities that enacted an ordinance to enforce red
 40 light violations or entered into a contract to purchase or
 41 lease equipment to enforce red light violations before the
 42 effective date of this act to charge a certain penalty
 43 amount; requiring counties or municipalities that have
 44 acquired such equipment pursuant to an agreement entered
 45 into before the effective date of this act to make certain
 46 payments to the state; providing for future expiration of
 47 such provisions; creating s. 316.0776, F.S.; providing for
 48 placement and installation of detectors on the State
 49 Highway System, county roads, city streets, and leased
 50 areas; amending s. 316.1967, F.S., relating to liability
 51 for payment of parking ticket violations and other
 52 violations; providing for inclusion of persons with
 53 outstanding violations in a list sent to the Department of
 54 Highway Safety and Motor Vehicles for enforcement
 55 purposes; amending s. 395.4036, F.S.; providing for
 56 distribution of funds to trauma centers, certain

57 hospitals, certain nursing homes, and certain health units
 58 and programs, to be used for specified purposes;
 59 correcting a cross-reference; exempting such funds from
 60 specified audit provisions; ratifying prior enforcement
 61 actions; providing for severability; providing an
 62 effective date.

63

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

65

66 Section 1. This act may be cited as the "Mark Wandall
 67 Traffic Safety Act."

68 Section 2. Subsection (86) is added to section 316.003,
 69 Florida Statutes, to read:

70 316.003 Definitions.—The following words and phrases, when
 71 used in this chapter, shall have the meanings respectively
 72 ascribed to them in this section, except where the context
 73 otherwise requires:

74 (86) TRAFFIC INFRACTION DETECTOR.—A vehicle sensor
 75 installed to work in conjunction with a traffic control signal
 76 and a camera or cameras synchronized to automatically record two
 77 or more sequenced photographic or electronic images or streaming
 78 video of only the rear of a motor vehicle at the time the
 79 vehicle fails to stop behind the stop bar or clearly marked stop
 80 line when facing a traffic control signal steady red light. Any
 81 ticket issued by the use of a traffic infraction detector must
 82 include a photograph or other recorded image showing both the
 83 license tag of the offending vehicle and the traffic control
 84 device being violated.

85 Section 3. Section 316.0083, Florida Statutes, is created
 86 to read:

87 316.0083 Mark Wandall Traffic Safety Program;
 88 administration; report.-

89 (1) There is created the Mark Wandall Traffic Safety
 90 Program governing the operation of traffic infraction detectors.
 91 The program shall be administered by the Department of
 92 Transportation and shall include the following provisions:

93 (a) In order to use a traffic infraction detector, a
 94 county or municipality must enact an ordinance that provides for
 95 the use of a traffic infraction detector to enforce s.
 96 316.075(1)(c), which requires the driver of a vehicle to stop
 97 the vehicle when facing a traffic control signal steady red
 98 light on the streets and highways under the jurisdiction of the
 99 county or municipality. The traffic infraction detector must
 100 conform to the contract specifications adopted by the Department
 101 of Transportation under s. 316.0776. A county or municipality
 102 may install such detectors within the boundaries of the county
 103 or municipality on rights-of-way owned or maintained by the
 104 Department of Transportation or on rights-of-way or areas owned,
 105 leased, or maintained by that county or municipality. Only a
 106 municipality may install or authorize the installation of any
 107 such detectors within the incorporated area of the municipality.
 108 A municipality may authorize the state or county to install such
 109 detectors within its incorporated area. Only a county may
 110 install or authorize the installation of any such detectors
 111 within the unincorporated area of the county. A county may
 112 authorize the state to install such detectors in the

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113 unincorporated area of the county. A county or municipality that
114 operates a traffic infraction detector must authorize a traffic
115 infraction enforcement officer or a code enforcement officer to
116 issue a ticket for a violation of s. 316.075(1)(c) and to
117 enforce the payment of the ticket for such violation. This
118 paragraph does not authorize a traffic infraction enforcement
119 officer or a code enforcement officer to carry a firearm or
120 other weapon and does not authorize such an officer to make
121 arrests. The ordinance must require signs to be posted at
122 locations designated by the county or municipality providing
123 notification that a traffic infraction detector may be in use.
124 Such signage must conform to the specifications adopted by the
125 Department of Transportation under s. 316.0745 or must be in
126 accordance with all applicable provisions of the latest edition
127 of the Manual on Uniform Traffic Control Devices, part 2, signs.
128 The ordinance must provide for the county or municipality to
129 install, maintain, and operate traffic infraction detectors
130 within the boundaries of the county or municipality on rights-
131 of-way owned or maintained by the Department of Transportation
132 or on rights-of-way or areas owned, leased, or maintained by
133 that county or municipality. The ordinance must also require
134 that the county or municipality make a public announcement and
135 conduct a public awareness campaign of the proposed use of
136 traffic infraction detectors at least 30 days before commencing
137 the enforcement program. In addition, the ordinance must
138 establish a fine of \$155 to be assessed against the registered
139 owner of a motor vehicle that fails to stop when facing a
140 traffic control signal steady red light as determined through

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141 the use of a traffic infraction detector. Any other provision of
 142 law to the contrary notwithstanding, an additional surcharge,
 143 fee, or cost may not be added to the civil penalty authorized by
 144 this paragraph, except as provided in paragraph (g).

145 (b) When responding to an emergency call, an emergency
 146 vehicle is exempt from any ordinance enacted under this section.

147 (c) A county or municipality must adopt an ordinance under
 148 this section that provides for the use of a traffic infraction
 149 detector in order to impose a fine on the registered owner of a
 150 motor vehicle for a violation of s. 316.075(1)(c). The fine
 151 shall be imposed in the same manner and is subject to the same
 152 limitations as provided for parking violations under s.
 153 316.1967. Except as specifically provided in this section,
 154 chapter 318 and s. 322.27 do not apply to a violation of s.
 155 316.075(1)(c) for which a ticket has been issued under an
 156 ordinance enacted pursuant to this section. Enforcement of a
 157 ticket issued under the ordinance is not a conviction of the
 158 operator of the motor vehicle, may not be made a part of the
 159 driving record of the operator, and may not be used for purposes
 160 of setting motor vehicle insurance rates. Points under s. 322.27
 161 may not be assessed based upon such enforcement.

162 (d) The procedures set forth in s. 316.1967(2)-(5) apply
 163 to an ordinance enacted pursuant to this section, except that
 164 the ticket must contain the name and address of the person
 165 alleged to be liable as the registered owner of the motor
 166 vehicle involved in the violation, the tag number of the motor
 167 vehicle, the violation charged, a copy of the photographic image
 168 or images evidencing the violation, the location where the

169 violation occurred, the date and time of the violation, and a
 170 signed statement by a specifically trained technician employed
 171 by the agency or its contractor that, based on inspection of
 172 photographs or other recorded images, the motor vehicle was
 173 being operated in violation of s. 316.075(1)(c). The ticket must
 174 advise the registered owner of the motor vehicle involved in the
 175 violation of the amount of the fine, the date by which the fine
 176 must be paid, and the procedure for contesting the violation
 177 alleged in the ticket. The ticket must contain a warning that
 178 failure to contest the violation in the manner and time provided
 179 is deemed an admission of the liability and that a default may
 180 be entered thereon. The violation shall be processed by the
 181 county or municipality that has jurisdiction over the street or
 182 highway where the violation occurred or by any entity authorized
 183 by the county or municipality to prepare and mail the ticket.

184 (e) The ticket shall be sent by first-class or certified
 185 mail, addressed to the registered owner of the motor vehicle,
 186 and postmarked no later than 30 days after obtaining the name
 187 and address of the registered owner of the vehicle, but in no
 188 event later than 60 days after the date of the violation.

189 (f)1. The registered owner of the motor vehicle involved
 190 in a violation is responsible and liable for payment of the fine
 191 assessed pursuant to this section unless the owner can establish
 192 that:

193 a. The motor vehicle passed through the intersection in
 194 order to yield right-of-way to an emergency vehicle or as part
 195 of a funeral procession;

196 b. The motor vehicle passed through the intersection at

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197 the direction of a law enforcement officer;

198 c. The motor vehicle was stolen at the time of the alleged
 199 violation; or

200 d. A uniform traffic citation was issued to the driver of
 201 the motor vehicle for the alleged violation of s. 316.075(1)(c).

202 2. In order to establish any such fact pursuant to
 203 subparagraph 1., the registered owner of the vehicle must,
 204 within 60 days after receipt of notification of the alleged
 205 violation, furnish to the county or municipality, as
 206 appropriate, an affidavit that sets forth detailed information
 207 supporting an exemption under subparagraph 1. For an exemption
 208 under sub-subparagraph 1.c., the affidavit must set forth that
 209 the vehicle was stolen and be accompanied by a copy of the
 210 police report indicating that the vehicle was stolen at the time
 211 of the alleged violation. For an exemption under sub-
 212 subparagraph 1.d., the affidavit must set forth that a citation
 213 was issued and be accompanied by a copy of the citation
 214 indicating the time of the alleged violation and the location of
 215 the intersection where it occurred.

216 (g) A registered owner may contest the determination that
 217 such person failed to stop at a traffic control signal steady
 218 red light as evidenced by a traffic infraction detector by
 219 electing to appear before any judge or locally designated
 220 official authorized by law to preside over an administrative
 221 hearing that adjudicates traffic infractions. If a hearing is
 222 requested by the registered owner, the notification by the
 223 issuing authority of a hearing date, time, and location shall be
 224 made by first class mail. A person who elects to appear before

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225 the judge or designated official to present evidence is deemed
 226 to have waived the limitation of civil penalties imposed for the
 227 violation. The judge or designated official shall make a
 228 determination as to whether a red light violation has been
 229 committed and may impose a civil penalty not to exceed \$155,
 230 plus court costs. Any person who fails to pay the civil penalty
 231 within the time allowed by the county, municipality, or court is
 232 deemed to have been convicted of a violation and the court shall
 233 take appropriate measures to enforce collection of the fine.

234 (h) A certificate sworn to or affirmed by a person
 235 authorized under this section who is employed by or under
 236 contract with the county or municipality where the infraction
 237 occurred, or a facsimile thereof that is based upon inspection
 238 of photographs or other recorded images produced by a traffic
 239 infraction detector, is prima facie evidence of the facts
 240 contained in the certificate. A photograph or other recorded
 241 image evidencing a violation of s. 316.075(1)(c) must be
 242 available for inspection in any proceeding to adjudicate
 243 liability under an ordinance enacted pursuant to this section.

244 (i) In any county or municipality in which tickets are
 245 issued as provided in this section, the names of persons who
 246 have one or more outstanding violations may be included on the
 247 list authorized under s. 316.1967(6).

248 (2) Of the fine imposed and collected pursuant to
 249 paragraph (1)(a) or paragraph (1)(g), \$55 shall be remitted by
 250 the county or municipality to the Department of Revenue for
 251 deposit into the General Revenue Fund, \$25 shall be remitted to
 252 the Department of Revenue for deposit into the Department of

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253 Health Administrative Trust Fund, and \$75 shall be retained by
254 the county or municipality enforcing the ordinance enacted
255 pursuant to this section. Funds deposited into the Department of
256 Health Administrative Trust Fund under this subsection shall be
257 distributed as provided in s. 395.4036(1).

258 (3) A complaint that a county or municipality is employing
259 traffic infraction detectors for purposes other than the
260 promotion of public health, welfare, and safety or in a manner
261 inconsistent with this section may be submitted to the governing
262 body of such county or municipality. Such complaints, along with
263 any investigation and corrective action taken by the county or
264 municipal governing body, shall be included in the biannual
265 report to the Department of Transportation and in that
266 department's biannual summary report to the Governor, the
267 President of the Senate, and the Speaker of the House
268 Representatives, as required by this section. Based on its
269 review of the report, the Legislature may exclude a county or
270 municipality from further participation in the program.

271 (4) (a) Each county or municipality that operates a traffic
272 infraction detector shall submit a biannual report to the
273 Department of Transportation that details the results of using
274 the traffic infraction detector and the procedures for
275 enforcement.

276 (b) The Department of Transportation shall provide a
277 biannual summary report to the Governor, the President of the
278 Senate, and the Speaker of the House of Representatives
279 regarding the use and operation of traffic infraction detectors
280 under this section. The summary report must include a review of

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281 the information submitted to the Department of Transportation by
 282 the counties and municipalities and must describe the
 283 enhancement of the traffic safety and enforcement programs. The
 284 Department of Transportation shall report its recommendations,
 285 including any necessary legislation, on or before December 1 of
 286 each even-numbered year to the Governor, the President of the
 287 Senate, and the Speaker of the House of Representatives.

288 Section 4. Subsection (6) of section 316.0745, Florida
 289 Statutes, is amended to read:

290 316.0745 Uniform signals and devices.—

291 (6) Any system of traffic control devices controlled and
 292 operated from a remote location by electronic computers or
 293 similar devices must ~~shall~~ meet all requirements established for
 294 the uniform system, and, ~~if where~~ a system affects systems
 295 ~~affect~~ the movement of traffic on state roads, the design of the
 296 system must ~~shall~~ be reviewed and approved by the Department of
 297 Transportation.

298 Section 5. Section 316.07456, Florida Statutes, is created
 299 to read:

300 316.07456 Grandfather clause.—

301 (1) Any traffic infraction detector deployed on the
 302 streets and highways of the state must meet the contract
 303 specifications established by the Department of Transportation
 304 and must be tested at regular intervals according to procedures
 305 prescribed by that department.

306 (2) Notwithstanding any provision of law to the contrary,
 307 nothing in this act shall prohibit any county or municipality
 308 from using red light traffic enforcement devices of any type or

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309 from enforcing violations of s. 316.074(1) or s. 316.075(1)(c)
 310 or other red light traffic enforcement ordinances if such county
 311 or municipality has enacted an ordinance to enforce red light
 312 violations or has entered into a contract to purchase or lease
 313 equipment to enforce red light violations before the effective
 314 date of this act.

315 (3) Of the fine imposed and collected pursuant to s.
 316 316.0083(1)(a) or (g), \$55 shall be remitted by the county or
 317 municipality to the Department of Revenue for deposit into the
 318 General Revenue Fund, \$25 shall be remitted to the Department of
 319 Revenue for deposit into the Department of Health Administrative
 320 Trust Fund, and \$75 shall be retained by the county or
 321 municipality enforcing the ordinance enacted pursuant to this
 322 section. Funds deposited into the Department of Health
 323 Administrative Trust Fund under this subsection shall be
 324 distributed as provided in s. 395.4036(1).

325 (4) This section expires 1 year after the Department of
 326 Transportation's final adoption of specifications or on July 1,
 327 2015, whichever occurs first.

328 Section 6. Section 316.0776, Florida Statutes, is created
 329 to read:

330 316.0776 Traffic infraction detectors; placement and
 331 installation.—Placement and installation of traffic infraction
 332 detectors is allowed on the State Highway System, county roads,
 333 city streets, and leased areas pursuant to specifications
 334 developed by the Department of Transportation, included in the
 335 handbook addressing material and equipment connections to the
 336 state electrical signal boxes and placement of signs on state

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337 equipment to protect the safety and operation of the traffic
 338 along roadways.

339 Section 7. Subsection (6) of section 316.1967, Florida
 340 Statutes, is amended to read:

341 316.1967 Liability for payment of parking ticket
 342 violations and other ~~parking~~ violations.-

343 (6) Any county or municipality may provide by ordinance
 344 that the clerk of the court or the traffic violations bureau
 345 shall supply the department with a magnetically encoded computer
 346 tape reel or cartridge or send by other electronic means data
 347 which is machine readable by the installed computer system at
 348 the department, listing persons who have three or more
 349 outstanding parking violations, including violations of s.
 350 316.1955, or who have one or more outstanding tickets for a
 351 violation of a traffic control signal steady red light
 352 indication issued pursuant to an ordinance adopted under s.
 353 316.0083. Each county shall provide by ordinance that the clerk
 354 of the court or the traffic violations bureau shall supply the
 355 department with a magnetically encoded computer tape reel or
 356 cartridge or send by other electronic means data that is machine
 357 readable by the installed computer system at the department,
 358 listing persons who have any outstanding violations of s.
 359 316.0083 or s. 316.1955 or any similar local ordinance that
 360 regulates parking in spaces designated for use by persons who
 361 have disabilities. The department shall mark the appropriate
 362 registration records of persons who are so reported. Section
 363 320.03(8) applies to each person whose name appears on the list.

364 Section 8. Section 395.4036, Florida Statutes, is amended

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365 to read:

366 395.4036 Trauma payments.—

367 (1) Recognizing the Legislature's stated intent to provide
 368 financial support to the current verified trauma centers and to
 369 provide incentives for the establishment of additional trauma
 370 centers as part of a system of state-sponsored trauma centers,
 371 the department shall use ~~utilize~~ funds collected under ss.
 372 316.0083 and ~~s.~~ 318.18 and deposited into the Administrative
 373 Trust Fund of the department to ensure the availability and
 374 accessibility of trauma and emergency services throughout the
 375 state as provided in this subsection.

376 (a) Funds collected under ss. 316.0083 and ~~s.~~ 318.18(15)
 377 shall be distributed as follows:

378 1. Five dollars of each fine collected under s. 316.0083
 379 shall be distributed equally among all children's crisis
 380 stabilization units and rural health initiatives.

381 2. Fourteen percent of the total funds, after the
 382 deduction under subparagraph 1., which were collected under s.
 383 316.0083 shall be distributed to the Miami Project to Cure
 384 Paralysis for brain and spinal cord injury.

385 3. Three percent of the total funds, after the deduction
 386 under subparagraph 1., which were collected under s. 316.0083
 387 shall be distributed equally to community-based support programs
 388 that provide support and services for individuals who have
 389 sustained a traumatic brain injury.

390 4.1. Eighteen percent of the total funds, after the
 391 deduction under subparagraph 1., which were collected under s.
 392 316.0083 and 20 ~~Twenty~~ percent of the total funds collected

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393 under s. 318.18(15) during the state fiscal year shall be
394 distributed to verified trauma centers that have a local funding
395 contribution as of December 31. Distribution of funds under this
396 subparagraph shall be based on trauma caseload volume for the
397 most recent calendar year available.

398 5.2. Thirty percent of the total funds, after the
399 deduction under subparagraph 1., which were collected under s.
400 316.0083 and 40 ~~Forty~~ percent of the total funds collected under
401 s. 318.18(15) shall be distributed to verified trauma centers
402 based on trauma caseload volume for the most recent calendar
403 year available. The determination of caseload volume for
404 distribution of funds under this subparagraph shall be based on
405 the department's Trauma Registry data.

406 6.3. Thirty-two percent of the total funds, after the
407 deduction under subparagraph 1., which were collected under s.
408 316.0083 and 40 ~~Forty~~ percent of the total funds collected under
409 s. 318.18(15) shall be distributed to verified trauma centers
410 based on severity of trauma patients for the most recent
411 calendar year available. The determination of severity for
412 distribution of funds under this subparagraph shall be based on
413 the department's International Classification Injury Severity
414 Scores or another statistically valid and scientifically
415 accepted method of stratifying a trauma patient's severity of
416 injury, risk of mortality, and resource consumption as adopted
417 by the department by rule, weighted based on the costs
418 associated with and incurred by the trauma center in treating
419 trauma patients. The weighting of scores shall be established by
420 the department by rule.

421 7. Three percent of the total funds, after the deduction
 422 under subparagraph 1., which were collected under s. 316.0083
 423 shall be distributed to public hospitals that qualify for
 424 distributions under s. 409.911(4), that are not verified trauma
 425 centers but are located in trauma service areas, as defined
 426 under s. 395.402, and that do not have a verified trauma center
 427 based on their proportionate number of emergency room visits on
 428 an annual basis. The Agency for Health Care Administration shall
 429 provide the department with a list of public hospitals and
 430 emergency room visits.

431 (b) Funds collected under s. 318.18(5)(c) and (20) ~~(19)~~
 432 shall be distributed as follows:

433 1. Thirty percent of the total funds collected shall be
 434 distributed to Level II trauma centers operated by a public
 435 hospital governed by an elected board of directors as of
 436 December 31, 2008.

437 2. Thirty-five percent of the total funds collected shall
 438 be distributed to verified trauma centers based on trauma
 439 caseload volume for the most recent calendar year available. The
 440 determination of caseload volume for distribution of funds under
 441 this subparagraph shall be based on the department's Trauma
 442 Registry data.

443 3. Thirty-five percent of the total funds collected shall
 444 be distributed to verified trauma centers based on severity of
 445 trauma patients for the most recent calendar year available. The
 446 determination of severity for distribution of funds under this
 447 subparagraph shall be based on the department's International
 448 Classification Injury Severity Scores or another statistically

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449 valid and scientifically accepted method of stratifying a trauma
450 patient's severity of injury, risk of mortality, and resource
451 consumption as adopted by the department by rule, weighted based
452 on the costs associated with and incurred by the trauma center
453 in treating trauma patients. The weighting of scores shall be
454 established by the department by rule.

455 (2) Funds deposited in the department's Administrative
456 Trust Fund for verified trauma centers and nontrauma center
457 public hospitals may be used to maximize the receipt of federal
458 funds that may be available for such trauma centers and
459 nontrauma center public hospitals. Notwithstanding this section
460 and s. 318.14, distributions to trauma centers and nontrauma
461 center public hospitals may be adjusted in a manner to ensure
462 that total payments to trauma centers and nontrauma center
463 public hospitals represent the same proportional allocation as
464 set forth in this section and s. 318.14. For purposes of this
465 section and s. 318.14, total funds distributed to trauma centers
466 and nontrauma center public hospitals may include revenue from
467 the Administrative Trust Fund and federal funds for which
468 revenue from the Administrative Trust Fund is used to meet state
469 or local matching requirements. Funds collected under ss.
470 318.14, 316.0083, and 318.18 and deposited in the Administrative
471 Trust Fund of the department shall be distributed to trauma
472 centers and nontrauma center public hospitals on a quarterly
473 basis using the most recent calendar year data available. Such
474 data shall not be used for more than four quarterly
475 distributions unless there are extenuating circumstances as
476 determined by the department, in which case the most recent

477 calendar year data available shall continue to be used and
 478 appropriate adjustments shall be made as soon as the more recent
 479 data becomes available.

480 (3) Funds distributed under this section are not subject
 481 to the provisions of s. 215.97.

482 ~~(a) Any trauma center not subject to audit pursuant to s.~~
 483 ~~215.97 shall annually attest, under penalties of perjury, that~~
 484 ~~such proceeds were used in compliance with law. The annual~~
 485 ~~attestation shall be made in a form and format determined by the~~
 486 ~~department. The annual attestation shall be submitted to the~~
 487 ~~department for review within 9 months after the end of the~~
 488 ~~organization's fiscal year.~~

489 ~~(b) Any trauma center subject to audit pursuant to s.~~
 490 ~~215.97 shall submit an audit report in accordance with rules~~
 491 ~~adopted by the Auditor General.~~

492 (4) The department, working with the Agency for Health
 493 Care Administration, shall maximize resources for trauma
 494 services wherever possible.

495 Section 9. This act recognizes, validates, and ratifies
 496 any enforcement action taken by a county or municipality using a
 497 traffic infraction detector that was previously or is currently
 498 installed until 1 year after the Department of Transportation's
 499 final specifications are adopted, including any and all civil
 500 finances, penalties, fees, and costs collected pursuant to such
 501 enforcement action.

502 Section 10. If any provision of this act or its
 503 application to any person or circumstance is held invalid, the
 504 invalidity shall not affect other provisions or applications of

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505 this act which can be given effect without the invalid provision
506 or application, and to this end the provisions of this act are
507 declared severable.

508 Section 11. This act shall take effect upon becoming a
509 law.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 325 (2010)

Amendment No.1

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Reagan offered the following:
4

5 **Amendment**

6 Remove lines 248-257 and insert:

7 (2) Of the fine imposed and collected pursuant to paragraph (1) (a)
8 or paragraph (1) (g), \$75 shall be retained by the county or
9 municipality enforcing the ordinance enacted pursuant to this
10 section and the balance shall be remitted by the county or
11 municipality to the Department of Revenue for deposit into the
12 General Revenue Fund.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 325 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Reagan offered the following:

4
5 **Amendment**

6 Remove lines 315-324 and insert:

7 (3) Of the fine imposed and collected pursuant to s. 315
8 316.0083(1)(a) or (g), \$75 shall be retained by the county or
9 municipality enforcing the ordinance enacted pursuant to this
10 section and the balance shall be remitted by the county or
11 municipality to the Department of Revenue for deposit into the
12 General Revenue Fund.

Amendment No. 3

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee
3 Representative(s) Reagan offered the following:
4

Amendment (with directory amendment)

6 Remove lines 364-494
7
8
9

10 -----
11 **D I R E C T O R Y A M E N D M E N T**

12 Remove lines 55-58

13 purposes;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Teaching Nursing Homes

SPONSOR(S): Bogdanoff

TIED BILLS: IDEN./SIM. BILLS: SB 816

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Shaw <i>JS</i>	Calamas <i>CC</i>
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

A teaching nursing home is a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility. Presently, only one facility, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens, is designated a teaching nursing home.

The bill revises the requirements for becoming a teaching nursing home which increases the number of facilities eligible for the designation. Under the revised requirements, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens will remain eligible and other nursing homes will become eligible. Presently, MorseLife in Palm Beach County would meet the requirements of the bill.

The bill will have no fiscal impact on state government.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Teaching Nursing Home Pilot Program

In 1999, the Legislature enacted a "Teaching Nursing Home Pilot Project" to implement a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility designated by the Agency for Health Care Administration (AHCA) as a teaching nursing home.¹ To receive the designation, a nursing home licensed under chapter 400, F.S., must: have at least 400 licensed nursing home beds; have access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and have a contractual relationship with a federally funded accredited geriatric research center in this state.² The facility must also have a valid accreditation, such as the accreditation awarded by the Joint Commission on Accreditation of Healthcare Organizations, and have a contractual relationship with a teaching hospital.³

The Miami Jewish Home and Hospital for the Aged at Douglas Gardens was licensed in July 2000 as a teaching nursing home, and it remains the only nursing home so designated. Since that time, the teaching nursing home has received \$5.2 million to implement the program; however, state funding was discontinued in the 2007-2008 fiscal year.

General and Professional Liability Insurance

Nursing homes must meet the requirements for licensure in Part II of Chapter 400, Florida Statutes. Among the requirements is that a nursing home must maintain general and professional liability insurance coverage that is in force at all times.⁴ A state-designated teaching nursing home and its affiliated assisting assisted living facility may opt to meet this requirement by self insuring.⁵ The teaching nursing home must demonstrate financial responsibility in a minimum amount of \$750,000.⁶

¹ Ch. 99-394, L.O.F., creating s. 430.80, F.S.

² s. 430.80(1) and (2), F.S.

³ *Id.*

⁴ s. 400.101(1)(s), F.S.

⁵ s. 430.80(3), F.S.

⁶ *Id.*

Gold Seal Program

The Goal Seal Program is an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period.

Section 400.235, F.S., sets the requirements for receiving a Goal Seal Award. The facility must:

- Demonstrate a high quality of care and have no Class I⁷ or Class II⁸ deficiencies within the 30 months preceding application for the program;
- Evidence financial soundness and stability;
- Participate in a consumer satisfaction process;
- Evidence the involvement of families and members of the community in the facility on a regular basis; have a stable workforce;
- Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program; and
- Provide targeted in-service training to meet needs identified by internal or external quality assurance efforts.

Effect of Proposed Changes

The bill amends s. 430.80, F.S., to revise the requirements for becoming a teaching nursing home. These changes increase the number of facilities eligible to be designated a teaching nursing home.

The bill makes the following changes to the designation requirements:

- The minimum number of licensed nursing home beds is reduced from 400 to 275.
- In lieu of participating in a nationally recognized accreditation program, the nursing home may possess a Gold Seal Award at the time of initial designation as a teaching nursing home.
- In lieu of having a contractual relationship with a federally-funded accredited geriatric research center, the nursing home may operate a geriatric research center itself.
- The nursing home need not have a formalized contractual relationship with an accredited hospital.

The Miami Jewish Home and Hospital for the Aged at Douglas Gardens will still qualify as teaching nursing home. AHCA reports that there are currently eight nursing homes with at least 275 beds; of those only one currently has a Gold Seal Award and two are involved with geriatric research. MorseLife in Palm Beach County would meet the revised requirements to become a teaching nursing home.

B. SECTION DIRECTORY:

Section 1: Amends s. 430.80, F.S., relating to teaching nursing homes.

Section 2: Amends s. 400.141, F.S., relating to the administration and management of nursing home facilities.

Section 3: Provides an effective date of July 1, 2010.

⁷ Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result. See s. 408.813(2)(a), F.S.

⁸ Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. See s. 408.813(2)(b), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

More Florida nursing homes may obtain the designation of a teaching nursing home which will allow them to self-insure.

D. FISCAL COMMENTS:

State funding was discontinued for teaching nursing homes in the 2007-2008 fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to teaching nursing homes; amending s.
 3 430.80, F.S.; revising the term "teaching nursing home" as
 4 it relates to the implementation of a teaching nursing
 5 home pilot project; revising the requirements to be
 6 designated as a teaching nursing home; amending s.
 7 400.141, F.S.; conforming a cross-reference; providing an
 8 effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsections (1) and (3) of section 430.80,
 13 Florida Statutes, are amended to read:

14 430.80 Implementation of a teaching nursing home pilot
 15 project.—

16 (1) As used in this section, the term "teaching nursing
 17 home" means a nursing home facility licensed under chapter 400
 18 which contains a minimum of 275 ~~400~~ licensed nursing home beds;
 19 has access to a resident senior population of sufficient size to
 20 support education, training, and research relating to geriatric
 21 care; and has a contractual relationship with a federally funded
 22 accredited geriatric research center in this state or operates
 23 in its own right a geriatric research center.

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

26 (a) Provide a comprehensive program of integrated senior
 27 services that include institutional services and community-based
 28 services;

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29 (b) Participate in a nationally recognized accreditation
 30 program and hold a valid accreditation, such as the
 31 accreditation awarded by the Joint Commission on Accreditation
 32 of Healthcare Organizations, or, at the time of initial
 33 designation, possess a Gold Seal Award as conferred by the state
 34 on its licensed nursing home;

35 (c) Have been in business in this state for a minimum of
 36 10 consecutive years;

37 (d) Demonstrate an active program in multidisciplinary
 38 education and research that relates to gerontology;

39 (e) Have a formalized contractual relationship with at
 40 least one accredited health profession education program located
 41 in this state;

42 ~~(f) Have a formalized contractual relationship with an~~
 43 ~~accredited hospital that is designated by law as a teaching~~
 44 ~~hospital; and~~

45 ~~(f)(g)~~ Have senior staff members who hold formal faculty
 46 appointments at universities, which must include at least one
 47 accredited health profession education program; and-

48 ~~(g)(h)~~ Maintain insurance coverage pursuant to s.
 49 400.141(1)(s) or proof of financial responsibility in a minimum
 50 amount of \$750,000. Such proof of financial responsibility may
 51 include:

- 52 1. Maintaining an escrow account consisting of cash or
- 53 assets eligible for deposit in accordance with s. 625.52; or
- 54 2. Obtaining and maintaining pursuant to chapter 675 an
- 55 unexpired, irrevocable, nontransferable and nonassignable letter
- 56 of credit issued by any bank or savings association organized

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57 and existing under the laws of this state or any bank or savings
 58 association organized under the laws of the United States that
 59 has its principal place of business in this state or has a
 60 branch office which is authorized to receive deposits in this
 61 state. The letter of credit shall be used to satisfy the
 62 obligation of the facility to the claimant upon presentment of a
 63 final judgment indicating liability and awarding damages to be
 64 paid by the facility or upon presentment of a settlement
 65 agreement signed by all parties to the agreement when such final
 66 judgment or settlement is a result of a liability claim against
 67 the facility.

68 Section 2. Paragraph (s) of subsection (1) of section
 69 400.141, Florida Statutes, is amended to read:

70 400.141 Administration and management of nursing home
 71 facilities.-

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

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

80 Section 3. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 491 (2010)

Amendment No.1

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee
3 Representative(s) Bogdanoff offered the following:

4
5 **Amendment**

6 Remove line 18 and insert:
7 which contains a minimum of 170 ~~400~~ licensed nursing home beds;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 Infants Born Alive

SPONSOR(S): Snyder and others

TIED BILLS: IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Calamas	Calamas <i>JFC</i>
2)	Health & Family Services Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

House Bill 1063 amends Chapter 390, Florida Statutes, related to termination of pregnancies. The bill creates the Born Alive Infant Protection Act (Act).

The Act provides that infants born alive subsequent to an abortion have the same rights, powers and privileges as children born alive not subsequent to an abortion. The Act also requires health care practitioners to exercise the same level of professional skill, care and diligence to preserve such an infant's life as they would for an infant born alive not subsequent to an abortion.

The Act provides that violations of the Act are grounds for licensure discipline, requires health care practitioners to report violations of the Act, and defines terms.

The bill will have no fiscal impact on state government.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Born Alive Infant Protection Acts (BAIPA) are legislative enactments intended to establish rights, legal protections, duties or standards of care for infants born alive regardless of whether the birth was the result of an abortion.

In 2002, Congress passed and the President signed into law a federal BAIPA. The federal BAIPA requires that, in any interpretation or determination of the meaning of any Act of Congress or any administrative rule or ruling, certain terms (person, human being, child, and individual) include a child born alive at any stage of development.¹ The law defines "born alive" to be:

the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.²

The federal law explicitly provides that it should not be interpreted to provide or deny any legal right to a person prior to being born alive.³

Many states have BAIPAs, and many use some variation of the federal definition of "born alive". However, state BAIPAs usually impose specific standards and duties, rather than, or in addition to, using statutory construction guidance to establish legal status.⁴

¹ P.L. 107-207; 1 U.S.C. 8 (2010).

² *Id.*

³ *Id.*

⁴ See, e.g., Cal. Health & Safety Code s. 123420-123450 (2010) (providing born alive infants subsequent to abortion have the same right to medical care as infants born otherwise); Del. Code Ann. Tit. 17 s. 1795 (2010) (medical practitioners must exercise the same degree of medical skill, care and diligence for infants born as a result of an abortion as for other infants); Ill. Comp. Stat. 510/6 (2010) (medical practitioners must exercise the same degree of medical skill, care and diligence for infants born as a result of an abortion as for other infants); Mich. Comp. Laws s. 333.1071 (2010) (requiring physicians to provide immediate medical care to the infant); Wash. Rev. Code 18.71.240 (2010) (providing born alive infants subsequent to abortion have the same right to medical care as infants born otherwise);. *But, see*, Ill. Comp. Stat. 70/1.36 (2010) (Illinois BAIPA also uses the federal language).

In 2006, an improperly performed abortion resulted in the live birth of a baby girl in a Hialeah abortion clinic. An owner of the clinic placed the baby in a plastic bag, closed it, and placed the bag in a trash can.⁵ Law enforcement officials recovered the remains over a week later, upon their third search.⁶ The Miami-Dade County Medical Examiner determined the infant had breathed prior to its death.⁷ The Department of Health Board of Medicine initiated licensure action against the physician, and successfully revoked his license, for failure to maintain medical records, falsifying medical records, failing to properly dispose of the infant's remains, failing to properly care for the mother, delegating authority to an unlicensed person, and other violations.⁸ The physician was not disciplined for failure to provide medical care to the infant.

Current Florida law does not expressly address duties to or rights of infants born alive subsequent to an abortion.

Effect of Proposed Changes

The bill creates s. 390.01112, F.S., the Born Alive Infant Protection Act (Act). The Act defines "born alive" as the complete expulsion or extraction of a human infant, at any stage of development, who breathes, has a beating heart, umbilical cord pulsation, or voluntary muscle movement after the expulsion or extraction.

The Act provides that infants born alive subsequent to an abortion have the same rights, powers and privileges as children born alive not subsequent to an abortion. The Act also requires health care practitioners to exercise the same level of professional skill, care and diligence to preserve the life of an infant born alive subsequent to an abortion as they would for an infant born alive not subsequent to an abortion.

The bill requires health care practitioners with actual knowledge of a violation of the Act to report the violation to the Department of Health. The bill provides that a violation of the Act is grounds for licensure disciplinary action, which includes license suspension or revocation, practice restriction, fines, probation, corrective action, and letters of reprimand or concern.⁹

The Act defines "health care practitioners" by cross-reference to the definition in s. 456.001, F.S., which includes many practitioners regulated by the Department of Health and its various Boards.

Accordingly, the Act's requirements apply to: acupuncturists (chapter 457); medical doctors (chapter 458); osteopathic doctors (chapter 459), chiropractors (chapter 460); podiatrists (chapter 461); naturopaths (chapter 462); optometrists (chapter 463), nurses (chapter 464); pharmacists (chapter 465); dentists and dental hygienists (chapter 466); midwives (chapter 467); speech, occupational, and respiratory therapists (parts I, III, and V of chapter 468); nursing home administrators (part II of chapter 468); dietitians/nutritionists (part X of chapter 468); athletic trainers (part XIII of chapter 468); orthotists and prosthetists (part XIV of chapter 468); electrologists (chapter 478); massage therapists (chapter 480); clinical lab personnel (part III of chapter 483); medical physicists (part IV of chapter 483); opticians and hearing aid specialists (chapter 484); physical therapists (chapter 486); psychologists (chapter 490); and social workers and counselors (chapter 491).

B. SECTION DIRECTORY:

Section 1: Creates s. 390.01112, F.S., relating to the Born Alive Infant Protection Act.

Section 2: Provides an effective date of July 1, 2010.

⁵ Fla. Dept. of Health v. Renelique, Feb. 19, 2009, No. 08-003964 (DOAH 2009).

⁶ *Id.* at 12.

⁷ *Id.*

⁸ *Id.* at 14-18.

⁹ S. 456.072(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Because House Bill 1063 does not regulate or limit access to abortions, it does not appear to directly implicate the right to privacy guaranteed by Art. 1 Sec. 23 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

The Department of Health and relevant Boards have sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to infants born alive; creating s.
 3 390.01112, F.S.; providing a short title; providing
 4 definitions; providing that an infant born alive
 5 subsequent to an abortion is entitled to the same rights,
 6 powers, and privileges as a child born alive in the course
 7 of a birth that is not subsequent to an abortion;
 8 providing a standard of care to be exercised by health
 9 care practitioners toward such a child; requiring health
 10 care practitioners to report violations; providing that
 11 violations may constitute grounds for discipline of health
 12 care practitioners under a specified provision; providing
 13 an effective date.

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

16
 17 Section 1. Section 390.01112, Florida Statutes, is created
 18 to read:

19 390.01112 Born Alive Infant Protection Act.-

20 (1) This section may be cited as the "Born Alive Infant
 21 Protection Act."

22 (2) As used in this section, the term:

23 (a) "Born alive" means the complete expulsion or
 24 extraction from his or her mother of a human infant, at any
 25 stage of development, who after such expulsion or extraction
 26 breathes or has a beating heart, pulsation of the umbilical
 27 cord, or definite movement of voluntary muscles, regardless of
 28 whether the umbilical cord has been cut and regardless of

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29 whether the expulsion or extraction occurs as a result of
 30 natural or induced labor, cesarean section, induced abortion, or
 31 other method.

32 (b) "Health care practitioner" has the same meaning as
 33 provided in s. 456.001.

34 (3) An infant born alive subsequent to an abortion is
 35 entitled to the same rights, powers, and privileges as are
 36 granted by the laws of this state to any other child born alive
 37 in the course of a birth that is not subsequent to an abortion.

38 (4) If an infant is born alive subsequent to an abortion,
 39 a health care practitioner present at the time must humanely
 40 exercise the same level of professional skill, care, and
 41 diligence to preserve the life and health of the infant as would
 42 be rendered by a health care practitioner to an infant born
 43 alive in the course of a birth that is not subsequent to an
 44 abortion.

45 (5) A health care practitioner with actual knowledge of a
 46 violation of this section must report the violation to the
 47 department.

48 (6) A violation of this section by a health care
 49 practitioner shall be considered a violation of s.
 50 456.072(1)(k).

51 Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143

Reduction and Simplification of Health Care Provider Regulation

SPONSOR(S): Hudson

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Calamas	Calamas <i>CEC</i>
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 1143 amends the Health Care Licensing Procedures Act and the various authorizing statutes of entities regulated by the Agency for Health Care Administration (AHCA) to reduce, streamline, and clarify regulations for those providers.

The bill eliminates the Limited Nursing Services (LNS) specialty license types for assisted living facilities (ALFs) to allow a licensed nurse to provide limited nursing services in a standard licensed assisted living facility. The bill replaces monitoring visits currently made to ALFs with specialty licenses with monitoring visits to all ALFs based upon citation of serious violations, and allows a fee to be charged for monitoring visits. The bill modifies AHCA consultation duties related to ALFs, and requires rules be adopted for data submission by ALFs to the Agency related to the numbers of residents receiving mental health or nursing services, resident funding sources and staffing.

The bill precludes collection of Lease Alternative Bond Fund (Fund) payments by certain nursing homes when the Fund exceeds \$25 million, based on certain calculations. This could save nursing home providers up to \$4.2 million, annually.

The bill amends various licensure provisions, including those related to bankruptcy notifications, licensure renewal notices, billing complaints, accrediting organizations, licensure application document submissions, staffing in geriatric outpatient clinics, medical records, property statements, AHCA inspection staff, litigation notices, and health care clinic licensure exemptions.

The bill repeals obsolete or duplicative provisions in licensing and related statutes, including expired reports and regulations and provisions that exist in other sections of law, and resolves conflicts among and between provisions in the Health Care Licensing Procedures Act and various authorizing statutes for individual provider types. The bill makes various revisions to update terminology and conform current law to prior legislative changes.

The bill has a positive impact on the Agency for Health Care Administration: The bill will save \$1.3 million annually in state funds by reducing state administrative costs and Medicaid expenditures. The bill also redirects revenue from certain traffic fines from AHCA to the Brain and Spinal Cord Trust Fund within the Department of Health. (See Fiscal Comments.)

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Health Care Licensing Procedures Act

The Agency for Health Care Administration (AHCA) regulates over 41,000 health care providers under various regulatory programs. Regulated providers include:

- Laboratories authorized to perform testing under the Drug-Free Workplace Act (ss. 112.0455, 440.102, F.S.)
- Birth centers (Ch. 383, F.S.).
- Abortion clinics (Ch. 390, F.S.).
- Crisis stabilization units (Pts. I and IV of Ch. 394, F.S.).
- Short-term residential treatment facilities (Pt. I and IV of Ch. 394, F.S.).
- Residential treatment facilities (Pt. IV of Ch. 394, F.S.).
- Residential treatment centers for children and adolescents (Pt. IV of Ch. 394, F.S.).
- Hospitals (Part I of Ch. 395, F.S.).
- Ambulatory surgical centers (Pt. I of Ch. 395, F.S.).
- Mobile surgical facilities (Pt. I of Ch. 395, F.S.).
- Health care risk managers (Pt. I of Ch. 395, F.S.).
- Nursing homes (Pt. II of Ch. 400, F.S.).
- Assisted living facilities (Pt. I of Ch. 429, F.S.).
- Home health agencies (Pt. III of Ch. 400, F.S.).
- Nurse registries (Pt. III of Ch. 400, F.S.).
- Companion services or homemaker services providers (Pt. III of Ch. 400, F.S.).
- Adult day care centers (Pt. III of Ch. 429, F.S.).
- Hospices (Pt. IV of Ch. 400, F.S.).
- Adult family-care homes (Pt. II of Ch. 429, F.S.).
- Homes for special services (Pt. V of Ch. 400, F.S.).
- Transitional living facilities (Pt. V of Ch. 400, F.S.).
- Prescribed pediatric extended care centers (Pt. VI of Ch. 400, F.S.).
- Home medical equipment providers (Pt. VII of Ch. 400, F.S.).
- Intermediate care facilities for persons with developmental disabilities (Pt. VIII of Ch. 400, F.S.).
- Health care services pools (Pt. IX of Ch. 400, F.S.).
- Health care clinics (Pt. X of Ch. 400, F.S.).

- Clinical laboratories (Pt. I of Ch. 483, F.S.).
- Multiphasic health testing centers (Pt. II of Ch. 483, F.S.).
- Organ, tissue, and eye procurement organizations (Pt. V of Ch. 765, F.S.).

Providers are regulated under individual licensing statutes and the Health Care Licensing Procedures Act (Act) in Part II of Chapter 408, Florida Statutes. The Act provides uniform licensing procedures and standards applicable to most AHCA-regulated entities. The Act contains basic licensing standards for 29 provider types in areas such as licensure application requirements, ownership disclosure, staff background screening, inspections, and administrative sanctions, license renewal notices, and bankruptcy and eviction notices.

In addition to the Act, each provider type has an authorizing statute which includes unique provisions for licensure beyond the uniform criteria. Pursuant to s. 408.832, F.S., in the case of conflict between the Act and an individual authorizing statute, the Act prevails. There are several references in authorizing statutes, that conflict with or duplicate provisions in the Act, including references to the classification of deficiencies, penalties for an intentional or negligent act by a provider, provisional licenses, proof of financial ability to operate, inspection requirements and plans of corrections from providers. In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F), which made changes to part II of Chapter 408 that supersede components of the specific licensing statutes.

House Bill 1143 repeals obsolete or duplicative provisions in licensing and related statutes, including expired reports and regulations and provisions that exist in other sections of law like the Act. The bill also makes changes to the Act to reduce, streamline, or clarify regulations for all providers regulated by AHCA.

The bill changes individual licensing statutes to reflect updates to the uniform standards in the Act. The bill makes corresponding changes to provider licensing statutes to reflect the changes made to the Act to eliminate conflicts and obsolete language.

License Renewal Notices

Section 408.806, F.S., requires AHCA to notify licensees by mail or electronically when it is time to renew their licenses. AHCA mails renewal notices by to over 30,000 providers every two years. While the statute does not specify the manner of mailing notices, AHCA sends them by certified mail to verify receipt by the providers. The cost of certified mail is approximately \$55,700 annually. According to AHCA, some certified mail is returned, as providers do not pick it up or the post office is unable to obtain necessary signatures for delivery. AHCA has also encountered situations in which licensees did not timely renew their licenses, and claimed that their lack of receipt of a renewal reminder was a reason for that failure.

The bill clarifies that renewal notices are courtesy reminders only and do not excuse the licensees from the requirement to file timely licensure applications. The revised language gives AHCA clear flexibility to use or not use certified mail to send courtesy renewal reminders.

Classification and Fines for Violations

Section 408.813, F.S., includes criteria for the classification of deficiencies for all providers licensed by AHCA. The language in the Act legally supersedes most conflicting provisions in the authorizing statutes; however, the dual provisions are confusing, and some conflicts still exist. Additionally, authorizing statutes are inconsistent related to fines for unclassified deficiencies such as failure to maintain insurance or exceeding licensed bed capacity.

The bill modifies the classification of licensure violations related to nursing homes, home health agencies, intermediate care facilities for the developmentally disabled and adult family care homes to refer to the scope and severity in s. 408.813, F.S. Fine amounts for violations are unchanged. For intermediate care facilities for the developmentally disabled, the amount of fines for Class I, II and III violations are unchanged, but a new Class IV is added consistent with s. 408.813 with a fine not to exceed \$500. The addition of the Class IV violation creates a lower category for minor violations by those facilities. This resolves conflicting or confusing differences between the Act and the authorizing statutes, and resolves inconsistencies between these three authorizing statutes.

In addition, the bill establishes uniform sanction authority for unclassified deficiencies of up to \$500 per violation. Examples of unclassified deficiencies include failure to maintain insurance and other administrative requirements, exceeding licensed capacity, or violating a moratorium. Without fine authority, AHCA would be required to initiate revocation action for violations against those providers that do not have general fine authority. These violations may not warrant such a severe sanction.

Notice of Bankruptcy and Eviction

Currently, nursing homes are required to notify AHCA of bankruptcy filing pursuant to s. 400.141(1)(r), F.S. However, nursing homes are not required to notify AHCA of eviction, and there is no statutory requirement for other types of facility providers to notify AHCA if served with an eviction notice or bankruptcy. According to AHCA, recently it has been made aware of several eviction and bankruptcy orders affecting regulated facilities. If notice is not received early in the process, finding alternative resident placement can become difficult and create a hardship for clients.

The bill requires providers to notify AHCA when an eviction or bankruptcy notice is filed. According to AHCA, this allows it to monitor the facility to ensure patient protection. If the property upon which a licensed provider operates is encumbered, the bill requires the licensee to notify the mortgage holder or landlord that the property will provide services that require licensure and instruct the mortgage holder or landlord to notify AHCA if action is initiated against the licensee, such as eviction. The bill also requires a controlling interest of a health care provider to notify AHCA within ten days of filing bankruptcy or other court action affecting the provider.

Licensure Denial and Revocation

An action by AHCA to deny or revoke a license is subject to challenge under the Administrative Procedures Act (Chapter 120). If a licensee challenges the agency action, s. 408.815(2), F.S., allows the license to continue to exist and the provider to continue to operate during the pendency of the case. Once a final order is issued on the denial or revocation, if the original licensure expiration date has passed, there is no valid license and the provider must cease operations immediately. According to AHCA, this can be problematic for residents or clients who must immediately be moved to another facility or find another health care provider.

The bill amends s. 408.815, F.S., to authorize AHCA to extend a license expiration date up to 60 days beyond the final order date in the event of a licensure denial or revocation to allow for orderly transfer of residents or patients.

Billing Complaint Authority

The Act provides authority to review billing complaints across all programs and gives the impression that AHCA can take licensure action regarding billing practices: s. 408.10(2), F.S., requires AHCA to determine whether billing practices are "unreasonable and unfair". However, the Act does not provide specific standards for billing practices which AHCA can use to cite violations and discipline a provider's license, and does not define what activities would be unreasonable and unfair. Several providers' authorizing statutes do include billing standards, including nursing homes and assisted living facilities. However, other authorizing statutes are silent on billing standards.

For calendar year 2009, AHCA received 693 complaints that alleged billing-related issues. Of those, 269 were for providers that have billing standards in their licensure statutes. The remaining 424 were related to billing issues where no regulatory authority existed for billing matters. According to AHCA, when the agency receives a billing complaint regarding one of the providers which does not have statutory billing standards, AHCA reviews the complaint and encourages the parties to work together to resolve the problem, but does not cite or discipline the provider.

The bill repeals AHCA's independent authority related to billing complaints in the Act. When a complaint is received for one of the providers over which AHCA has authority over billing matters, a review for regulatory compliance, possibly resulting in citations and discipline, would still occur.

Hospital Licensure

Currently, Florida law allows AHCA to consider and use hospital accreditation by certain accrediting organizations for various purposes, including accepting accreditation surveys in lieu of AHCA survey, requiring accreditation for designation as certain specialty hospitals, and setting standards for quality improvement programs. Section 395.002, F.S., defines "accrediting organizations" as the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, and the Accreditation Association for Ambulatory Health Care, Inc.

Complaint investigation procedures for hospitals exist in the hospital authorizing chapter as well as in the Act. Section 395.1046, F.S., provides special procedures for hospital complaints regarding emergency access issues. For example, AHCA must: investigate emergency access complaints even if the complaint is withdrawn; prepare an investigative report; and make a probable cause determination. According to AHCA, the federal process for emergency access complaints dictates that these complaints should not be handled any differently from other types of complaints, thereby creating two separate processes for emergency access complaints, one state and one federal.

The bill broadens the definition of "accrediting organizations" for hospitals and ambulatory surgery centers to include any nationally recognized accrediting organization which has standards comparable to AHCA's licensure standards, as determined by AHCA. This gives AHCA and providers greater flexibility to accept new or improving accrediting organizations, and reconsider existing ones based on current statutory and rule-based standards.

The bill repeals s. 395.1046, F.S., which modifies the procedures for investigations hospital emergency access complaints. Under the bill, AHCA would use existing hospital complaint investigation procedures used for all other types of complaints.

Nursing Home Licensure

An application for nursing home licensure must include the following:

- A signed affidavit disclosing financial or ownership interest of a nursing home controlling interest in the last five years in any health or residential facility which has closed, filed bankruptcy, has a receiver appointed or an injunction placed against it, or been denied, suspended, or revoked by a regulatory agency. This information is also required in s. 400.111, F.S.
- A plan for quality assurance and risk management. This plan is also reviewed during onsite inspections by AHCA.
- The total number of beds including those certified for Medicaid and Medicaid. This information is also required by s. 408.806(1)(d), F.S.

The bill eliminates routine submission of documents at licensure by amending ss. 400.071, 400.111, 400.1183, 400.141, F.S. to substitute the requirement for nursing homes to routinely submit certain documents at the time of licensure with the ability for AHCA to request if needed.

Geriatric Outpatient Clinics

Under current law, nursing homes may establish a geriatric outpatient clinic as authorized in s. 400.021, F.S., to provide outpatient health care to persons 60 years of age or older. The clinic can be staffed by a registered nurse or a physician's assistant.

The bill expands the health care professionals that may staff a geriatric outpatient clinic in a nursing home by including licensed practical nurses under the direct supervision of registered nurses or advanced registered nurse practitioners.

Medical Records

Nursing home medical records regulations exist under both state licensure, s. 400.141(1)(j), F.S., and federal regulations. Section 400.141(1)(j), F.S., requires licensees to maintain full patient records. AHCA Rule 59A-4.118, F.A.C., also requires nursing homes to employ or contract with a person who is eligible for certification as a Registered Record Administrator or an Accredited Record Technician by the American Health Information Management Association of a graduate of a School of Medical Record Science that is accredited jointly by the Council on Medical Education of the American Medical Association and the American Health Information Management Association.

The bill specifies the standard for maintaining medical records. According to AHCA, inclusion of this language will enable it to repeal regulation of the credentials of medical records personnel.

Staffing Ratios

Nursing homes must comply with nursing staff-to-resident staffing ratios. Under s. 400.141(1)(o), F.S., if a nursing home fails to comply with minimum staffing requirements for two consecutive days, the facility must cease new admissions until the staffing ratio has been achieved for six consecutive days. Failure to self-impose this moratorium on admissions results in a Class II deficiency cited by AHCA. All other citations for a Class II deficiency represent current, ongoing non-compliance that AHCA determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being. Use of the Class II deficiency for a failure to cease admissions is an inconsistent use of a "Class II" level compared to all other violations. No nursing homes were cited for this violation in 2009.

The bill modifies the penalty for nursing homes that fail to self impose a moratorium for insufficient staffing to a fine of \$1,000 instead of a Class II deficiency.

DNR Orders

Section 400.142, F.S., requires AHCA to develop rules relating to implementation of Do Not Resuscitate Orders for nursing home residents. Draft rules have been developed but are not final. Criteria for Do Not Resuscitate Orders are found in s. 401.45, F.S.

The bill removes the requirement of AHCA to promulgate rules related to the implementation of Do Not Resuscitate Orders for nursing home residents. The statutory requirements for such orders in s. 401.45 are clear and do not require rule implementation.

Property Statements

Section 400.141, F.S., requires nursing homes to provide quarterly property statements to residents when they hold property or funds for a resident.

The bill maintains the requirement for a quarterly property statement for funds, but amends the requirement for other types of property. Instead of quarterly, nursing homes must provide a property statement upon resident request, and within 7 days of a request.

Lease Alternative Bond Fund

Nursing homes that are leased and choose to participate in the Medicaid program must either post a bond or pay into a Lease Alternative Bond Fund (Fund) annually pursuant to s. 400.179, F.S. Most leased nursing homes choose to pay into the Fund. Of the 674 licensed nursing homes in Florida, 519 are leased and participate in Medicaid. Of those 505 nursing homes pay into the Fund and 14 post a leased surety bond. In 2009, Senate Bill 2602 provided a reprieve from payments for Medicaid leased nursing homes for one year, July 1, 2009 through June 30, 2010, specifying that all nursing facilities licensees operating a leased facility shall not be required to submit the nonrefundable 1 percent lease bond fee or be required to provide proof of lease bond. As of February 26, 2010, the net balance of the Lease Bond Alternative fund is \$23,675,779.13.

The bill creates an automatic mechanism to provide relief from payments into the Fund when receipts minus payments for nursing homes overpayments exceed \$25 million. This bill protects nursing homes from having

to contribute additional funds into the Fund if the balance has been reduced as a result of transfers pursuant to section 215.32, Florida Statutes or deposits to the General Revenue Fund pursuant to section 215.20, Florida Statutes. The fund would be reviewed annually to determine if payments during the next year will be required. This provision can save up to \$1,264,448 in annual Medicaid nursing home expenditures and \$4.2 million annually for nursing home providers.

Inspections and Surveys

AHCA employs staff to inspect nursing homes, referred to as surveyors. Pursuant to s. 400.275, F.S., newly-hired nursing home surveyors must spend two days in a nursing home as part of basic training in a non-regulatory role. Federal regulations prescribe an extensive training process for nursing home inspection staff. Staff must pass the federal Surveyor Minimum Qualifications Test. Federal regulations prohibit an Agency staff person who formerly worked in a nursing home from inspecting a nursing home within two (2) years of employment with that home; state law requires a five year lapse.

The bill removes the requirement for new AHCA nursing home inspection staff to spend two days in a nursing home as part of basic training and aligns staff requirements with federal regulations. Agency nursing home staff must still be fully qualified under federal requirements for the Surveyor Minimum Qualifications Test.

Litigation Notices

Since 2001, nursing homes has been required by s. 400.147(10), F.S., to report civil notices of intent to litigate and complaints filed with clerks of courts by a resident or representative of a resident. This information has been used to produce the Semi-Annual Report on Nursing Homes in s. 400.195, F.S. Information is reported in aggregate for all facilities.

The bill eliminates the requirement to submit an affidavit of disclosure of civil verdicts.

Hospice Licensure

In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law requires any hospice initial or change of ownership applicant show anticipated provider revenue and expenditures, the basis for financing anticipated cash flow requirements and access to contingency financing, per s. 408.810(8), F.S. Current state law for hospice licensing, s. 400.606(1)(i), F.S., requires that an annual operating budget be submitted, which duplicates the financial information now required in the Act.

The hospice state law (ss.400.606, 400.609, F.S.) and federal regulations (42 CFR 418.98) require that hospices have inpatient beds for symptom control and pain management and for respite for caregivers. Inpatient beds may be in a hospital, skilled nursing facility or a freestanding inpatient facility operated by a hospice. State law requires that there be a certificate of need for hospice freestanding inpatient facility. Current wording in hospice state law [s. 400.606(4), F.S.] is redundant to the more general statute [408.043(2), F.S.], which also requires a certificate of need for hospice inpatient facilities.

The bill removes the requirement for hospice licensure applicants to submit a projected annual operating budget. Since financial projections are already submitted as part of the proof of financial ability to operate as required in the Health Care Licensing Act, this removes duplicative requirements.

The term "primarily" is deleted to clarify that a certificate of need is required to provide inpatient services in any facility that is not already licensed as a health care facility, i.e. a hospital, skilled nursing facility, and that no exemptions exist to this requirement.

Home Medical Equipment Licensure

Licensure law, s. 400.931(2), F.S., allows a bond be posted as an alternative to submitted proof of financial ability to operate for a home medical equipment provider. In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law, s. 408.8065, F.S., requires that financial statements with evidence of funding to cover start up costs, working capital and contingencies be submitted.

The bill deletes the provisions of s. 400.931, F.S., related to the ability to submit a bond as an alternative to submitting proof of financial ability to operate. Due to the 2009 legislative changes, financial oversight is now addressed in the Act.

Health Care Clinic Licensure

Licensure for health care clinics includes mobile clinics and portable equipment providers. Exemptions from licensure exist for clinics that are wholly owned, directly or indirectly, by a publically traded corporations, among other exemptions.

Licensure law, s. 400.991(4), F.S., allows a bond be posted as an alternative to submitted proof of financial ability to operate for a home medical equipment provider. In 2009, the Legislature passed and the Governor signed into law SB 1986 (Ch. 2009-223 L.O.F). The new law, s. 408.8065, F.S., requires that financial statements with evidence of funding to cover start up costs, working capital and contingencies be submitted in.

The bill provides that portable service providers, such as mobile ultrasound providers, are subject to health care clinic licensure even though they do not deliver care at the clinic's location. The bill also expands an existing exemption from health care clinic licensure for clinics that are wholly owned, directly or indirectly, by a publically traded corporation to include pediatric cardiology or perinatology clinics.

Assisted Living Facility Licensure

Under current law, a licensed assisted living facility (ALF) that wishes to provide certain nursing services must also have a limited nursing services (LNS) or extended congregate care (ECC) specialty license to provide certain nursing services. These specialty licenses allow facilities to provide a variety of additional services beyond those allowed in a standard licensed ALF.

With the LNS specialty, a facility may provide nursing assessment, care and application of routine dressings, care of casts, braces and splints, administration and regulation of portable oxygen, catheter, colostomy and ileostomy care and maintenance and the application of cold or heat treatments, passive range of motion exercises, and ear and eye irrigations.

Facilities with the ECC specialty license may provide additional services, including total help with activities of daily living (bathing, dressing, toileting), dietary management including special diets and nutrition monitoring, administering medication and prescribed treatments, rehabilitative services, and escort to health services. Additionally, licensed nursing staff in an ECC program may provide any nursing service permitted within the scope of their license consistent with residency requirements and the facility's written policies and procedures. A facility is required to pay an additional licensure fee for the LNS and ECC specialty license.

Under current law, LNS facilities must be monitored at least twice a year and ECC facilities must be monitored quarterly. Additional fees required for these programs cover the costs of monitoring visits and the additional oversight during routine inspections and licensure due to the higher acuity of residents and services. The 2010 proposed license fees will be adjusted by a 2.72 percent increase in the consumer price index pursuant to s. 408.805, F.S., effective August 2010, as follows:

Fee Type	Current Fees	Fees August 2010
Standard ALF	Standard ALF	Standard ALF
Application Fee	\$ 356	\$366
Per Bed Fee	\$ 59	\$61
Not to exceed	\$13,087	\$13,443
ECC ALF	ECC ALF	ECC ALF
Application Fee	\$ 501	\$515
Per Bed Fee	\$10	\$10
LNS ALF	LNS ALF	LNS ALF
Application Fee	\$ 296	\$304
Per Bed Fee	\$10	\$10

As of February 2010, there are a total of 2,853 ALFs with standard licenses, with a total of 81,038 beds. Of the 2,853 ALFs in Florida, 995 have a LNS specialty license and 313 have an ECC specialty license. Of those 995 ALFs, 77 have both a LNS and an ECC license.

ALFs are not currently required to submit resident population data to AHCA. However, there is a requirement to submit disaster/emergency information electronically via AHCA's Emergency Status System (ESS). Submission of ESS data was a result of SB 1986 (Ch. 2009-223 L.O.F), and is being required at the time of licensure renewal. Currently, 42.1 percent (1197) of ALFs are currently enrolled in this system.

The bill eliminates the Limited Nursing Services specialty license types for ALFs and allows a licensed nurse to provide limited nursing services in a standard licensed ALF without additional licensure. The bill repeals the requirement to monitor specialty license facilities, and replaces it with a requirement to monitor based upon citation of serious violations (Class I or Class II) in any ALF, and allows a fee to be charged for monitoring visits. The bill increases ALF licensure fees to compensate for the loss of LNS licensure fees and maintain the licensure program. The increase in licensure fees for all ALFs may offset the loss of revenue to AHCA for the elimination of the LNS specialty license and, thus, the specialty license fee. The bill authorizes \$356 for a standard license fee, \$67.50 per private pay bed and \$18,500 for a total fee cap.

The bill modifies AHCA's consultation duties, and requires AHCA to adopt rules for data submission by ALFs to AHCA related to numbers of residents receiving mental health or nursing services, resident funding sources and staffing. The bill requires facilities to electronically submit resident population data to AHCA on a semi-annual basis. Licensees will be required to report ALF resident information not currently required and allows DOEA, in consultation with AHCA, to adopt rules. According to AHCA, this resident information will be useful for health planning and regulatory purposes.

Brain and Spinal Cord Injury Trust Fund

Under current law, specified traffic fines may be used to provide an enhanced Medicaid rate to nursing homes that serve clients with brain and spinal cord injuries. According to AHCA, funds collected from these fines thus far have not been sufficient to support a Medicaid nursing home supplemental rate for an estimated 100 adult ventilator-dependent patients (\$255.80 per day). As of July 2009, the Department of Revenue should have transferred a total of \$39,294 to AHCA since May 2008.

The bill redirects the revenue to the Brain and Spinal Cord Injury Trust Fund within the Department of Health, to be used for Medicaid recipients who have sustained a spinal cord injury and who are technologically and respiratory dependent.

Pilot Projects

The Medicaid "Up-or-Out" Quality of Care Contract Management Program in s. 400.148, F.S., was created as a pilot program in 2001 to improve care in poor performing nursing homes and assisted living facilities by assigning trained medical personnel to facilities in select counties similar to Medicare models for managing the medical and supportive-care needs of long-term nursing home residents. The pilot was subject to appropriation; however, an appropriation was not allocated to this program and it was never implemented. According to AHCA, The criteria specified to identify poor performing facilities has been replaced by more comprehensive information for consumers to make informed choices for care.

The bill repeals the Medicaid Up or Out Pilot Quality of Care Contract Management Program.

Reports

The semi-annual report on nursing homes in s. 400.195, F.S., was provided from December 2002 through June 2005 as a tool to provide information about litigation in Florida nursing homes. The report included demographic and regulatory information about nursing homes in Florida and aggregate numbers of notices of intent to litigate and civil complaints filed with the clerks of courts against Florida nursing homes. The reporting

requirement ended June 2005 by law. The statutory obligation to publish this report has been met and by law expired on June 30, 2005.

The bill repeals the report requirement.

The Consumer Directed Care Plus (CDC+) report was created as part of the new program, in s. 409.221(4)(k), F.S. for AHCA, Department of Elder Affairs, and Agency for Persons with Disabilities to provide an annual update of the review of the CDC program and recommendations for improvement. In March 2008, the CDC program was approved to be under the 1915(j) self directed option as a Medicaid state plan amendment instead of an 1115 Research and Demonstrative waiver. The 1915(j) state plan amendment requires annual and three (3) year comprehensive reporting to the federal Centers for Medicare and Medicaid Services (CMS). The report to CMS communicates current status of the CDC program, data on CDC enrollment, demographics, consumer satisfaction and cost effectiveness. This federal report is required by CMS to be available for public review.

The bill repeals the report requirement.

The Assisted Living Facility Extended Congregate Care Report in s. 429.07, F.S., is produced by the Department of Elder Affairs. This report requires an annual description of assisted living facilities with a special license of Extended Congregate Care including the number of beds, resident characteristics, services, availability, deficiencies, admission sources, and recommendations for changes to the ECC license. The requirement to publish this report was created when the ECC licensure type was implemented to monitor effectiveness. ECC facilities must report information to the Department of Elder Affairs for this report. According to AHCA, the need for this report has diminished.

The bill repeals the report requirement.

Statutory Revisions

The bill updates the name of the Statewide Advocacy Council, formerly known as The Human Rights Advocacy Committee. The bill also updates the name of The Joint Commission, formerly known as the Joint Commission of the Accreditation of Healthcare Organizations.

The bill deletes definitions for private review agents and utilization review in s. 395.002, F.S., to conform to repeals made in 2009 (SB 1986, ch. 2009-223 L.O.F.

The bill makes technical corrections and repeals requested by the Division of Statutory Revision, such as repealing obsolete dates and updating the reference to an obsolete rule.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.0455, F.S., relating to the Drug-Free Workplace Act.

Section 2: Amends s. 154.11, F.S., relating to powers of the board of trustees.

Section 3: Amends s. 318.21, F.S., relating to the disposition of civil penalties by county courts.

Section 4: Repeals s. 383.325, F.S., relating to inspection reports.

Section 5: Amends s. 394.741, F.S., relating to accreditation requirements for providers of behavioral health care services.

Section 6: Amends s. 395.002, F.S., relating to accrediting organizations and specialty hospitals.

Section 7: Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.

Section 8: Amends s. 395.0193, F.S., relating to licensed facilities; peer review; disciplinary powers; agency or partnership with physicians.

Section 9: Amends s. 395.1023, F.S., relating to child abuse and neglect cases.

Section 10: Amends s. 395.1041, F.S., relating to access to emergency services and care.

Section 11: Repeals s. 395.1046, F.S., relating to complaint investigation procedures.

Section 12: Amends s. 395.1055, F.S., relating to rules and enforcement.

Section 13: Amends s. 395.10972, F.S., relating to the Health Care Risk Manager Advisory Council.

- Section 14:** Amends s. 395.2050, F.S., relating to routine inquiry for organ and tissue donation, certification for procurement activities and death records review.
- Section 15:** Amends s. 395.3036, F.S., relating to confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.
- Section 16:** Repeals s. 395.3037, F.S., relating to definitions of "Department" and "Agency".
- Section 17:** Amends s. 395.3038, F.S., relating to state-listed primary stroke centers and comprehensive stroke centers, and the notification of hospitals.
- Section 18:** Amends s. 395.602, F.S., relating to rural hospitals.
- Section 19:** Amends s. 400.021, F.S., relating to geriatric outpatient clinics.
- Section 20:** Amends s. 400.063, F.S., relating to resident protection.
- Section 21:** Amends s. 400.071, F.S., relating to applications for licensure.
- Section 22:** Amends s. 400.0712, F.S., relating to applications for inactive licenses.
- Section 23:** Amends s. 400.111, F.S., relating to disclosure of controlling interest.
- Section 24:** Amends s. 400.1183, F.S., relating to resident grievance procedures.
- Section 25:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.
- Section 26:** Amends s. 400.142, F.S., relating to emergency medication kits and orders not to resuscitate.
- Section 27:** Amends s. 400.147, F.S., relating to internal risk management and the quality assurance program.
- Section 28:** Repeals s. 400.148, F.S., relating to the Medicaid "Up-or-Out" quality of care contract management program.
- Section 29:** Amends s. 400.162, F.S., relating to property and personal affairs of residents.
- Section 30:** Amends s. 400.179, F.S., relating to liability for Medicaid underpayments and overpayments.
- Section 31:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 32:** Repeals s. 400.195, F.S., relating to agency reporting requirements.
- Section 33:** Amends s. 400.23, F.S., relating to rules, evaluation and deficiencies and licensure status.
- Section 34:** Amends s. 400.275, F.S., relating to agency duties.
- Section 35:** Amends s. 400.484, F.S., relating to right of inspection, violations and fines.
- Section 36:** Amends s. 400.606, F.S., relating to license application, renewal, conditional license or permits and certificates of need.
- Section 37:** Amends s. 400.607, F.S., relating to denial, suspension and revocation of a license; emergency actions and imposition of administrative fines.
- Section 38:** Amends s. 400.925, F.S., relating to accrediting organizations.
- Section 39:** Amends s. 400.931, F.S., relating to application for licensure.
- Section 40:** Amends s. 400.932, F.S., relating to administrative penalties.
- Section 41:** Amends s. 400.967, F.S., relating to rules and classification of violations.
- Section 42:** Amends s. 400.9905, F.S., relating to clinics and portable health service or equipment providers.
- Section 43:** Amends s. 400.991, F.S., relating to License requirements, background screenings and prohibitions.
- Section 44:** Amends s. 400.9935, F.S., relating to clinic responsibilities.
- Section 45:** Amends s. 408.034, F.S., relating to agency duties and responsibilities.
- Section 46:** Amends s. 408.036, F.S., relating to projects subject to review.
- Section 47:** Amends s. 408.043, F.S., relating to special provisions.
- Section 48:** Amends s. 408.05, F.S., relating to the Florida Center for Health Information and Policy Analysis.
- Section 49:** Amends s. 408.061, F.S., relating to data collection.
- Section 50:** Amends s. 408.10, F.S., relating to consumer complaints.
- Section 51:** Amends s. 408.802, F.S., relating to applicability.
- Section 52:** Amends s. 408.804, F.S., relating to displaying of a license.
- Section 53:** Amends s. 408.806, F.S., relating to the license application process.
- Section 54:** Amends s. 408.810, F.S., relating to minimum licensure requirements.
- Section 55:** Amends s. 408.813, F.S., relating to administrative fines and violations.
- Section 56:** Amends s. 408.815, F.S., relating to license or application denial and revocation.
- Section 57:** Amends s. 409.221, F.S., relating to the consumer-directed care program.

- Section 58:** Amends s. 429.07, F.S., relating to license requirements, fees and inspections.
- Section 59:** Amends s. 429.11, F.S., relating to initial applications for licensure.
- Section 60:** Amends s. 429.12, F.S., relating to the sale or transfer of ownership of a facility.
- Section 61:** Amends s. 429.14, F.S., relating to administrative penalties.
- Section 62:** Amends s. 429.17, F.S., relating to license expiration, renewal and conditional licenses.
- Section 63:** Amends s. 429.19, F.S., relating to violations and the imposition of administrative fines.
- Section 64:** Amends s. 429.23, F.S., relating to the internal risk management and quality assurance program.
- Section 65:** Amends s. 429.255, F.S., relating to the use of personnel and emergency care.
- Section 66:** Amends s. 429.28, F.S., relating to the resident bill of rights.
- Section 67:** Amends s. 429.35, F.S., relating to the maintenance of records.
- Section 68:** Amends s. 429.41, F.S., relating to rules establishing standards.
- Section 69:** Amends s. 429.53, F.S., relating to consultation by the agency.
- Section 70:** Amends s. 429.54, F.S., relating to the collection of information.
- Section 71:** Amends s. 429.71, F.S., relating to the classification of violations.
- Section 72:** Amends s. 429.911, F.S., relating to the denial, suspension, or revocation of a license.
- Section 73:** Amends s. 429.915, F.S., relating to conditional licensure.
- Section 74:** Amends s. 394.4787, F.S., relating to specialty psychiatric hospitals.
- Section 75:** Amends s. 400.0239, F.S., relating to the Quality of Long-Term Care Facility Improvement Trust Fund.
- Section 76:** Amends s. 408.07, F.S., relating to rural hospitals.
- Section 77:** Amends s. 430.80, F.S., relating to the implementation of a teaching nursing home pilot project.
- Section 78:** Amends s. 440.13, F.S., relating to medical services and supplies.
- Section 79:** Amends s. 483.294, F.S., relating to the inspection of centers.
- Section 80:** Amends s. 627.645, F.S., relating to the restriction of denied health insurance claims.
- Section 81:** Amends s. 627.668, F.S., relating to optional coverage for mental and nervous disorders.
- Section 82:** Amends s. 627.669, F.S., relating to optional coverage requirement for substance abuse impaired persons.
- Section 83:** Amends s. 627.736, F.S., relating to required personal injury protection benefits.
- Section 84:** Amends s. 641.495, F.S., relating to requirements for issuance and maintenance of certificate.
- Section 85:** Amends s. 651.118, F.S., relating to the Agency for Health Care Administration
- Section 86:** Amends s. 766.1015, F.S., relating to civil immunity for members of or consultants to certain boards, committees, or other entities.
- Section 87:** Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
See Fiscal Comments
- 2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will save nursing home providers up to \$4.2 million annually by providing relief from lease bond fund requirements if adequate fund receipts exist.

Assisted living facility provider fees will be increased to offset the elimination of the Limited Nursing Services licensure fee. (See Fiscal Comments.)

D. FISCAL COMMENTS:

AHCA estimates that the bill will save \$1.3 million annually in state funds by reducing state administrative costs and Medicaid expenditures. The bill will save an estimated \$55,700 annually in certified mail costs for license renewal notices.

Nursing Home Lease Bond Fund

The bill will save up to \$1,264,448 in annual Medicaid expenditures for nursing home lease bond payments. Nursing homes include the costs of the lease bond payments as allowable costs in their cost reports, which impact Medicaid expenditures.

The bill triggers collection of the lease bond fund from nursing homes if the fund is reduced to reimburse Medicaid overpayments, but not if the fund is reduced for other reasons such as a legislative sweep pursuant to s. 215.32, F.S., or reduced from deposits to General Revenue pursuant to s. 215.20, F.S. According to AHCA, if the lease bond fund is reduced for non-overpayment recoupment reasons, Medicaid could be at risk if a leased nursing home goes out of business or is in significant financial hardship and is unable to repay overpayments. However, to date, AHCA has only expended \$3,563,200 from the fund for nursing home overpayments.

Assisted Living Facility Limited Nursing Specialty License

Adjustments in assisted living facility fees have a neutral impact on AHCA as fees are adjusted to offset losses of revenues from the elimination of the Limited Nursing Services license. Based on the number of LNS specialty licenses in February 2010 (995), the LNS specialty license generates approximately \$554,000 in revenues biennially.

$\$296 \text{ per license plus } \$10 \text{ per bed} = \$553,350 (\$294,520 + \$258,830).$

The additional fee increase in the bill will offset these losses:

$\$553,350 \text{ divided by } 65,298 \text{ beds (81,038 total beds less 15,740 OSS beds, which are exempt from the bed fee)} = \8.47 per bed

The current fee is \$59 per bed. The bill will cost licensed ALFs an additional \$8.47 per bed every two years upon license renewal, for a total bed fee cost of \$67.47. These figures reflect current fees, and do not take into account the consumer price index adjustments pursuant to s. 408.805, F.S. which will take effect August, 2010.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to the reduction and simplification of

3 health care provider regulation; amending s. 112.0455,

4 F.S., relating to the Drug-Free Workplace Act; deleting an

5 obsolete provision; amending s. 318.21, F.S.; revising

6 distribution of funds from civil penalties imposed for

7 traffic infractions by county courts; repealing s.

8 383.325, F.S., relating to confidentiality of inspection

9 reports of licensed birth center facilities; amending s.

10 395.002, F.S.; revising and deleting definitions

11 applicable to regulation of hospitals and other licensed

12 facilities; conforming a cross-reference; amending s.

13 395.003, F.S.; deleting an obsolete provision; amending s.

14 395.0193, F.S.; requiring a licensed facility to report

15 certain peer review information and final disciplinary

16 actions to the Division of Medical Quality Assurance of

17 the Department of Health rather than the Division of

18 Health Quality Assurance of the Agency for Health Care

19 Administration; amending s. 395.1023, F.S.; providing for

20 the Department of Children and Family Services rather than

21 the Department of Health to perform certain functions with

22 respect to child protection cases; requiring certain

23 hospitals to notify the Department of Children and Family

24 Services of compliance; amending s. 395.1041, F.S.,

25 relating to hospital emergency services and care; deleting

26 obsolete provisions; repealing s. 395.1046, F.S., relating

27 to complaint investigation procedures; amending s.

28 395.1055, F.S.; requiring licensed facility beds to

29 conform to standards specified by the Agency for Health
 30 Care Administration, the Florida Building Code, and the
 31 Florida Fire Prevention Code; amending s. 395.10972, F.S.;
 32 revising a reference to the Florida Society of Healthcare
 33 Risk Management to conform to the current designation;
 34 amending s. 395.2050, F.S.; revising a reference to the
 35 federal Health Care Financing Administration to conform to
 36 the current designation; amending s. 395.3036, F.S.;
 37 correcting a reference; repealing s. 395.3037, F.S.,
 38 relating to redundant definitions; amending ss. 154.11,
 39 394.741, 395.3038, 400.925, 400.9935, 408.05, 440.13,
 40 627.645, 627.668, 627.669, 627.736, 641.495, and 766.1015,
 41 F.S.; revising references to the Joint Commission on
 42 Accreditation of Healthcare Organizations and the Council
 43 on Accreditation of Children and Family Services to
 44 conform to the current designation; amending s. 395.602,
 45 F.S.; revising the definition of the term "rural hospital"
 46 to delete an obsolete provision; amending s. 400.021,
 47 F.S.; revising the definition of the term "geriatric
 48 outpatient clinic"; amending s. 400.063, F.S.; deleting an
 49 obsolete provision; amending ss. 400.071 and 400.0712,
 50 F.S.; revising applicability of general licensure
 51 requirements under pt. II of ch. 408, F.S., to
 52 applications for nursing home licensure; revising
 53 provisions governing inactive licenses; amending s.
 54 400.111, F.S.; providing for disclosure of controlling
 55 interest of a nursing home facility upon request by the
 56 Agency for Health Care Administration; amending s.

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57 400.1183, F.S.; revising grievance record maintenance and
 58 reporting requirements for nursing homes; amending s.
 59 400.141, F.S.; conforming a reference; requiring
 60 facilities to maintain clinical records that meet
 61 specified standards; providing a fine; deleting
 62 requirement for facilities to submit certain information
 63 related to management companies to the agency; amending s.
 64 400.142, F.S.; deleting language relating to agency
 65 adoption of rules; amending 400.147, F.S.; revising
 66 reporting requirements for licensed nursing home
 67 facilities relating to adverse incidents; repealing s.
 68 400.148, F.S., relating to the Medicaid "Up-or-Out"
 69 Quality of Care Contract Management Program; amending s.
 70 400.162, F.S., requiring nursing homes to provide a
 71 resident property statement annually and upon request;
 72 amending s. 400.179, F.S.; revising requirements for
 73 nursing home lease bond alternative fees; deleting an
 74 obsolete provision; amending s. 400.19, F.S.; revising
 75 inspection requirements; repealing s. 400.195, F.S.,
 76 relating to agency reporting requirements; amending s.
 77 400.23, F.S.; deleting an obsolete provision; clarifying a
 78 reference; amending s. 400.275, F.S.; revising agency
 79 duties with regard to training nursing home surveyor
 80 teams; revising requirements for team members; amending s.
 81 400.484, F.S.; revising the schedule of home health agency
 82 inspection violations; amending s. 400.606, F.S.; revising
 83 the content requirements of the plan accompanying an
 84 initial or change-of-ownership application for licensure

85 of a hospice; revising requirements relating to
 86 certificates of need for certain hospice facilities;
 87 amending s. 400.607, F.S.; revising grounds for agency
 88 action against a hospice; amending s. 400.931, F.S.;
 89 deleting a requirement that an applicant for a home
 90 medical equipment provider license submit a surety bond to
 91 the agency; amending s. 400.932, F.S.; revising grounds
 92 for the imposition of administrative penalties for certain
 93 violations by an employee of a home medical equipment
 94 provider; amending s. 400.967, F.S.; revising the schedule
 95 of inspection violations for intermediate care facilities
 96 for the developmentally disabled; providing a penalty for
 97 certain violations; amending s. 400.9905, F.S.; revising
 98 definitions under the Health Care Clinic Act; amending s.
 99 400.991, F.S.; conforming terminology; revising
 100 application requirements relating to documentation of
 101 financial ability to operate a mobile clinic; amending s.
 102 408.034, F.S.; revising agency authority relating to
 103 licensing of intermediate care facilities for the
 104 developmentally disabled; amending s. 408.036, F.S.;
 105 deleting an exemption from certain certificate-of-need
 106 review requirements for a hospice or a hospice inpatient
 107 facility; amending s. 408.043, F.S.; revising requirements
 108 for certain freestanding inpatient hospice care facilities
 109 to obtain a certificate of need; amending s. 408.061,
 110 F.S.; revising health care facility data reporting
 111 requirements; amending s. 408.10, F.S.; removing agency
 112 authority to investigate certain consumer complaints;

113 amending s. 408.802, F.S.; removing applicability of pt.
 114 II of ch. 408, F.S., relating to general licensure
 115 requirements, to private review agents; amending s.
 116 408.804, F.S.; providing penalties for altering, defacing,
 117 or falsifying a license certificate issued by the agency
 118 or displaying such an altered, defaced, or falsified
 119 certificate; amending s. 408.806, F.S.; revising agency
 120 responsibilities for notification of licensees of
 121 impending expiration of a license; removing an exception
 122 from the imposition of a fee for late filing of an
 123 application for renewal of a license; requiring payment of
 124 a late fee for a license application to be considered
 125 complete under certain circumstances; amending s. 408.810,
 126 F.S.; revising provisions relating to information required
 127 for licensure; requiring proof of submission of notice to
 128 a mortgagor or landlord regarding provision of services
 129 requiring licensure; requiring disclosure of information
 130 by a controlling interest of certain court actions
 131 relating to financial instability within a specified time
 132 period; amending s. 408.813, F.S.; authorizing the agency
 133 to impose fines for unclassified violations of pt. II of
 134 ch. 408, F.S.; amending s. 408.815, F.S.; authorizing the
 135 agency to extend a license expiration date under certain
 136 circumstances; amending s. 409.221, F.S.; deleting a
 137 reporting requirement relating to the consumer-directed
 138 care program; amending s. 429.07, F.S.; deleting the
 139 requirement for an assisted living facility to obtain an
 140 additional license in order to provide limited nursing

141 services; deleting the requirement for the agency to
 142 conduct quarterly monitoring visits of facilities that
 143 hold a license to provide extended congregate care
 144 services; deleting the requirement for the department to
 145 report annually on the status of and recommendations
 146 related to extended congregate care; deleting the
 147 requirement for the agency to conduct monitoring visits at
 148 least twice a year to facilities providing limited nursing
 149 services; increasing the licensure fees and the maximum
 150 fee required for the standard license; increasing the
 151 licensure fees for the extended congregate care license;
 152 eliminating the license fee for the limited nursing
 153 services license; transferring from another provision of
 154 law the requirement that a biennial survey of an assisted
 155 living facility include specific actions to determine
 156 whether the facility is adequately protecting residents'
 157 rights; providing that an assisted living facility that
 158 has a class I or class II violation is subject to
 159 monitoring visits; requiring a registered nurse to
 160 participate in certain monitoring visits; amending s.
 161 429.11, F.S.; revising licensure application requirements
 162 for assisted living facilities to eliminate provisional
 163 licenses; amending s. 429.12, F.S.; revising notification
 164 requirements for the sale or transfer of ownership of an
 165 assisted living facility; amending s. 429.14, F.S.;
 166 removing a ground for the imposition of an administrative
 167 penalty; clarifying language relating to a facility's
 168 request for a hearing under certain circumstances;

169 authorizing the agency to provide certain information
 170 relating to the licensure status of assisted living
 171 facilities electronically or through the agency's Internet
 172 website; amending s. 429.17, F.S.; deleting provisions
 173 relating to the limited nursing services license; revising
 174 agency responsibilities regarding the issuance of
 175 conditional licenses; amending s. 429.19, F.S.; clarifying
 176 that a monitoring fee may be assessed in addition to an
 177 administrative fine; amending s. 429.23, F.S.; deleting
 178 reporting requirements for assisted living facilities
 179 relating to liability claims; amending s. 429.255, F.S.;
 180 eliminating provisions authorizing the use of volunteers
 181 to provide certain health-care-related services in
 182 assisted living facilities; authorizing assisted living
 183 facilities to provide limited nursing services; requiring
 184 an assisted living facility to be responsible for certain
 185 recordkeeping and staff to be trained to monitor residents
 186 receiving certain health-care-related services; amending
 187 s. 429.28, F.S.; deleting a requirement for a biennial
 188 survey of an assisted living facility, to conform to
 189 changes made by the act; amending s. 429.35, F.S.;
 190 authorizing the agency to provide certain information
 191 relating to the inspections of assisted living facilities
 192 electronically or through the agency's Internet website;
 193 amending s. 429.41, F.S., relating to rulemaking;
 194 conforming provisions to changes made by the act; amending
 195 s. 429.53, F.S.; revising provisions relating to
 196 consultation by the agency; revising a definition;

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197 amending s. 429.54, F.S.; requiring licensed assisted
 198 living facilities to electronically report certain data
 199 semiannually to the agency in accordance with rules
 200 adopted by the department; amending s. 429.71, F.S.;
 201 revising schedule of inspection violations for adult
 202 family-care homes; amending s. 429.911, F.S.; deleting a
 203 ground for agency action against an adult day care center;
 204 amending s. 429.915, F.S.; revising agency
 205 responsibilities regarding the issuance of conditional
 206 licenses; amending s. 483.294, F.S.; revising frequency of
 207 agency inspections of multiphasic health testing centers;
 208 amending ss. 394.4787, 400.0239, 408.07, 430.80, and
 209 651.118, F.S.; conforming terminology and cross-
 210 references; revising a reference; providing an effective
 211 date.

212
 213 Be It Enacted by the Legislature of the State of Florida:

214
 215 Section 1. Present paragraph (e) of subsection (10) and
 216 paragraph (e) of subsection (14) of section 112.0455, Florida
 217 Statutes, are amended, and paragraphs (f) through (k) of
 218 subsection (10) of that section are redesignated as paragraphs
 219 (e) through (j), respectively, to read:

220 112.0455 Drug-Free Workplace Act.—

221 (10) EMPLOYER PROTECTION.—

222 ~~(e) Nothing in this section shall be construed to operate~~
 223 ~~retroactively, and nothing in this section shall abrogate the~~
 224 ~~right of an employer under state law to conduct drug tests prior~~

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225 ~~to January 1, 1990. A drug test conducted by an employer prior~~
 226 ~~to January 1, 1990, is not subject to this section.~~

227 (14) DISCIPLINE REMEDIES.—

228 (e) Upon resolving an appeal filed pursuant to paragraph
 229 (c), and finding a violation of this section, the commission may
 230 order the following relief:

231 1. Rescind the disciplinary action, expunge related
 232 records from the personnel file of the employee or job applicant
 233 and reinstate the employee.

234 2. Order compliance with paragraph (10) (f) ~~(g)~~.

235 3. Award back pay and benefits.

236 4. Award the prevailing employee or job applicant the
 237 necessary costs of the appeal, reasonable attorney's fees, and
 238 expert witness fees.

239 Section 2. Paragraph (n) of subsection (1) of section
 240 154.11, Florida Statutes, is amended to read:

241 154.11 Powers of board of trustees.—

242 (1) The board of trustees of each public health trust
 243 shall be deemed to exercise a public and essential governmental
 244 function of both the state and the county and in furtherance
 245 thereof it shall, subject to limitation by the governing body of
 246 the county in which such board is located, have all of the
 247 powers necessary or convenient to carry out the operation and
 248 governance of designated health care facilities, including, but
 249 without limiting the generality of, the foregoing:

250 (n) To appoint originally the staff of physicians to
 251 practice in any designated facility owned or operated by the
 252 board and to approve the bylaws and rules to be adopted by the

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253 medical staff of any designated facility owned and operated by
 254 the board, such governing regulations to be in accordance with
 255 the standards of The Joint Commission ~~on the Accreditation of~~
 256 ~~Hospitals~~ which provide, among other things, for the method of
 257 appointing additional staff members and for the removal of staff
 258 members.

259 Section 3. Subsection (15) of section 318.21, Florida
 260 Statutes, is amended to read:

261 318.21 Disposition of civil penalties by county courts.-
 262 All civil penalties received by a county court pursuant to the
 263 provisions of this chapter shall be distributed and paid monthly
 264 as follows:

265 (15) Of the additional fine assessed under s. 318.18(3)(e)
 266 for a violation of s. 316.1893, 50 percent of the moneys
 267 received from the fines shall be remitted to the Department of
 268 Revenue and deposited into the Brain and Spinal Cord Injury
 269 Trust Fund of Department of Health and shall be appropriated to
 270 the Department of Health Agency for Health Care Administration
 271 as general revenue to ~~provide an enhanced Medicaid payment to~~
 272 ~~nursing homes that~~ serve Medicaid recipients with spinal cord
 273 injuries that are medically complex and who are technologically
 274 and respiratory dependent with brain and spinal cord injuries.
 275 The remaining 50 percent of the moneys received from the
 276 enhanced fine imposed under s. 318.18(3)(e) shall be remitted to
 277 the Department of Revenue and deposited into the Department of
 278 Health Administrative Trust Fund to provide financial support to
 279 certified trauma centers in the counties where enhanced penalty
 280 zones are established to ensure the availability and

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281 accessibility of trauma services. Funds deposited into the
 282 Administrative Trust Fund under this subsection shall be
 283 allocated as follows:

284 (a) Fifty percent shall be allocated equally among all
 285 Level I, Level II, and pediatric trauma centers in recognition
 286 of readiness costs for maintaining trauma services.

287 (b) Fifty percent shall be allocated among Level I, Level
 288 II, and pediatric trauma centers based on each center's relative
 289 volume of trauma cases as reported in the Department of Health
 290 Trauma Registry.

291 Section 4. Section 383.325, Florida Statutes, is repealed.

292 Section 5. Subsection (2) of section 394.741, Florida
 293 Statutes, is amended to read:

294 394.741 Accreditation requirements for providers of
 295 behavioral health care services.—

296 (2) Notwithstanding any provision of law to the contrary,
 297 accreditation shall be accepted by the agency and department in
 298 lieu of the agency's and department's facility licensure onsite
 299 review requirements and shall be accepted as a substitute for
 300 the department's administrative and program monitoring
 301 requirements, except as required by subsections (3) and (4),
 302 for:

303 (a) Any organization from which the department purchases
 304 behavioral health care services that is accredited by The Joint
 305 ~~Commission on Accreditation of Healthcare Organizations~~ or the
 306 ~~Council on Accreditation for Children and Family Services~~, or
 307 has those services that are being purchased by the department
 308 accredited by CARF—the Rehabilitation Accreditation Commission.

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309 (b) Any mental health facility licensed by the agency or
 310 any substance abuse component licensed by the department that is
 311 accredited by ~~The Joint Commission on Accreditation of~~
 312 ~~Healthcare Organizations~~, CARF—the Rehabilitation Accreditation
 313 Commission, or the Council on Accreditation ~~of Children and~~
 314 ~~Family Services~~.

315 (c) Any network of providers from which the department or
 316 the agency purchases behavioral health care services accredited
 317 by ~~The Joint Commission on Accreditation of Healthcare~~
 318 ~~Organizations~~, CARF—the Rehabilitation Accreditation Commission,
 319 the Council on Accreditation ~~of Children and Family Services~~, or
 320 the National Committee for Quality Assurance. A provider
 321 organization, which is part of an accredited network, is
 322 afforded the same rights under this part.

323 Section 6. Present subsections (15) through (32) of
 324 section 395.002, Florida Statutes, are renumbered as subsections
 325 (14) through (28), respectively, and present subsections (1),
 326 (14), (24), (30), and (31), and paragraph (c) of present
 327 subsection (28) of that section are amended to read:

328 395.002 Definitions.—As used in this chapter:

329 (1) "Accrediting organizations" means nationally
 330 recognized or approved accrediting organizations whose standards
 331 incorporate comparable licensure requirements as determined by
 332 the agency ~~the Joint Commission on Accreditation of Healthcare~~
 333 ~~Organizations~~, ~~the American Osteopathic Association~~, ~~the~~
 334 ~~Commission on Accreditation of Rehabilitation Facilities~~, and
 335 ~~the Accreditation Association for Ambulatory Health Care, Inc.~~

336 ~~(14) "Initial denial determination" means a determination~~
 337 ~~by a private review agent that the health care services~~
 338 ~~furnished or proposed to be furnished to a patient are~~
 339 ~~inappropriate, not medically necessary, or not reasonable.~~

340 ~~(24) "Private review agent" means any person or entity~~
 341 ~~which performs utilization review services for third party~~
 342 ~~payors on a contractual basis for outpatient or inpatient~~
 343 ~~services. However, the term shall not include full time~~
 344 ~~employees, personnel, or staff of health insurers, health~~
 345 ~~maintenance organizations, or hospitals, or wholly owned~~
 346 ~~subsidiaries thereof or affiliates under common ownership, when~~
 347 ~~performing utilization review for their respective hospitals,~~
 348 ~~health maintenance organizations, or insureds of the same~~
 349 ~~insurance group. For this purpose, health insurers, health~~
 350 ~~maintenance organizations, and hospitals, or wholly owned~~
 351 ~~subsidiaries thereof or affiliates under common ownership,~~
 352 ~~include such entities engaged as administrators of self-~~
 353 ~~insurance as defined in s. 624.031.~~

354 (26)~~(28)~~ "Specialty hospital" means any facility which
 355 meets the provisions of subsection (12), and which regularly
 356 makes available either:

357 (c) Intensive residential treatment programs for children
 358 and adolescents as defined in subsection (14) ~~(15)~~.

359 ~~(30) "Utilization review" means a system for reviewing the~~
 360 ~~medical necessity or appropriateness in the allocation of health~~
 361 ~~care resources of hospital services given or proposed to be~~
 362 ~~given to a patient or group of patients.~~

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363 ~~(31) "Utilization review plan" means a description of the~~
 364 ~~policies and procedures governing utilization review activities~~
 365 ~~performed by a private review agent.~~

366 Section 7. Paragraph (c) of subsection (1) of section
 367 395.003, Florida Statutes, is amended to read:

368 395.003 Licensure; denial, suspension, and revocation.-

369 (1)

370 ~~(c) Until July 1, 2006, additional emergency departments~~
 371 ~~located off the premises of licensed hospitals may not be~~
 372 ~~authorized by the agency.~~

373 Section 8. Paragraph (e) of subsection (2) and subsection
 374 (4) of section 395.0193, Florida Statutes, are amended to read:

375 395.0193 Licensed facilities; peer review; disciplinary
 376 powers; agency or partnership with physicians.-

377 (2) Each licensed facility, as a condition of licensure,
 378 shall provide for peer review of physicians who deliver health
 379 care services at the facility. Each licensed facility shall
 380 develop written, binding procedures by which such peer review
 381 shall be conducted. Such procedures shall include:

382 (e) Recording of agendas and minutes which do not contain
 383 confidential material, for review by the Division of Medical
 384 Quality Assurance of the department ~~Health Quality Assurance of~~
 385 ~~the agency.~~

386 (4) Pursuant to ss. 458.337 and 459.016, any disciplinary
 387 actions taken under subsection (3) shall be reported in writing
 388 to the Division of Medical Quality Assurance of the department
 389 ~~Health Quality Assurance of the agency~~ within 30 working days
 390 after its initial occurrence, regardless of the pendency of

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391 appeals to the governing board of the hospital. The notification
 392 shall identify the disciplined practitioner, the action taken,
 393 and the reason for such action. All final disciplinary actions
 394 taken under subsection (3), if different from those which were
 395 reported to the department ~~agency~~ within 30 days after the
 396 initial occurrence, shall be reported within 10 working days to
 397 the Division of Medical Quality Assurance of the department
 398 ~~Health Quality Assurance of the agency~~ in writing and shall
 399 specify the disciplinary action taken and the specific grounds
 400 therefor. The division shall review each report and determine
 401 whether it potentially involved conduct by the licensee that is
 402 subject to disciplinary action, in which case s. 456.073 shall
 403 apply. The reports are not subject to inspection under s.
 404 119.07(1) even if the division's investigation results in a
 405 finding of probable cause.

406 Section 9. Section 395.1023, Florida Statutes, is amended
 407 to read:

408 395.1023 Child abuse and neglect cases; duties.—Each
 409 licensed facility shall adopt a protocol that, at a minimum,
 410 requires the facility to:

411 (1) Incorporate a facility policy that every staff member
 412 has an affirmative duty to report, pursuant to chapter 39, any
 413 actual or suspected case of child abuse, abandonment, or
 414 neglect; and

415 (2) In any case involving suspected child abuse,
 416 abandonment, or neglect, designate, at the request of the
 417 Department of Children and Family Services, a staff physician to
 418 act as a liaison between the hospital and the Department of

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419 Children and Family Services office which is investigating the
 420 suspected abuse, abandonment, or neglect, and the child
 421 protection team, as defined in s. 39.01, when the case is
 422 referred to such a team.

423
 424 Each general hospital and appropriate specialty hospital shall
 425 comply with the provisions of this section and shall notify the
 426 agency and the Department of Children and Family Services of its
 427 compliance by sending a copy of its policy to the agency and the
 428 Department of Children and Family Services as required by rule.
 429 The failure by a general hospital or appropriate specialty
 430 hospital to comply shall be punished by a fine not exceeding
 431 \$1,000, to be fixed, imposed, and collected by the agency. Each
 432 day in violation is considered a separate offense.

433 Section 10. Subsection (2) and paragraph (d) of subsection
 434 (3) of section 395.1041, Florida Statutes, are amended to read:
 435 395.1041 Access to emergency services and care.—

436 (2) INVENTORY OF HOSPITAL EMERGENCY SERVICES.—The agency
 437 shall establish and maintain an inventory of hospitals with
 438 emergency services. The inventory shall list all services within
 439 the service capability of the hospital, and such services shall
 440 appear on the face of the hospital license. Each hospital having
 441 emergency services shall notify the agency of its service
 442 capability in the manner and form prescribed by the agency. The
 443 agency shall use the inventory to assist emergency medical
 444 services providers and others in locating appropriate emergency
 445 medical care. The inventory shall also be made available to the
 446 general public. ~~On or before August 1, 1992, the agency shall~~

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447 ~~request that each hospital identify the services which are~~
 448 ~~within its service capability. On or before November 1, 1992,~~
 449 ~~the agency shall notify each hospital of the service capability~~
 450 ~~to be included in the inventory. The hospital has 15 days from~~
 451 ~~the date of receipt to respond to the notice. By December 1,~~
 452 ~~1992, the agency shall publish a final inventory. Each hospital~~
 453 shall reaffirm its service capability when its license is
 454 renewed and shall notify the agency of the addition of a new
 455 service or the termination of a service prior to a change in its
 456 service capability.

457 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
 458 FACILITY OR HEALTH CARE PERSONNEL.—

459 (d)1. Every hospital shall ensure the provision of
 460 services within the service capability of the hospital, at all
 461 times, either directly or indirectly through an arrangement with
 462 another hospital, through an arrangement with one or more
 463 physicians, or as otherwise made through prior arrangements. A
 464 hospital may enter into an agreement with another hospital for
 465 purposes of meeting its service capability requirement, and
 466 appropriate compensation or other reasonable conditions may be
 467 negotiated for these backup services.

468 2. If any arrangement requires the provision of emergency
 469 medical transportation, such arrangement must be made in
 470 consultation with the applicable provider and may not require
 471 the emergency medical service provider to provide transportation
 472 that is outside the routine service area of that provider or in
 473 a manner that impairs the ability of the emergency medical

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474 service provider to timely respond to prehospital emergency
 475 calls.

476 3. A hospital shall not be required to ensure service
 477 capability at all times as required in subparagraph 1. if, prior
 478 to the receiving of any patient needing such service capability,
 479 such hospital has demonstrated to the agency that it lacks the
 480 ability to ensure such capability and it has exhausted all
 481 reasonable efforts to ensure such capability through backup
 482 arrangements. In reviewing a hospital's demonstration of lack of
 483 ability to ensure service capability, the agency shall consider
 484 factors relevant to the particular case, including the
 485 following:

486 a. Number and proximity of hospitals with the same service
 487 capability.

488 b. Number, type, credentials, and privileges of
 489 specialists.

490 c. Frequency of procedures.

491 d. Size of hospital.

492 4. The agency shall publish ~~proposed~~ rules implementing a
 493 reasonable exemption procedure ~~by November 1, 1992. Subparagraph~~
 494 ~~1. shall become effective upon the effective date of said rules~~
 495 ~~or January 31, 1993, whichever is earlier. For a period not to~~
 496 ~~exceed 1 year from the effective date of subparagraph 1., a~~
 497 ~~hospital requesting an exemption shall be deemed to be exempt~~
 498 ~~from offering the service until the agency initially acts to~~
 499 ~~deny or grant the original request. The agency has 45 days from~~
 500 ~~the date of receipt of the request to approve or deny the~~
 501 ~~request. After the first year from the effective date of~~

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502 ~~subparagraph 1.7~~, If the agency fails to initially act within the
 503 time period, the hospital is deemed to be exempt from offering
 504 the service until the agency initially acts to deny the request.

505 Section 11. Section 395.1046, Florida Statutes, is
 506 repealed.

507 Section 12. Paragraph (e) of subsection (1) of section
 508 395.1055, Florida Statutes, is amended to read:

509 395.1055 Rules and enforcement.—

510 (1) The agency shall adopt rules pursuant to ss.
 511 120.536(1) and 120.54 to implement the provisions of this part,
 512 which shall include reasonable and fair minimum standards for
 513 ensuring that:

514 (e) Licensed facility beds conform to minimum space,
 515 equipment, and furnishings standards as specified by the agency,
 516 the Florida Building Code, and the Florida Fire Prevention Code
 517 department.

518 Section 13. Subsection (1) of section 395.10972, Florida
 519 Statutes, is amended to read:

520 395.10972 Health Care Risk Manager Advisory Council.—The
 521 Secretary of Health Care Administration may appoint a seven-
 522 member advisory council to advise the agency on matters
 523 pertaining to health care risk managers. The members of the
 524 council shall serve at the pleasure of the secretary. The
 525 council shall designate a chair. The council shall meet at the
 526 call of the secretary or at those times as may be required by
 527 rule of the agency. The members of the advisory council shall
 528 receive no compensation for their services, but shall be
 529 reimbursed for travel expenses as provided in s. 112.061. The

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530 council shall consist of individuals representing the following
531 areas:

532 (1) Two shall be active health care risk managers,
533 including one risk manager who is recommended by and a member of
534 the Florida Society for ~~of~~ Healthcare Risk Management and
535 Patient Safety.

536 Section 14. Subsection (3) of section 395.2050, Florida
537 Statutes, is amended to read:

538 395.2050 Routine inquiry for organ and tissue donation;
539 certification for procurement activities; death records review.-

540 (3) Each organ procurement organization designated by the
541 federal Centers for Medicare and Medicaid Services Health Care
542 ~~Financing Administration~~ and licensed by the state shall conduct
543 an annual death records review in the organ procurement
544 organization's affiliated donor hospitals. The organ procurement
545 organization shall enlist the services of every Florida licensed
546 tissue bank and eye bank affiliated with or providing service to
547 the donor hospital and operating in the same service area to
548 participate in the death records review.

549 Section 15. Subsection (2) of section 395.3036, Florida
550 Statutes, is amended to read:

551 395.3036 Confidentiality of records and meetings of
552 corporations that lease public hospitals or other public health
553 care facilities.-The records of a private corporation that
554 leases a public hospital or other public health care facility
555 are confidential and exempt from the provisions of s. 119.07(1)
556 and s. 24(a), Art. I of the State Constitution, and the meetings
557 of the governing board of a private corporation are exempt from

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558 s. 286.011 and s. 24(b), Art. I of the State Constitution when
 559 the public lessor complies with the public finance
 560 accountability provisions of s. 155.40(5) with respect to the
 561 transfer of any public funds to the private lessee and when the
 562 private lessee meets at least three of the five following
 563 criteria:

564 (2) The public lessor and the private lessee do not
 565 commingle any of their funds in any account maintained by either
 566 of them, other than the payment of the rent and administrative
 567 fees or the transfer of funds pursuant to s. 155.40(2)
 568 ~~subsection (2)~~.

569 Section 16. Section 395.3037, Florida Statutes, is
 570 repealed.

571 Section 17. Subsections (1), (4), and (5) of section
 572 395.3038, Florida Statutes, are amended to read:

573 395.3038 State-listed primary stroke centers and
 574 comprehensive stroke centers; notification of hospitals.—

575 (1) The agency shall make available on its website and to
 576 the department a list of the name and address of each hospital
 577 that meets the criteria for a primary stroke center and the name
 578 and address of each hospital that meets the criteria for a
 579 comprehensive stroke center. The list of primary and
 580 comprehensive stroke centers shall include only those hospitals
 581 that attest in an affidavit submitted to the agency that the
 582 hospital meets the named criteria, or those hospitals that
 583 attest in an affidavit submitted to the agency that the hospital
 584 is certified as a primary or a comprehensive stroke center by

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585 The Joint Commission ~~on Accreditation of Healthcare~~
 586 ~~Organizations.~~

587 (4) The agency shall adopt by rule criteria for a primary
 588 stroke center which are substantially similar to the
 589 certification standards for primary stroke centers of The Joint
 590 Commission ~~on Accreditation of Healthcare Organizations.~~

591 (5) The agency shall adopt by rule criteria for a
 592 comprehensive stroke center. However, if The Joint Commission ~~on~~
 593 ~~Accreditation of Healthcare Organizations~~ establishes criteria
 594 for a comprehensive stroke center, the agency shall establish
 595 criteria for a comprehensive stroke center which are
 596 substantially similar to those criteria established by The Joint
 597 Commission ~~on Accreditation of Healthcare Organizations.~~

598 Section 18. Paragraph (e) of subsection (2) of section
 599 395.602, Florida Statutes, is amended to read:

600 395.602 Rural hospitals.—

601 (2) DEFINITIONS.—As used in this part:

602 (e) "Rural hospital" means an acute care hospital licensed
 603 under this chapter, having 100 or fewer licensed beds and an
 604 emergency room, which is:

605 1. The sole provider within a county with a population
 606 density of no greater than 100 persons per square mile;

607 2. An acute care hospital, in a county with a population
 608 density of no greater than 100 persons per square mile, which is
 609 at least 30 minutes of travel time, on normally traveled roads
 610 under normal traffic conditions, from any other acute care
 611 hospital within the same county;

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612 3. A hospital supported by a tax district or subdistrict
613 whose boundaries encompass a population of 100 persons or fewer
614 per square mile;

615 ~~4. A hospital in a constitutional charter county with a~~
616 ~~population of over 1 million persons that has imposed a local~~
617 ~~option health service tax pursuant to law and in an area that~~
618 ~~was directly impacted by a catastrophic event on August 24,~~
619 ~~1992, for which the Governor of Florida declared a state of~~
620 ~~emergency pursuant to chapter 125, and has 120 beds or less that~~
621 ~~serves an agricultural community with an emergency room~~
622 ~~utilization of no less than 20,000 visits and a Medicaid~~
623 ~~inpatient utilization rate greater than 15 percent;~~

624 4.5. A hospital with a service area that has a population
625 of 100 persons or fewer per square mile. As used in this
626 subparagraph, the term "service area" means the fewest number of
627 zip codes that account for 75 percent of the hospital's
628 discharges for the most recent 5-year period, based on
629 information available from the hospital inpatient discharge
630 database in the Florida Center for Health Information and Policy
631 Analysis at the Agency for Health Care Administration; or

632 5.6. A hospital designated as a critical access hospital,
633 as defined in s. 408.07(15).

634

635 Population densities used in this paragraph must be based upon
636 the most recently completed United States census. A hospital
637 that received funds under s. 409.9116 for a quarter beginning no
638 later than July 1, 2002, is deemed to have been and shall
639 continue to be a rural hospital from that date through June 30,

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640 2015, if the hospital continues to have 100 or fewer licensed
 641 beds and an emergency room, ~~or meets the criteria of~~
 642 ~~subparagraph 4.~~ An acute care hospital that has not previously
 643 been designated as a rural hospital and that meets the criteria
 644 of this paragraph shall be granted such designation upon
 645 application, including supporting documentation to the Agency
 646 for Health Care Administration.

647 Section 19. Subsection (8) of section 400.021, Florida
 648 Statutes, is amended to read:

649 400.021 Definitions.—When used in this part, unless the
 650 context otherwise requires, the term:

651 (8) "Geriatric outpatient clinic" means a site for
 652 providing outpatient health care to persons 60 years of age or
 653 older, which is staffed by a registered nurse or a physician
 654 assistant, or a licensed practical nurse under the direct
 655 supervision of a registered nurse, advanced registered nurse
 656 practitioner, or physician assistant.

657 Section 20. Subsection (2) of section 400.063, Florida
 658 Statutes, is amended to read:

659 400.063 Resident protection.—

660 (2) The agency is authorized to establish for each
 661 facility, subject to intervention by the agency, a separate bank
 662 account for the deposit to the credit of the agency of any
 663 moneys received from the Health Care Trust Fund or any other
 664 moneys received for the maintenance and care of residents in the
 665 facility, and the agency is authorized to disburse moneys from
 666 such account to pay obligations incurred for the purposes of
 667 this section. The agency is authorized to requisition moneys

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668 from the Health Care Trust Fund in advance of an actual need for
 669 cash on the basis of an estimate by the agency of moneys to be
 670 spent under the authority of this section. Any bank account
 671 established under this section need not be approved in advance
 672 of its creation as required by s. 17.58, but shall be secured by
 673 depository insurance equal to or greater than the balance of
 674 such account or by the pledge of collateral security ~~in~~
 675 ~~conformance with criteria established in s. 18.11.~~ The agency
 676 shall notify the Chief Financial Officer of any such account so
 677 established and shall make a quarterly accounting to the Chief
 678 Financial Officer for all moneys deposited in such account.

679 Section 21. Subsections (1) and (5) of section 400.071,
 680 Florida Statutes, are amended to read:

681 400.071 Application for license.—

682 (1) In addition to the requirements of part II of chapter
 683 408, the application for a license shall be under oath and must
 684 contain the following:

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

688 ~~(b) A signed affidavit disclosing any financial or~~
 689 ~~ownership interest that a controlling interest as defined in~~
 690 ~~part II of chapter 408 has held in the last 5 years in any~~
 691 ~~entity licensed by this state or any other state to provide~~
 692 ~~health or residential care which has closed voluntarily or~~
 693 ~~involuntarily; has filed for bankruptcy; has had a receiver~~
 694 ~~appointed; has had a license denied, suspended, or revoked; or~~
 695 ~~has had an injunction issued against it which was initiated by a~~

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696 ~~regulatory agency. The affidavit must disclose the reason any~~
 697 ~~such entity was closed, whether voluntarily or involuntarily.~~

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

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

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

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

719 Section 22. Section 400.0712, Florida Statutes, is amended
 720 to read:

721 400.0712 Application for inactive license.—

722 ~~(1) As specified in this section, the agency may issue an~~
 723 ~~inactive license to a nursing home facility for all or a portion~~

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724 ~~of its beds. Any request by a licensee that a nursing home or~~
 725 ~~portion of a nursing home become inactive must be submitted to~~
 726 ~~the agency in the approved format. The facility may not initiate~~
 727 ~~any suspension of services, notify residents, or initiate~~
 728 ~~inactivity before receiving approval from the agency; and a~~
 729 ~~licensee that violates this provision may not be issued an~~
 730 ~~inactive license.~~

731 (1)~~(2)~~ In addition to the powers granted under part II of
 732 chapter 408, the agency may issue an inactive license to a
 733 nursing home that chooses to use an unoccupied contiguous
 734 portion of the facility for an alternative use to meet the needs
 735 of elderly persons through the use of less restrictive, less
 736 institutional services.

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

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

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

748 (2)~~(3)~~ The agency shall adopt rules pursuant to ss.
 749 120.536(1) and 120.54 necessary to implement this section.

750 Section 23. Section 400.111, Florida Statutes, is amended
 751 to read:

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752 400.111 Disclosure of controlling interest.—In addition to
 753 the requirements of part II of chapter 408, when requested by
 754 the agency, the licensee shall submit a signed affidavit
 755 disclosing any financial or ownership interest that a
 756 controlling interest has held within the last 5 years in any
 757 entity licensed by the state or any other state to provide
 758 health or residential care which entity has closed voluntarily
 759 or involuntarily; has filed for bankruptcy; has had a receiver
 760 appointed; has had a license denied, suspended, or revoked; or
 761 has had an injunction issued against it which was initiated by a
 762 regulatory agency. The affidavit must disclose the reason such
 763 entity was closed, whether voluntarily or involuntarily.

764 Section 24. Subsection (2) of section 400.1183, Florida
 765 Statutes, is amended to read:

766 400.1183 Resident grievance procedures.—

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

772 Section 25. Paragraphs (o) through (w) of subsection (1)
 773 of section 400.141, Florida Statutes, are redesignated as
 774 paragraphs (n) through (u), respectively, and present paragraphs
 775 (g), (j), (n), and (o) of that subsection are amended, to read:

776 400.141 Administration and management of nursing home
 777 facilities.—

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

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780 (g) If the facility has a standard license or is a Gold
 781 Seal facility, exceeds the minimum required hours of licensed
 782 nursing and certified nursing assistant direct care per resident
 783 per day, and is part of a continuing care facility licensed
 784 under chapter 651 or a retirement community that offers other
 785 services pursuant to part III of this chapter or part I or part
 786 III of chapter 429 on a single campus, be allowed to share
 787 programming and staff. At the time of inspection and in the
 788 semiannual report required pursuant to paragraph (n) ~~(o)~~, a
 789 continuing care facility or retirement community that uses this
 790 option must demonstrate through staffing records that minimum
 791 staffing requirements for the facility were met. Licensed nurses
 792 and certified nursing assistants who work in the nursing home
 793 facility may be used to provide services elsewhere on campus if
 794 the facility exceeds the minimum number of direct care hours
 795 required per resident per day and the total number of residents
 796 receiving direct care services from a licensed nurse or a
 797 certified nursing assistant does not cause the facility to
 798 violate the staffing ratios required under s. 400.23(3)(a).
 799 Compliance with the minimum staffing ratios shall be based on
 800 total number of residents receiving direct care services,
 801 regardless of where they reside on campus. If the facility
 802 receives a conditional license, it may not share staff until the
 803 conditional license status ends. This paragraph does not
 804 restrict the agency's authority under federal or state law to
 805 require additional staff if a facility is cited for deficiencies
 806 in care which are caused by an insufficient number of certified
 807 nursing assistants or licensed nurses. The agency may adopt

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808 rules for the documentation necessary to determine compliance
 809 with this provision.

810 (j) Keep full records of resident admissions and
 811 discharges; medical and general health status, including medical
 812 records, personal and social history, and identity and address
 813 of next of kin or other persons who may have responsibility for
 814 the affairs of the residents; and individual resident care plans
 815 including, but not limited to, prescribed services, service
 816 frequency and duration, and service goals. The records shall be
 817 open to inspection by the agency. The facility must maintain
 818 clinical records on each resident in accordance with accepted
 819 professional standards and practices that are complete,
 820 accurately documented, readily accessible, and systematically
 821 organized.

822 ~~(n) Submit to the agency the information specified in s.~~
 823 ~~400.071(1)(b) for a management company within 30 days after the~~
 824 ~~effective date of the management agreement.~~

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

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

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

846 c. The formula for determining staff stability is the
847 total number of employees that have been employed for more than
848 12 months, divided by the total number of employees employed at
849 the end of the most recent calendar quarter, and expressed as a
850 percentage.

851 d. A nursing facility that has failed to comply with state
852 minimum-staffing requirements for 2 consecutive days is
853 prohibited from accepting new admissions until the facility has
854 achieved the minimum-staffing requirements for a period of 6
855 consecutive days. For the purposes of this sub-subparagraph, any
856 person who was a resident of the facility and was absent from
857 the facility for the purpose of receiving medical care at a
858 separate location or was on a leave of absence is not considered
859 a new admission. Failure to impose such an admissions moratorium
860 is subject to a \$1,000 fine ~~constitutes a class II deficiency.~~

861 e. A nursing facility which does not have a conditional
862 license may be cited for failure to comply with the standards in

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863 s. 400.23(3)(a)1.a. only if it has failed to meet those
 864 standards on 2 consecutive days or if it has failed to meet at
 865 least 97 percent of those standards on any one day.

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

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

871 Section 26. Subsection (3) of section 400.142, Florida
 872 Statutes, is amended to read:

873 400.142 Emergency medication kits; orders not to
 874 resuscitate.-

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

887 Section 27. Subsections (11) through (15) of section
 888 400.147, Florida Statutes, are renumbered as subsections (10)
 889 through (14), respectively, and present subsection (10) is
 890 amended to read:

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891 400.147 Internal risk management and quality assurance
892 program.—

893 ~~(10) By the 10th of each month, each facility subject to~~
894 ~~this section shall report any notice received pursuant to s.~~
895 ~~400.0233(2) and each initial complaint that was filed with the~~
896 ~~clerk of the court and served on the facility during the~~
897 ~~previous month by a resident or a resident's family member,~~
898 ~~guardian, conservator, or personal legal representative. The~~
899 ~~report must include the name of the resident, the resident's~~
900 ~~date of birth and social security number, the Medicaid~~
901 ~~identification number for Medicaid eligible persons, the date or~~
902 ~~dates of the incident leading to the claim or dates of~~
903 ~~residency, if applicable, and the type of injury or violation of~~
904 ~~rights alleged to have occurred. Each facility shall also submit~~
905 ~~a copy of the notices received pursuant to s. 400.0233(2) and~~
906 ~~complaints filed with the clerk of the court. This report is~~
907 ~~confidential as provided by law and is not discoverable or~~
908 ~~admissible in any civil or administrative action, except in such~~
909 ~~actions brought by the agency to enforce the provisions of this~~
910 ~~part.~~

911 Section 28. Section 400.148, Florida Statutes, is
912 repealed.

913 Section 29. Paragraph (f) of subsection (5) of section
914 400.162, Florida Statutes, is amended to read:

915 400.162 Property and personal affairs of residents.—

916 (5)

917 (f) At least every 3 months, the licensee shall furnish
918 the resident and the guardian, trustee, or conservator, if any,

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919 for the resident a complete and verified statement of all funds
 920 ~~and other property~~ to which this subsection applies, detailing
 921 the amounts ~~and items~~ received, together with their sources and
 922 disposition. For resident property, the licensee shall furnish
 923 such a statement annually and within 7 calendar days after a
 924 request for a statement. In any event, the licensee shall
 925 furnish such statements ~~a statement~~ annually and upon the
 926 discharge or transfer of a resident. Any governmental agency or
 927 private charitable agency contributing funds or other property
 928 on account of a resident also shall be entitled to receive such
 929 statements ~~statement~~ annually and upon discharge or transfer and
 930 such other report as it may require pursuant to law.

931 Section 30. Paragraphs (d) and (e) of subsection (2) of
 932 section 400.179, Florida Statutes, are amended to read:

933 400.179 Liability for Medicaid underpayments and
 934 overpayments.—

935 (2) Because any transfer of a nursing facility may expose
 936 the fact that Medicaid may have underpaid or overpaid the
 937 transferor, and because in most instances, any such underpayment
 938 or overpayment can only be determined following a formal field
 939 audit, the liabilities for any such underpayments or
 940 overpayments shall be as follows:

941 (d) Where the transfer involves a facility that has been
 942 leased by the transferor:

943 1. The transferee shall, as a condition to being issued a
 944 license by the agency, acquire, maintain, and provide proof to
 945 the agency of a bond with a term of 30 months, renewable
 946 annually, in an amount not less than the total of 3 months'

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947 Medicaid payments to the facility computed on the basis of the
948 preceding 12-month average Medicaid payments to the facility.

949 2. A leasehold licensee may meet the requirements of
950 subparagraph 1. by payment of a nonrefundable fee, paid at
951 initial licensure, paid at the time of any subsequent change of
952 ownership, and paid annually thereafter, in the amount of 1
953 percent of the total of 3 months' Medicaid payments to the
954 facility computed on the basis of the preceding 12-month average
955 Medicaid payments to the facility. If a preceding 12-month
956 average is not available, projected Medicaid payments may be
957 used. The fee shall be deposited into the Grants and Donations
958 Trust Fund and shall be accounted for separately as a Medicaid
959 nursing home overpayment account. These fees shall be used at
960 the sole discretion of the agency to repay nursing home Medicaid
961 overpayments. Payment of this fee shall not release the licensee
962 from any liability for any Medicaid overpayments, nor shall
963 payment bar the agency from seeking to recoup overpayments from
964 the licensee and any other liable party. As a condition of
965 exercising this lease bond alternative, licensees paying this
966 fee must maintain an existing lease bond through the end of the
967 30-month term period of that bond. The agency is herein granted
968 specific authority to promulgate all rules pertaining to the
969 administration and management of this account, including
970 withdrawals from the account, subject to federal review and
971 approval. This provision shall take effect upon becoming law and
972 shall apply to any leasehold license application. The financial
973 viability of the Medicaid nursing home overpayment account shall
974 be determined by the agency through annual review of the account

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975 balance and the amount of total outstanding, unpaid Medicaid
 976 overpayments owing from leasehold licensees to the agency as
 977 determined by final agency audits. By March 31 of each year, the
 978 agency shall assess the cumulative fees collected under this
 979 subparagraph, minus any amounts used to repay nursing home
 980 Medicaid overpayments. If the net cumulative collections, minus
 981 amounts utilized to repay nursing home Medicaid overpayments,
 982 exceed \$25 million, the provisions of this paragraph shall not
 983 apply for the subsequent fiscal year.

984 3. The leasehold licensee may meet the bond requirement
 985 through other arrangements acceptable to the agency. The agency
 986 is herein granted specific authority to promulgate rules
 987 pertaining to lease bond arrangements.

988 4. All existing nursing facility licensees, operating the
 989 facility as a leasehold, shall acquire, maintain, and provide
 990 proof to the agency of the 30-month bond required in
 991 subparagraph 1., above, on and after July 1, 1993, for each
 992 license renewal.

993 5. It shall be the responsibility of all nursing facility
 994 operators, operating the facility as a leasehold, to renew the
 995 30-month bond and to provide proof of such renewal to the agency
 996 annually.

997 6. Any failure of the nursing facility operator to
 998 acquire, maintain, renew annually, or provide proof to the
 999 agency shall be grounds for the agency to deny, revoke, and
 1000 suspend the facility license to operate such facility and to
 1001 take any further action, including, but not limited to,
 1002 enjoining the facility, asserting a moratorium pursuant to part

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1003 II of chapter 408, or applying for a receiver, deemed necessary
 1004 to ensure compliance with this section and to safeguard and
 1005 protect the health, safety, and welfare of the facility's
 1006 residents. A lease agreement required as a condition of bond
 1007 financing or refinancing under s. 154.213 by a health facilities
 1008 authority or required under s. 159.30 by a county or
 1009 municipality is not a leasehold for purposes of this paragraph
 1010 and is not subject to the bond requirement of this paragraph.

1011 ~~(e) For the 2009 2010 fiscal year only, the provisions of~~
 1012 ~~paragraph (d) shall not apply. This paragraph expires July 1,~~
 1013 ~~2010.~~

1014 Section 31. Subsection (3) of section 400.19, Florida
 1015 Statutes, is amended to read:

1016 400.19 Right of entry and inspection.—

1017 (3) The agency shall every 15 months conduct at least one
 1018 unannounced inspection to determine compliance by the licensee
 1019 with statutes, and with rules promulgated under the provisions
 1020 of those statutes, governing minimum standards of construction,
 1021 quality and adequacy of care, and rights of residents. The
 1022 survey shall be conducted every 6 months for the next 2-year
 1023 period if the facility has been cited for a class I deficiency,
 1024 has been cited for two or more class II deficiencies arising
 1025 from separate surveys or investigations within a 60-day period,
 1026 or has had three or more substantiated complaints within a 6-
 1027 month period, each resulting in at least one class I or class II
 1028 deficiency. In addition to any other fees or fines in this part,
 1029 the agency shall assess a fine for each facility that is subject
 1030 to the 6-month survey cycle. The fine for the 2-year period

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1031 shall be \$6,000, one-half to be paid at the completion of each
 1032 survey. The agency may adjust this fine by the change in the
 1033 Consumer Price Index, based on the 12 months immediately
 1034 preceding the increase, to cover the cost of the additional
 1035 surveys. The agency shall verify through subsequent inspection
 1036 that any deficiency identified during inspection is corrected.
 1037 However, the agency may verify the correction of a class III or
 1038 class IV deficiency ~~unrelated to resident rights or resident~~
 1039 ~~care~~ without reinspecting the facility if adequate written
 1040 documentation has been received from the facility, which
 1041 provides assurance that the deficiency has been corrected. The
 1042 giving or causing to be given of advance notice of such
 1043 unannounced inspections by an employee of the agency to any
 1044 unauthorized person shall constitute cause for suspension of not
 1045 fewer than 5 working days according to the provisions of chapter
 1046 110.

1047 Section 32. Section 400.195, Florida Statutes, is
 1048 repealed.

1049 Section 33. Subsection (5) of section 400.23, Florida
 1050 Statutes, is amended to read:

1051 400.23 Rules; evaluation and deficiencies; licensure
 1052 status.-

1053 (5) The agency, in collaboration with the Division of
 1054 Children's Medical Services Network of the Department of Health,
 1055 ~~must, no later than December 31, 1993,~~ adopt rules for minimum
 1056 standards of care for persons under 21 years of age who reside
 1057 in nursing home facilities. The rules must include a methodology
 1058 for reviewing a nursing home facility under ss. 408.031-408.045

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1059 which serves only persons under 21 years of age. A facility may
 1060 be exempt from these standards for specific persons between 18
 1061 and 21 years of age, if the person's physician agrees that
 1062 minimum standards of care based on age are not necessary.

1063 Section 34. Subsection (1) of section 400.275, Florida
 1064 Statutes, is amended to read:

1065 400.275 Agency duties.—

1066 (1) ~~The agency shall ensure that each newly hired nursing~~
 1067 ~~home surveyor, as a part of basic training, is assigned full-~~
 1068 ~~time to a licensed nursing home for at least 2 days within a 7-~~
 1069 ~~day period to observe facility operations outside of the survey~~
 1070 ~~process before the surveyor begins survey responsibilities. Such~~
 1071 ~~observations may not be the sole basis of a deficiency citation~~
 1072 ~~against the facility.~~ The agency may not assign an individual to
 1073 be a member of a survey team for purposes of a survey,
 1074 evaluation, or consultation visit at a nursing home facility in
 1075 which the surveyor was an employee within the preceding 2 ~~5~~
 1076 years.

1077 Section 35. Subsection (2) of section 400.484, Florida
 1078 Statutes, is amended to read:

1079 400.484 Right of inspection; violations ~~deficiencies~~;
 1080 fines.—

1081 (2) The agency shall impose fines for various classes of
 1082 violations ~~deficiencies~~ in accordance with the following
 1083 schedule:

1084 (a) Class I violations are defined in s. 408.813. ~~A class~~
 1085 ~~I deficiency is any act, omission, or practice that results in a~~
 1086 ~~patient's death, disablement, or permanent injury, or places a~~

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1087 ~~patient at imminent risk of death, disablement, or permanent~~
 1088 ~~injury.~~ Upon finding a class I violation ~~deficiency~~, the agency
 1089 shall impose an administrative fine in the amount of \$15,000 for
 1090 each occurrence and each day that the violation ~~deficiency~~
 1091 exists.

1092 (b) Class II violations are defined in s. 408.813. ~~A class~~
 1093 ~~II deficiency is any act, omission, or practice that has a~~
 1094 ~~direct adverse effect on the health, safety, or security of a~~
 1095 ~~patient.~~ Upon finding a class II violation ~~deficiency~~, the
 1096 agency shall impose an administrative fine in the amount of
 1097 \$5,000 for each occurrence and each day that the violation
 1098 ~~deficiency~~ exists.

1099 (c) Class III violations are defined in s. 408.813. ~~A~~
 1100 ~~class III deficiency is any act, omission, or practice that has~~
 1101 ~~an indirect, adverse effect on the health, safety, or security~~
 1102 ~~of a patient.~~ Upon finding an uncorrected or repeated class III
 1103 violation ~~deficiency~~, the agency shall impose an administrative
 1104 fine not to exceed \$1,000 for each occurrence and each day that
 1105 the uncorrected or repeated violation ~~deficiency~~ exists.

1106 (d) Class IV violations are defined in s. 408.813. ~~A class~~
 1107 ~~IV deficiency is any act, omission, or practice related to~~
 1108 ~~required reports, forms, or documents which does not have the~~
 1109 ~~potential of negatively affecting patients. These violations are~~
 1110 ~~of a type that the agency determines do not threaten the health,~~
 1111 ~~safety, or security of patients.~~ Upon finding an uncorrected or
 1112 repeated class IV violation ~~deficiency~~, the agency shall impose
 1113 an administrative fine not to exceed \$500 for each occurrence

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1114 and each day that the uncorrected or repeated violation
 1115 deficiency exists.

1116 Section 36. Paragraph (i) of subsection (1) and subsection
 1117 (4) of section 400.606, Florida Statutes, are amended to read:

1118 400.606 License; application; renewal; conditional license
 1119 or permit; certificate of need.—

1120 (1) In addition to the requirements of part II of chapter
 1121 408, the initial application and change of ownership application
 1122 must be accompanied by a plan for the delivery of home,
 1123 residential, and homelike inpatient hospice services to
 1124 terminally ill persons and their families. Such plan must
 1125 contain, but need not be limited to:

1126 ~~(i) The projected annual operating cost of the hospice.~~
 1127

1128 If the applicant is an existing licensed health care provider,
 1129 the application must be accompanied by a copy of the most recent
 1130 profit-loss statement and, if applicable, the most recent
 1131 licensure inspection report.

1132 (4) A freestanding hospice facility that is primarily
 1133 engaged in providing inpatient and related services and that is
 1134 not otherwise licensed as a health care facility shall be
 1135 required to obtain a certificate of need. However, a
 1136 freestanding hospice facility with six or fewer beds shall not
 1137 be required to comply with institutional standards such as, but
 1138 not limited to, standards requiring sprinkler systems, emergency
 1139 electrical systems, or special lavatory devices.

1140 Section 37. Subsection (2) of section 400.607, Florida
 1141 Statutes, is amended to read:

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1142 400.607 Denial, suspension, revocation of license;
 1143 emergency actions; imposition of administrative fine; grounds.—

1144 (2) A violation of this part, part II of chapter 408, or
 1145 applicable rules Any of the following actions by a licensed
 1146 hospice or any of its employees shall be grounds for
 1147 administrative action by the agency against a hospice.†

1148 ~~(a) A violation of the provisions of this part, part II of~~
 1149 ~~chapter 408, or applicable rules.~~

1150 ~~(b) An intentional or negligent act materially affecting~~
 1151 ~~the health or safety of a patient.~~

1152 Section 38. Subsection (1) of section 400.925, Florida
 1153 Statutes, is amended to read:

1154 400.925 Definitions.—As used in this part, the term:

1155 (1) "Accrediting organizations" means The Joint Commission
 1156 ~~on Accreditation of Healthcare Organizations~~ or other national
 1157 accreditation agencies whose standards for accreditation are
 1158 comparable to those required by this part for licensure.

1159 Section 39. Subsections (3) through (6) of section
 1160 400.931, Florida Statutes, are renumbered as subsections (2)
 1161 through (5), respectively, and present subsection (2) of that
 1162 section is amended to read:

1163 400.931 Application for license; fee; ~~provisional license;~~
 1164 ~~temporary permit.~~—

1165 ~~(2) As an alternative to submitting proof of financial~~
 1166 ~~ability to operate as required in s. 408.810(8), the applicant~~
 1167 ~~may submit a \$50,000 surety bond to the agency.~~

1168 Section 40. Subsection (2) of section 400.932, Florida
 1169 Statutes, is amended to read:

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1170 400.932 Administrative penalties.—

1171 (2) A violation of this part, part II of chapter 408, or
 1172 applicable rules ~~Any of the following actions~~ by an employee of
 1173 a home medical equipment provider shall be ~~are~~ grounds for
 1174 administrative action or penalties by the agency.†

1175 ~~(a) Violation of this part, part II of chapter 408, or~~
 1176 ~~applicable rules.~~

1177 ~~(b) An intentional, reckless, or negligent act that~~
 1178 ~~materially affects the health or safety of a patient.~~

1179 Section 41. Subsection (3) of section 400.967, Florida
 1180 Statutes, is amended to read:

1181 400.967 Rules and classification of violations
 1182 deficiencies.—

1183 (3) The agency shall adopt rules to provide that, when the
 1184 criteria established under this part and part II of chapter 408
 1185 are not met, such violations ~~deficiencies~~ shall be classified
 1186 according to the nature of the violation ~~deficiency~~. The agency
 1187 shall indicate the classification on the face of the notice of
 1188 deficiencies as follows:

1189 (a) Class I violations ~~deficiencies~~ are defined in s.
 1190 408.813 ~~those which the agency determines present an imminent~~
 1191 ~~danger to the residents or guests of the facility or a~~
 1192 ~~substantial probability that death or serious physical harm~~
 1193 ~~would result therefrom. The condition or practice constituting a~~
 1194 ~~class I violation must be abated or eliminated immediately,~~
 1195 ~~unless a fixed period of time, as determined by the agency, is~~
 1196 ~~required for correction.~~ A class I violation ~~deficiency~~ is
 1197 subject to a civil penalty in an amount not less than \$5,000 and

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1198 not exceeding \$10,000 for each violation ~~deficiency~~. A fine may
 1199 be levied notwithstanding the correction of the violation
 1200 ~~deficiency~~.

1201 (b) Class II violations ~~deficiencies~~ are defined in s.
 1202 408.813 ~~those which the agency determines have a direct or~~
 1203 ~~immediate relationship to the health, safety, or security of the~~
 1204 ~~facility residents, other than class I deficiencies~~. A class II
 1205 violation ~~deficiency~~ is subject to a civil penalty in an amount
 1206 not less than \$1,000 and not exceeding \$5,000 for each violation
 1207 ~~deficiency~~. A citation for a class II violation ~~deficiency~~ shall
 1208 specify the time within which the violation ~~deficiency~~ must be
 1209 corrected. If a class II violation ~~deficiency~~ is corrected
 1210 within the time specified, no civil penalty shall be imposed,
 1211 unless it is a repeated offense.

1212 (c) Class III violations ~~deficiencies~~ are defined in s.
 1213 408.813 ~~those which the agency determines to have an indirect or~~
 1214 ~~potential relationship to the health, safety, or security of the~~
 1215 ~~facility residents, other than class I or class II deficiencies~~.
 1216 A class III violation ~~deficiency~~ is subject to a civil penalty
 1217 of not less than \$500 and not exceeding \$1,000 for each
 1218 deficiency. A citation for a class III violation ~~deficiency~~
 1219 shall specify the time within which the violation ~~deficiency~~
 1220 must be corrected. If a class III violation ~~deficiency~~ is
 1221 corrected within the time specified, no civil penalty shall be
 1222 imposed, unless it is a repeated offense.

1223 (d) Class IV violations are defined in s. 408.813. Upon
 1224 finding an uncorrected or repeated class IV violation, the
 1225 agency shall impose an administrative fine not to exceed \$500

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1226 for each occurrence and each day that the uncorrected or
 1227 repeated violation exists.

1228 Section 42. Subsections (4) and (7) of section 400.9905,
 1229 Florida Statutes, are amended to read:

1230 400.9905 Definitions.—

1231 (4) "Clinic" means an entity at which health care services
 1232 are provided to individuals and which tenders charges for
 1233 reimbursement for such services, including a mobile clinic and a
 1234 portable health service or equipment provider. For purposes of
 1235 this part, the term does not include and the licensure
 1236 requirements of this part do not apply to:

1237 (a) Entities licensed or registered by the state under
 1238 chapter 395; or entities licensed or registered by the state and
 1239 providing only health care services within the scope of services
 1240 authorized under their respective licenses granted under ss.
 1241 383.30-383.335, chapter 390, chapter 394, chapter 397, this
 1242 chapter except part X, chapter 429, chapter 463, chapter 465,
 1243 chapter 466, chapter 478, part I of chapter 483, chapter 484, or
 1244 chapter 651; end-stage renal disease providers authorized under
 1245 42 C.F.R. part 405, subpart U; or providers certified under 42
 1246 C.F.R. part 485, subpart B or subpart H; or any entity that
 1247 provides neonatal or pediatric hospital-based health care
 1248 services or other health care services by licensed practitioners
 1249 solely within a hospital licensed under chapter 395.

1250 (b) Entities that own, directly or indirectly, entities
 1251 licensed or registered by the state pursuant to chapter 395; or
 1252 entities that own, directly or indirectly, entities licensed or
 1253 registered by the state and providing only health care services

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1254 within the scope of services authorized pursuant to their
 1255 respective licenses granted under ss. 383.30-383.335, chapter
 1256 390, chapter 394, chapter 397, this chapter except part X,
 1257 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 1258 part I of chapter 483, chapter 484, chapter 651; end-stage renal
 1259 disease providers authorized under 42 C.F.R. part 405, subpart
 1260 U; or providers certified under 42 C.F.R. part 485, subpart B or
 1261 subpart H; or any entity that provides neonatal or pediatric
 1262 hospital-based health care services by licensed practitioners
 1263 solely within a hospital licensed under chapter 395.

1264 (c) Entities that are owned, directly or indirectly, by an
 1265 entity licensed or registered by the state pursuant to chapter
 1266 395; or entities that are owned, directly or indirectly, by an
 1267 entity licensed or registered by the state and providing only
 1268 health care services within the scope of services authorized
 1269 pursuant to their respective licenses granted under ss. 383.30-
 1270 383.335, chapter 390, chapter 394, chapter 397, this chapter
 1271 except part X, chapter 429, chapter 463, chapter 465, chapter
 1272 466, chapter 478, part I of chapter 483, chapter 484, or chapter
 1273 651; end-stage renal disease providers authorized under 42
 1274 C.F.R. part 405, subpart U; or providers certified under 42
 1275 C.F.R. part 485, subpart B or subpart H; or any entity that
 1276 provides neonatal or pediatric hospital-based health care
 1277 services by licensed practitioners solely within a hospital
 1278 under chapter 395.

1279 (d) Entities that are under common ownership, directly or
 1280 indirectly, with an entity licensed or registered by the state
 1281 pursuant to chapter 395; or entities that are under common

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1282 ownership, directly or indirectly, with an entity licensed or
 1283 registered by the state and providing only health care services
 1284 within the scope of services authorized pursuant to their
 1285 respective licenses granted under ss. 383.30-383.335, chapter
 1286 390, chapter 394, chapter 397, this chapter except part X,
 1287 chapter 429, chapter 463, chapter 465, chapter 466, chapter 478,
 1288 part I of chapter 483, chapter 484, or chapter 651; end-stage
 1289 renal disease providers authorized under 42 C.F.R. part 405,
 1290 subpart U; or providers certified under 42 C.F.R. part 485,
 1291 subpart B or subpart H; or any entity that provides neonatal or
 1292 pediatric hospital-based health care services by licensed
 1293 practitioners solely within a hospital licensed under chapter
 1294 395.

1295 (e) An entity that is exempt from federal taxation under
 1296 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
 1297 under 26 U.S.C. s. 409 that has a board of trustees not less
 1298 than two-thirds of which are Florida-licensed health care
 1299 practitioners and provides only physical therapy services under
 1300 physician orders, any community college or university clinic,
 1301 and any entity owned or operated by the federal or state
 1302 government, including agencies, subdivisions, or municipalities
 1303 thereof.

1304 (f) A sole proprietorship, group practice, partnership, or
 1305 corporation that provides health care services by physicians
 1306 covered by s. 627.419, that is directly supervised by one or
 1307 more of such physicians, and that is wholly owned by one or more
 1308 of those physicians or by a physician and the spouse, parent,
 1309 child, or sibling of that physician.

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1310 (g) A sole proprietorship, group practice, partnership, or
 1311 corporation that provides health care services by licensed
 1312 health care practitioners under chapter 457, chapter 458,
 1313 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 1314 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 1315 chapter 490, chapter 491, or part I, part III, part X, part
 1316 XIII, or part XIV of chapter 468, or s. 464.012, which are
 1317 wholly owned by one or more licensed health care practitioners,
 1318 or the licensed health care practitioners set forth in this
 1319 paragraph and the spouse, parent, child, or sibling of a
 1320 licensed health care practitioner, so long as one of the owners
 1321 who is a licensed health care practitioner is supervising the
 1322 business activities and is legally responsible for the entity's
 1323 compliance with all federal and state laws. However, a health
 1324 care practitioner may not supervise services beyond the scope of
 1325 the practitioner's license, except that, for the purposes of
 1326 this part, a clinic owned by a licensee in s. 456.053(3)(b) that
 1327 provides only services authorized pursuant to s. 456.053(3)(b)
 1328 may be supervised by a licensee specified in s. 456.053(3)(b).

1329 (h) Clinical facilities affiliated with an accredited
 1330 medical school at which training is provided for medical
 1331 students, residents, or fellows.

1332 (i) Entities that provide only oncology or radiation
 1333 therapy services by physicians licensed under chapter 458 or
 1334 chapter 459 or entities that provide oncology or radiation
 1335 therapy services by physicians licensed under chapter 458 or
 1336 chapter 459 which are owned by a corporation whose shares are
 1337 publicly traded on a recognized stock exchange.

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1338 (j) Clinical facilities affiliated with a college of
 1339 chiropractic accredited by the Council on Chiropractic Education
 1340 at which training is provided for chiropractic students.

1341 (k) Entities that provide licensed practitioners to staff
 1342 emergency departments or to deliver anesthesia services in
 1343 facilities licensed under chapter 395 and that derive at least
 1344 90 percent of their gross annual revenues from the provision of
 1345 such services. Entities claiming an exemption from licensure
 1346 under this paragraph must provide documentation demonstrating
 1347 compliance.

1348 (l) Orthotic, ~~or~~ prosthetic, pediatric cardiology, or
 1349 perinatology clinical facilities that are a publicly traded
 1350 corporation or that are wholly owned, directly or indirectly, by
 1351 a publicly traded corporation. As used in this paragraph, a
 1352 publicly traded corporation is a corporation that issues
 1353 securities traded on an exchange registered with the United
 1354 States Securities and Exchange Commission as a national
 1355 securities exchange.

1356 (7) "Portable health service or equipment provider" means
 1357 an entity that contracts with or employs persons to provide
 1358 portable health care services or equipment to multiple locations
 1359 ~~performing treatment or diagnostic testing of individuals, that~~
 1360 bills third-party payors for those services, and that otherwise
 1361 meets the definition of a clinic in subsection (4).

1362 Section 43. Paragraph (b) of subsection (1) and paragraph
 1363 (c) of subsection (4) of section 400.991, Florida Statutes, are
 1364 amended to read:

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1365 400.991 License requirements; background screenings;
 1366 prohibitions.-

1367 (1)

1368 (b) Each mobile clinic must obtain a separate health care
 1369 clinic license and must provide to the agency, at least
 1370 quarterly, its projected street location to enable the agency to
 1371 locate and inspect such clinic. A portable health service or
 1372 equipment provider must obtain a health care clinic license for
 1373 a single administrative office and is not required to submit
 1374 quarterly projected street locations.

1375 (4) In addition to the requirements of part II of chapter
 1376 408, the applicant must file with the application satisfactory
 1377 proof that the clinic is in compliance with this part and
 1378 applicable rules, including:

1379 (c) Proof of financial ability to operate as required
 1380 under ss. s. 408.810(8) and 408.8065. ~~As an alternative to~~
 1381 ~~submitting proof of financial ability to operate as required~~
 1382 ~~under s. 408.810(8), the applicant may file a surety bond of at~~
 1383 ~~least \$500,000 which guarantees that the clinic will act in full~~
 1384 ~~conformity with all legal requirements for operating a clinic,~~
 1385 ~~payable to the agency. The agency may adopt rules to specify~~
 1386 ~~related requirements for such surety bond.~~

1387 Section 44. Paragraph (g) of subsection (1) and paragraph
 1388 (a) of subsection (7) of section 400.9935, Florida Statutes, are
 1389 amended to read:

1390 400.9935 Clinic responsibilities.-

1391 (1) Each clinic shall appoint a medical director or clinic
 1392 director who shall agree in writing to accept legal

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1393 responsibility for the following activities on behalf of the
 1394 clinic. The medical director or the clinic director shall:
 1395 (g) Conduct systematic reviews of clinic billings to
 1396 ensure that the billings are not fraudulent or unlawful. Upon
 1397 discovery of an unlawful charge, the medical director or clinic
 1398 director shall take immediate corrective action. If the clinic
 1399 performs only the technical component of magnetic resonance
 1400 imaging, static radiographs, computed tomography, or positron
 1401 emission tomography, and provides the professional
 1402 interpretation of such services, in a fixed facility that is
 1403 accredited by The Joint Commission ~~on Accreditation of~~
 1404 ~~Healthcare Organizations~~ or the Accreditation Association for
 1405 Ambulatory Health Care, and the American College of Radiology;
 1406 and if, in the preceding quarter, the percentage of scans
 1407 performed by that clinic which was billed to all personal injury
 1408 protection insurance carriers was less than 15 percent, the
 1409 chief financial officer of the clinic may, in a written
 1410 acknowledgment provided to the agency, assume the responsibility
 1411 for the conduct of the systematic reviews of clinic billings to
 1412 ensure that the billings are not fraudulent or unlawful.

1413 (7) (a) Each clinic engaged in magnetic resonance imaging
 1414 services must be accredited by The Joint Commission ~~on~~
 1415 ~~Accreditation of Healthcare Organizations~~, the American College
 1416 of Radiology, or the Accreditation Association for Ambulatory
 1417 Health Care, within 1 year after licensure. A clinic that is
 1418 accredited by the American College of Radiology or is within the
 1419 original 1-year period after licensure and replaces its core
 1420 magnetic resonance imaging equipment shall be given 1 year after

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1421 the date on which the equipment is replaced to attain
 1422 accreditation. However, a clinic may request a single, 6-month
 1423 extension if it provides evidence to the agency establishing
 1424 that, for good cause shown, such clinic cannot be accredited
 1425 within 1 year after licensure, and that such accreditation will
 1426 be completed within the 6-month extension. After obtaining
 1427 accreditation as required by this subsection, each such clinic
 1428 must maintain accreditation as a condition of renewal of its
 1429 license. A clinic that files a change of ownership application
 1430 must comply with the original accreditation timeframe
 1431 requirements of the transferor. The agency shall deny a change
 1432 of ownership application if the clinic is not in compliance with
 1433 the accreditation requirements. When a clinic adds, replaces, or
 1434 modifies magnetic resonance imaging equipment and the
 1435 accreditation agency requires new accreditation, the clinic must
 1436 be accredited within 1 year after the date of the addition,
 1437 replacement, or modification but may request a single, 6-month
 1438 extension if the clinic provides evidence of good cause to the
 1439 agency.

1440 Section 45. Subsection (2) of section 408.034, Florida
 1441 Statutes, is amended to read:

1442 408.034 Duties and responsibilities of agency; rules.—

1443 (2) In the exercise of its authority to issue licenses to
 1444 health care facilities and health service providers, as provided
 1445 under chapters 393 and 395 and parts II, and IV, and VIII of
 1446 chapter 400, the agency may not issue a license to any health
 1447 care facility or health service provider that fails to receive a
 1448 certificate of need or an exemption for the licensed facility or

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1449 service.

1450 Section 46. Paragraph (d) of subsection (1) of section
1451 408.036, Florida Statutes, is amended to read:

1452 408.036 Projects subject to review; exemptions.—

1453 (1) APPLICABILITY.—Unless exempt under subsection (3), all
1454 health-care-related projects, as described in paragraphs (a)-
1455 (g), are subject to review and must file an application for a
1456 certificate of need with the agency. The agency is exclusively
1457 responsible for determining whether a health-care-related
1458 project is subject to review under ss. 408.031-408.045.

1459 (d) The establishment of a hospice or hospice inpatient
1460 facility, ~~except as provided in s. 408.043.~~

1461 Section 47. Subsection (2) of section 408.043, Florida
1462 Statutes, is amended to read:

1463 408.043 Special provisions.—

1464 (2) HOSPICES.—When an application is made for a
1465 certificate of need to establish or to expand a hospice, the
1466 need for such hospice shall be determined on the basis of the
1467 need for and availability of hospice services in the community.
1468 The formula on which the certificate of need is based shall
1469 discourage regional monopolies and promote competition. The
1470 inpatient hospice care component of a hospice which is a
1471 freestanding facility, or a part of a facility, ~~which is~~
1472 ~~primarily engaged in providing inpatient care and related~~
1473 ~~services~~ and is not licensed as a health care facility shall
1474 also be required to obtain a certificate of need. Provision of
1475 hospice care by any current provider of health care is a

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1476 significant change in service and therefore requires a
 1477 certificate of need for such services.

1478 Section 48. Paragraph (k) of subsection (3) of section
 1479 408.05, Florida Statutes, is amended to read:

1480 408.05 Florida Center for Health Information and Policy
 1481 Analysis.-

1482 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.-In order to
 1483 produce comparable and uniform health information and statistics
 1484 for the development of policy recommendations, the agency shall
 1485 perform the following functions:

1486 (k) Develop, in conjunction with the State Consumer Health
 1487 Information and Policy Advisory Council, and implement a long-
 1488 range plan for making available health care quality measures and
 1489 financial data that will allow consumers to compare health care
 1490 services. The health care quality measures and financial data
 1491 the agency must make available shall include, but is not limited
 1492 to, pharmaceuticals, physicians, health care facilities, and
 1493 health plans and managed care entities. The agency shall submit
 1494 the initial plan to the Governor, the President of the Senate,
 1495 and the Speaker of the House of Representatives by January 1,
 1496 2006, and shall update the plan and report on the status of its
 1497 implementation annually thereafter. The agency shall also make
 1498 the plan and status report available to the public on its
 1499 Internet website. As part of the plan, the agency shall identify
 1500 the process and timeframes for implementation, any barriers to
 1501 implementation, and recommendations of changes in the law that
 1502 may be enacted by the Legislature to eliminate the barriers. As
 1503 preliminary elements of the plan, the agency shall:

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1504 1. Make available patient-safety indicators, inpatient
 1505 quality indicators, and performance outcome and patient charge
 1506 data collected from health care facilities pursuant to s.
 1507 408.061(1)(a) and (2). The terms "patient-safety indicators" and
 1508 "inpatient quality indicators" shall be as defined by the
 1509 Centers for Medicare and Medicaid Services, the National Quality
 1510 Forum, The Joint Commission ~~on Accreditation of Healthcare~~
 1511 ~~Organizations~~, the Agency for Healthcare Research and Quality,
 1512 the Centers for Disease Control and Prevention, or a similar
 1513 national entity that establishes standards to measure the
 1514 performance of health care providers, or by other states. The
 1515 agency shall determine which conditions, procedures, health care
 1516 quality measures, and patient charge data to disclose based upon
 1517 input from the council. When determining which conditions and
 1518 procedures are to be disclosed, the council and the agency shall
 1519 consider variation in costs, variation in outcomes, and
 1520 magnitude of variations and other relevant information. When
 1521 determining which health care quality measures to disclose, the
 1522 agency:

1523 a. Shall consider such factors as volume of cases; average
 1524 patient charges; average length of stay; complication rates;
 1525 mortality rates; and infection rates, among others, which shall
 1526 be adjusted for case mix and severity, if applicable.

1527 b. May consider such additional measures that are adopted
 1528 by the Centers for Medicare and Medicaid Studies, National
 1529 Quality Forum, The Joint Commission ~~on Accreditation of~~
 1530 ~~Healthcare Organizations~~, the Agency for Healthcare Research and
 1531 Quality, Centers for Disease Control and Prevention, or a

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1532 similar national entity that establishes standards to measure
 1533 the performance of health care providers, or by other states.

1534
 1535 When determining which patient charge data to disclose, the
 1536 agency shall include such measures as the average of
 1537 undiscounted charges on frequently performed procedures and
 1538 preventive diagnostic procedures, the range of procedure charges
 1539 from highest to lowest, average net revenue per adjusted patient
 1540 day, average cost per adjusted patient day, and average cost per
 1541 admission, among others.

1542 2. Make available performance measures, benefit design,
 1543 and premium cost data from health plans licensed pursuant to
 1544 chapter 627 or chapter 641. The agency shall determine which
 1545 health care quality measures and member and subscriber cost data
 1546 to disclose, based upon input from the council. When determining
 1547 which data to disclose, the agency shall consider information
 1548 that may be required by either individual or group purchasers to
 1549 assess the value of the product, which may include membership
 1550 satisfaction, quality of care, current enrollment or membership,
 1551 coverage areas, accreditation status, premium costs, plan costs,
 1552 premium increases, range of benefits, copayments and
 1553 deductibles, accuracy and speed of claims payment, credentials
 1554 of physicians, number of providers, names of network providers,
 1555 and hospitals in the network. Health plans shall make available
 1556 to the agency any such data or information that is not currently
 1557 reported to the agency or the office.

1558 3. Determine the method and format for public disclosure
 1559 of data reported pursuant to this paragraph. The agency shall

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1560 make its determination based upon input from the State Consumer
 1561 Health Information and Policy Advisory Council. At a minimum,
 1562 the data shall be made available on the agency's Internet
 1563 website in a manner that allows consumers to conduct an
 1564 interactive search that allows them to view and compare the
 1565 information for specific providers. The website must include
 1566 such additional information as is determined necessary to ensure
 1567 that the website enhances informed decisionmaking among
 1568 consumers and health care purchasers, which shall include, at a
 1569 minimum, appropriate guidance on how to use the data and an
 1570 explanation of why the data may vary from provider to provider.
 1571 The data specified in subparagraph 1. shall be released no later
 1572 than January 1, 2006, for the reporting of infection rates, and
 1573 no later than October 1, 2005, for mortality rates and
 1574 complication rates. The data specified in subparagraph 2. shall
 1575 be released no later than October 1, 2006.

1576 4. Publish on its website undiscounted charges for no
 1577 fewer than 150 of the most commonly performed adult and
 1578 pediatric procedures, including outpatient, inpatient,
 1579 diagnostic, and preventative procedures.

1580 Section 49. Paragraph (a) of subsection (1) of section
 1581 408.061, Florida Statutes, is amended to read:

1582 408.061 Data collection; uniform systems of financial
 1583 reporting; information relating to physician charges;
 1584 confidential information; immunity.—

1585 (1) The agency shall require the submission by health care
 1586 facilities, health care providers, and health insurers of data
 1587 necessary to carry out the agency's duties. Specifications for

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1588 data to be collected under this section shall be developed by
 1589 the agency with the assistance of technical advisory panels
 1590 including representatives of affected entities, consumers,
 1591 purchasers, and such other interested parties as may be
 1592 determined by the agency.

1593 (a) Data submitted by health care facilities, including
 1594 the facilities as defined in chapter 395, shall include, but are
 1595 not limited to: case-mix data, patient admission and discharge
 1596 data, hospital emergency department data which shall include the
 1597 number of patients treated in the emergency department of a
 1598 licensed hospital reported by patient acuity level, data on
 1599 hospital-acquired infections as specified by rule, data on
 1600 complications as specified by rule, data on readmissions as
 1601 specified by rule, with patient and provider-specific
 1602 identifiers included, actual charge data by diagnostic groups,
 1603 financial data, accounting data, operating expenses, expenses
 1604 incurred for rendering services to patients who cannot or do not
 1605 pay, interest charges, depreciation expenses based on the
 1606 expected useful life of the property and equipment involved, and
 1607 demographic data. The agency shall adopt nationally recognized
 1608 risk adjustment methodologies or software consistent with the
 1609 standards of the Agency for Healthcare Research and Quality and
 1610 as selected by the agency for all data submitted as required by
 1611 this section. Data may be obtained from documents such as, but
 1612 not limited to: leases, contracts, debt instruments, itemized
 1613 patient bills, medical record abstracts, and related diagnostic
 1614 information. Reported data elements shall be reported
 1615 electronically and ~~in accordance with rule 59E-7.012, Florida~~

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1616 ~~Administrative Code. Data submitted shall be~~ certified by the
 1617 chief executive officer or an appropriate and duly authorized
 1618 representative or employee of the licensed facility that the
 1619 information submitted is true and accurate.

1620 Section 50. Section 408.10, Florida Statutes, is amended
 1621 to read:

1622 408.10 Consumer complaints.—The agency shall:

1623 ~~(1)~~ publish and make available to the public a toll-free
 1624 telephone number for the purpose of handling consumer complaints
 1625 and shall serve as a liaison between consumer entities and other
 1626 private entities and governmental entities for the disposition
 1627 of problems identified by consumers of health care.

1628 ~~(2) Be empowered to investigate consumer complaints~~
 1629 ~~relating to problems with health care facilities' billing~~
 1630 ~~practices and issue reports to be made public in any cases where~~
 1631 ~~the agency determines the health care facility has engaged in~~
 1632 ~~billing practices which are unreasonable and unfair to the~~
 1633 ~~consumer.~~

1634 Section 51. Subsections (12) through (30) of section
 1635 408.802, Florida Statutes, are renumbered as subsections (11)
 1636 through (29), respectively, and present subsection (11) of that
 1637 section is amended to read:

1638 408.802 Applicability.—The provisions of this part apply
 1639 to the provision of services that require licensure as defined
 1640 in this part and to the following entities licensed, registered,
 1641 or certified by the agency, as described in chapters 112, 383,
 1642 390, 394, 395, 400, 429, 440, 483, and 765:

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1643 ~~(11) Private review agents, as provided under part I of~~
 1644 ~~chapter 395.~~

1645 Section 52. Subsection (3) is added to section 408.804,
 1646 Florida Statutes, to read:

1647 408.804 License required; display.—

1648 (3) Any person who knowingly alters, defaces, or falsifies
 1649 a license certificate issued by the agency, or causes or
 1650 procures any person to commit such an offense, commits a
 1651 misdemeanor of the second degree, punishable as provided in s.
 1652 775.082 or s 775.083. Any licensee or provider who displays an
 1653 altered, defaced, or falsified license certificate is subject to
 1654 the penalties set forth in s. 408.815 and an administrative fine
 1655 of \$1,000 for each day of illegal display.

1656 Section 53. Paragraph (d) of subsection (2) of section
 1657 408.806, Florida Statutes, is amended, present subsections (3)
 1658 through (8) are renumbered as subsections (4) through (9),
 1659 respectively, and a new subsection (3) is added to that section,
 1660 to read:

1661 408.806 License application process.—

1662 (2)

1663 ~~(d) The agency shall notify the licensee by mail or~~
 1664 ~~electronically at least 90 days before the expiration of a~~
 1665 ~~license that a renewal license is necessary to continue~~
 1666 ~~operation. The licensee's failure to timely file submit a~~
 1667 ~~renewal application and license application fee with the agency~~
 1668 shall result in a \$50 per day late fee charged to the licensee
 1669 by the agency; however, the aggregate amount of the late fee may
 1670 not exceed 50 percent of the licensure fee or \$500, whichever is

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1671 less. The agency shall provide a courtesy notice to the licensee
 1672 by United States mail, electronically, or by any other manner at
 1673 its address of record or mailing address, if provided, at least
 1674 90 days prior to the expiration of a license informing the
 1675 licensee of the expiration of the license. If the agency does
 1676 not provide the courtesy notice or the licensee does not receive
 1677 the courtesy notice, the licensee continues to be legally
 1678 obligated to timely file the renewal application and license
 1679 application fee with the agency and is not excused from the
 1680 payment of a late fee. ~~If an application is received after the~~
 1681 ~~required filing date and exhibits a hand canceled postmark~~
 1682 ~~obtained from a United States post office dated on or before the~~
 1683 ~~required filing date, no fine will be levied.~~

1684 (3) Payment of the late fee is required to consider any
 1685 late application complete, and failure to pay the late fee is
 1686 considered an omission from the application.

1687 Section 54. Subsections (6) and (9) of section 408.810,
 1688 Florida Statutes, are amended to read:

1689 408.810 Minimum licensure requirements.—In addition to the
 1690 licensure requirements specified in this part, authorizing
 1691 statutes, and applicable rules, each applicant and licensee must
 1692 comply with the requirements of this section in order to obtain
 1693 and maintain a license.

1694 (6) (a) An applicant must provide the agency with proof of
 1695 the applicant's legal right to occupy the property before a
 1696 license may be issued. Proof may include, but need not be
 1697 limited to, copies of warranty deeds, lease or rental
 1698 agreements, contracts for deeds, quitclaim deeds, or other such

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1699 | documentation.

1700 | (b) In the event the property is encumbered by a mortgage
 1701 | or is leased, an applicant must provide the agency with proof
 1702 | that the mortgagor or landlord has been provided written notice
 1703 | of the applicant's intent as mortgagee or tenant to provide
 1704 | services that require licensure and instruct the mortgagor or
 1705 | landlord to serve the agency by certified mail with copies of
 1706 | any foreclosure or eviction actions initiated by the mortgagor
 1707 | or landlord against the applicant.

1708 | (9) A controlling interest may not withhold from the
 1709 | agency any evidence of financial instability, including, but not
 1710 | limited to, checks returned due to insufficient funds,
 1711 | delinquent accounts, nonpayment of withholding taxes, unpaid
 1712 | utility expenses, nonpayment for essential services, or adverse
 1713 | court action concerning the financial viability of the provider
 1714 | or any other provider licensed under this part that is under the
 1715 | control of the controlling interest. A controlling interest
 1716 | shall notify the agency within 10 days after a court action to
 1717 | initiate bankruptcy, foreclosure, or eviction proceedings
 1718 | concerning the provider, in which the controlling interest is a
 1719 | petitioner or defendant. Any person who violates this subsection
 1720 | commits a misdemeanor of the second degree, punishable as
 1721 | provided in s. 775.082 or s. 775.083. Each day of continuing
 1722 | violation is a separate offense.

1723 | Section 55. Subsection (3) is added to section 408.813,
 1724 | Florida Statutes, to read:

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1725 408.813 Administrative fines; violations.—As a penalty for
 1726 any violation of this part, authorizing statutes, or applicable
 1727 rules, the agency may impose an administrative fine.

1728 (3) The agency may impose an administrative fine for a
 1729 violation that does not qualify as a class I, class II, class
 1730 III, or class IV violation. The amount of the fine shall not
 1731 exceed \$500 for each violation. Unclassified violations may
 1732 include:

1733 (a) Violating any term or condition of a license.

1734 (b) Violating any provision of this part, authorizing
 1735 statutes, or applicable rules.

1736 (c) Exceeding licensed capacity.

1737 (d) Providing services beyond the scope of the license.

1738 (e) Violating a moratorium imposed pursuant to s. 408.814.

1739 Section 56. Subsection (5) is added to section 408.815,
 1740 Florida Statutes, to read:

1741 408.815 License or application denial; revocation.—

1742 (5) In order to ensure the health, safety, and welfare of
 1743 clients when a license has been denied, revoked, or is set to
 1744 terminate, the agency may extend the license expiration date for
 1745 a period of up to 60 days for the sole purpose of allowing the
 1746 safe and orderly discharge of clients. The agency may impose
 1747 conditions on the extension, including, but not limited to,
 1748 prohibiting or limiting admissions, expedited discharge
 1749 planning, required status reports, and mandatory monitoring by
 1750 the agency or third parties. In imposing these conditions, the
 1751 agency shall take into consideration the nature and number of
 1752 clients, the availability and location of acceptable alternative

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1753 placements, and the ability of the licensee to continue
 1754 providing care to the clients. The agency may terminate the
 1755 extension or modify the conditions at any time. This authority
 1756 is in addition to any other authority granted to the agency
 1757 under chapter 120, this part, and authorizing statutes but
 1758 creates no right or entitlement to an extension of a license
 1759 expiration date.

1760 Section 57. Paragraph (k) of subsection (4) of section
 1761 409.221, Florida Statutes, is amended to read:

1762 409.221 Consumer-directed care program.—

1763 (4) CONSUMER-DIRECTED CARE.—

1764 ~~(k) Reviews and reports. The agency and the Departments of~~
 1765 ~~Elderly Affairs, Health, and Children and Family Services and~~
 1766 ~~the Agency for Persons with Disabilities shall each, on an~~
 1767 ~~ongoing basis, review and assess the implementation of the~~
 1768 ~~consumer directed care program. By January 15 of each year, the~~
 1769 ~~agency shall submit a written report to the Legislature that~~
 1770 ~~includes each department's review of the program and contains~~
 1771 ~~recommendations for improvements to the program.~~

1772 Section 58. Subsections (3) and (4) of section 429.07,
 1773 Florida Statutes, are amended, and subsections (6) and (7) are
 1774 added to that section, to read:

1775 429.07 License required; fee; inspections.—

1776 (3) In addition to the requirements of s. 408.806, each
 1777 license granted by the agency must state the type of care for
 1778 which the license is granted. Licenses shall be issued for one
 1779 or more of the following categories of care: standard, extended
 1780 congregate care, ~~limited nursing services,~~ or limited mental

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1781 health.

1782 (a) A standard license shall be issued to a facility
 1783 ~~facilities~~ providing one or more of the personal services
 1784 identified in s. 429.02. Such licensee ~~facilities~~ may also
 1785 employ or contract with a person ~~licensed under part I of~~
 1786 ~~chapter 464 to administer medications and~~ perform other tasks as
 1787 specified in s. 429.255.

1788 (b) An extended congregate care license shall be issued to
 1789 a licensee ~~facilities~~ providing, directly or through contract,
 1790 services beyond those authorized in paragraph (a), including
 1791 acts performed pursuant to part I of chapter 464 by persons
 1792 licensed thereunder, and supportive services defined by rule to
 1793 persons who otherwise would be disqualified from continued
 1794 residence in a facility licensed under this part.

1795 1. In order for extended congregate care services to be
 1796 provided in a facility licensed under this part, the agency must
 1797 first determine that all requirements established in law and
 1798 rule are met and must specifically designate, on the ~~facility's~~
 1799 license, that such services may be provided and whether the
 1800 designation applies to all or part of a facility. Such
 1801 designation may be made at the time of initial licensure or
 1802 relicensure, or upon request in writing by a licensee under this
 1803 part and part II of chapter 408. Notification of approval or
 1804 denial of such request shall be made in accordance with part II
 1805 of chapter 408. An existing licensee ~~facilities~~ qualifying to
 1806 provide extended congregate care services must have maintained a
 1807 standard license and ~~may not have~~ been subject to administrative
 1808 sanctions during the previous 2 years, or since initial

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1809 | licensure if ~~the facility has been~~ licensed for less than 2
 1810 | years, for any of the following reasons:
 1811 | a. A class I or class II violation;
 1812 | b. Three or more repeat or recurring class III violations
 1813 | of identical or similar resident care standards as specified in
 1814 | rule from which a pattern of noncompliance is found by the
 1815 | agency;
 1816 | c. Three or more class III violations that were not
 1817 | corrected in accordance with the corrective action plan approved
 1818 | by the agency;
 1819 | d. Violation of resident care standards resulting in a
 1820 | requirement to employ the services of a consultant pharmacist or
 1821 | consultant dietitian;
 1822 | e. Denial, suspension, or revocation of a license for
 1823 | another facility under this part in which the applicant for an
 1824 | extended congregate care license has at least 25 percent
 1825 | ownership interest; or
 1826 | f. Imposition of a moratorium pursuant to this part or
 1827 | part II of chapter 408 or initiation of injunctive proceedings.
 1828 | 2. A licensee ~~Facilities~~ that is ~~are~~ licensed to provide
 1829 | extended congregate care services shall maintain a written
 1830 | progress report for ~~on~~ each person who receives such services,
 1831 | and the ~~which~~ report must describe ~~describes~~ the type, amount,
 1832 | duration, scope, and outcome of services that are rendered and
 1833 | the general status of the resident's health. ~~A registered nurse,~~
 1834 | ~~or appropriate designee, representing the agency shall visit~~
 1835 | ~~such facilities at least quarterly to monitor residents who are~~
 1836 | ~~receiving extended congregate care services and to determine if~~

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1837 ~~the facility is in compliance with this part, part II of chapter~~
 1838 ~~408, and rules that relate to extended congregate care. One of~~
 1839 ~~these visits may be in conjunction with the regular survey. The~~
 1840 ~~monitoring visits may be provided through contractual~~
 1841 ~~arrangements with appropriate community agencies. A registered~~
 1842 ~~nurse shall serve as part of the team that inspects such~~
 1843 ~~facility. The agency may waive one of the required yearly~~
 1844 ~~monitoring visits for a facility that has been licensed for at~~
 1845 ~~least 24 months to provide extended congregate care services,~~
 1846 ~~if, during the inspection, the registered nurse determines that~~
 1847 ~~extended congregate care services are being provided~~
 1848 ~~appropriately, and if the facility has no class I or class II~~
 1849 ~~violations and no uncorrected class III violations. Before such~~
 1850 ~~decision is made, the agency shall consult with the long term~~
 1851 ~~care ombudsman council for the area in which the facility is~~
 1852 ~~located to determine if any complaints have been made and~~
 1853 ~~substantiated about the quality of services or care. The agency~~
 1854 ~~may not waive one of the required yearly monitoring visits if~~
 1855 ~~complaints have been made and substantiated.~~

1856 3. Licensees Facilities that are licensed to provide
 1857 extended congregate care services shall:

1858 a. Demonstrate the capability to meet unanticipated
 1859 resident service needs.

1860 b. Offer a physical environment that promotes a homelike
 1861 setting, provides for resident privacy, promotes resident
 1862 independence, and allows sufficient congregate space as defined
 1863 by rule.

1864 c. Have sufficient staff available, taking into account

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1865 the physical plant and firesafety features of the building, to
 1866 assist with the evacuation of residents in an emergency, as
 1867 necessary.

1868 d. Adopt and follow policies and procedures that maximize
 1869 resident independence, dignity, choice, and decisionmaking to
 1870 permit residents to age in place to the extent possible, so that
 1871 moves due to changes in functional status are minimized or
 1872 avoided.

1873 e. Allow residents or, if applicable, a resident's
 1874 representative, designee, surrogate, guardian, or attorney in
 1875 fact to make a variety of personal choices, participate in
 1876 developing service plans, and share responsibility in
 1877 decisionmaking.

1878 f. Implement the concept of managed risk.

1879 g. Provide, either directly or through contract, the
 1880 services of a person licensed pursuant to part I of chapter 464.

1881 h. In addition to the training mandated in s. 429.52,
 1882 provide specialized training as defined by rule for facility
 1883 staff.

1884 4. Licensees ~~Facilities~~ licensed to provide extended
 1885 congregate care services are exempt from the criteria for
 1886 continued residency as set forth in rules adopted under s.
 1887 429.41. Licensees ~~Facilities~~ ~~so licensed~~ shall adopt their own
 1888 requirements within guidelines for continued residency set forth
 1889 by rule. However, such licensees ~~facilities~~ may not serve
 1890 residents who require 24-hour nursing supervision. Licensees
 1891 ~~Facilities~~ licensed to provide extended congregate care services
 1892 shall provide each resident with a written copy of facility

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1893 policies governing admission and retention.

1894 5. The primary purpose of extended congregate care
 1895 services is to allow residents, as they become more impaired,
 1896 the option of remaining in a familiar setting from which they
 1897 would otherwise be disqualified for continued residency. A
 1898 facility licensed to provide extended congregate care services
 1899 may also admit an individual who exceeds the admission criteria
 1900 for a facility with a standard license, if the individual is
 1901 determined appropriate for admission to the extended congregate
 1902 care facility.

1903 6. Before admission of an individual to a facility
 1904 licensed to provide extended congregate care services, the
 1905 individual must undergo a medical examination as provided in s.
 1906 429.26(4) and the facility must develop a preliminary service
 1907 plan for the individual.

1908 7. When a licensee facility can no longer provide or
 1909 arrange for services in accordance with the resident's service
 1910 plan and needs and the licensee's facility's policy, the
 1911 licensee facility shall make arrangements for relocating the
 1912 person in accordance with s. 429.28(1)(k).

1913 8. Failure to provide extended congregate care services
 1914 may result in denial of extended congregate care license
 1915 renewal.

1916 ~~9. No later than January 1 of each year, the department,~~
 1917 ~~in consultation with the agency, shall prepare and submit to the~~
 1918 ~~Governor, the President of the Senate, the Speaker of the House~~
 1919 ~~of Representatives, and the chairs of appropriate legislative~~
 1920 ~~committees, a report on the status of, and recommendations~~

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1921 ~~related to, extended congregate care services. The status report~~
 1922 ~~must include, but need not be limited to, the following~~
 1923 ~~information:~~

1924 ~~a. A description of the facilities licensed to provide~~
 1925 ~~such services, including total number of beds licensed under~~
 1926 ~~this part.~~

1927 ~~b. The number and characteristics of residents receiving~~
 1928 ~~such services.~~

1929 ~~c. The types of services rendered that could not be~~
 1930 ~~provided through a standard license.~~

1931 ~~d. An analysis of deficiencies cited during licensure~~
 1932 ~~inspections.~~

1933 ~~e. The number of residents who required extended~~
 1934 ~~congregate care services at admission and the source of~~
 1935 ~~admission.~~

1936 ~~f. Recommendations for statutory or regulatory changes.~~

1937 ~~g. The availability of extended congregate care to state~~
 1938 ~~clients residing in facilities licensed under this part and in~~
 1939 ~~need of additional services, and recommendations for~~
 1940 ~~appropriations to subsidize extended congregate care services~~
 1941 ~~for such persons.~~

1942 ~~h. Such other information as the department considers~~
 1943 ~~appropriate.~~

1944 ~~(c) A limited nursing services license shall be issued to~~
 1945 ~~a facility that provides services beyond those authorized in~~
 1946 ~~paragraph (a) and as specified in this paragraph.~~

1947 ~~1. In order for limited nursing services to be provided in~~
 1948 ~~a facility licensed under this part, the agency must first~~

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1949 ~~determine that all requirements established in law and rule are~~
 1950 ~~met and must specifically designate, on the facility's license,~~
 1951 ~~that such services may be provided. Such designation may be made~~
 1952 ~~at the time of initial licensure or relicensure, or upon request~~
 1953 ~~in writing by a licensee under this part and part II of chapter~~
 1954 ~~408. Notification of approval or denial of such request shall be~~
 1955 ~~made in accordance with part II of chapter 408. Existing~~
 1956 ~~facilities qualifying to provide limited nursing services shall~~
 1957 ~~have maintained a standard license and may not have been subject~~
 1958 ~~to administrative sanctions that affect the health, safety, and~~
 1959 ~~welfare of residents for the previous 2 years or since initial~~
 1960 ~~licensure if the facility has been licensed for less than 2~~
 1961 ~~years.~~

1962 ~~2. Facilities that are licensed to provide limited nursing~~
 1963 ~~services shall maintain a written progress report on each person~~
 1964 ~~who receives such nursing services, which report describes the~~
 1965 ~~type, amount, duration, scope, and outcome of services that are~~
 1966 ~~rendered and the general status of the resident's health. A~~
 1967 ~~registered nurse representing the agency shall visit such~~
 1968 ~~facilities at least twice a year to monitor residents who are~~
 1969 ~~receiving limited nursing services and to determine if the~~
 1970 ~~facility is in compliance with applicable provisions of this~~
 1971 ~~part, part II of chapter 408, and related rules. The monitoring~~
 1972 ~~visits may be provided through contractual arrangements with~~
 1973 ~~appropriate community agencies. A registered nurse shall also~~
 1974 ~~serve as part of the team that inspects such facility.~~

1975 ~~3. A person who receives limited nursing services under~~
 1976 ~~this part must meet the admission criteria established by the~~

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1977 ~~agency for assisted living facilities. When a resident no longer~~
 1978 ~~meets the admission criteria for a facility licensed under this~~
 1979 ~~part, arrangements for relocating the person shall be made in~~
 1980 ~~accordance with s. 429.28(1)(k), unless the facility is licensed~~
 1981 ~~to provide extended congregate care services.~~

1982 (4) In accordance with s. 408.805, an applicant or
 1983 licensee shall pay a fee for each license application submitted
 1984 under this part, part II of chapter 408, and applicable rules.
 1985 The amount of the fee shall be established by rule.

1986 (a) The biennial license fee required of a facility is
 1987 \$356 ~~\$300~~ per license, with an additional fee of \$67.50 ~~\$50~~ per
 1988 resident based on the total licensed resident capacity of the
 1989 facility, except that no additional fee will be assessed for
 1990 beds designated for recipients of optional state supplementation
 1991 payments provided for in s. 409.212. The total fee may not
 1992 exceed \$18,000 ~~\$10,000~~.

1993 (b) In addition to the total fee assessed under paragraph
 1994 (a), the agency shall require facilities that are licensed to
 1995 provide extended congregate care services under this part to pay
 1996 an additional fee per licensed facility. The amount of the
 1997 biennial fee shall be \$501 ~~\$400~~ per license, with an additional
 1998 fee of \$10 per resident based on the total licensed resident
 1999 capacity of the facility.

2000 ~~(c) In addition to the total fee assessed under paragraph~~
 2001 ~~(a), the agency shall require facilities that are licensed to~~
 2002 ~~provide limited nursing services under this part to pay an~~
 2003 ~~additional fee per licensed facility. The amount of the biennial~~
 2004 ~~fee shall be \$250 per license, with an additional fee of \$10 per~~

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2005 ~~resident based on the total licensed resident capacity of the~~
 2006 ~~facility.~~

2007 (6) In order to determine whether the facility is
 2008 adequately protecting residents' rights as provided in s.
 2009 429.28, the biennial survey shall include private informal
 2010 conversations with a sample of residents and consultation with
 2011 the ombudsman council in the planning and service area in which
 2012 the facility is located to discuss residents' experiences within
 2013 the facility.

2014 (7) An assisted living facility that has been cited within
 2015 the previous 24-month period for a class I or class II
 2016 violation, regardless of the status of any enforcement or
 2017 disciplinary action, is subject to periodic unannounced
 2018 monitoring to determine if the facility is in compliance with
 2019 this part, part II of chapter 408, and applicable rules.
 2020 Monitoring may occur through a desk review or an onsite
 2021 assessment. If the class I or class II violation relates to
 2022 providing or failing to provide nursing care, a registered nurse
 2023 must participate in at least two onsite monitoring visits within
 2024 a 12-month period.

2025 Section 59. Subsection (7) of section 429.11, Florida
 2026 Statutes, is renumbered as subsection (6), and present
 2027 subsection (6) of that section is amended to read:

2028 429.11 Initial application for license; ~~provisional~~
 2029 ~~license.~~

2030 ~~(6) In addition to the license categories available in s.~~
 2031 ~~408.808, a provisional license may be issued to an applicant~~
 2032 ~~making initial application for licensure or making application~~

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2033 ~~for a change of ownership. A provisional license shall be~~
 2034 ~~limited in duration to a specific period of time not to exceed 6~~
 2035 ~~months, as determined by the agency.~~

2036 Section 60. Section 429.12, Florida Statutes, is amended
 2037 to read:

2038 429.12 Sale or transfer of ownership of a facility.—It is
 2039 the intent of the Legislature to protect the rights of the
 2040 residents of an assisted living facility when the facility is
 2041 sold or the ownership thereof is transferred. Therefore, in
 2042 addition to the requirements of part II of chapter 408, whenever
 2043 a facility is sold or the ownership thereof is transferred,
 2044 including leasing⁺.

2045 (1) The transferee shall notify the residents, in writing,
 2046 of the change of ownership within 7 days after receipt of the
 2047 new license.

2048 ~~(2) The transferor of a facility the license of which is~~
 2049 ~~denied pending an administrative hearing shall, as a part of the~~
 2050 ~~written change of ownership contract, advise the transferee that~~
 2051 ~~a plan of correction must be submitted by the transferee and~~
 2052 ~~approved by the agency at least 7 days before the change of~~
 2053 ~~ownership and that failure to correct the condition which~~
 2054 ~~resulted in the moratorium pursuant to part II of chapter 408 or~~
 2055 ~~denial of licensure is grounds for denial of the transferee's~~
 2056 ~~license.~~

2057 Section 61. Paragraphs (b) through (l) of subsection (1)
 2058 of section 429.14, Florida Statutes, are redesignated as
 2059 paragraphs (a) through (k), respectively, and present paragraph

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2060 (a) of subsection (1) and subsections (5) and (6) of that
 2061 section are amended to read:

2062 429.14 Administrative penalties.—

2063 (1) In addition to the requirements of part II of chapter
 2064 408, the agency may deny, revoke, and suspend any license issued
 2065 under this part and impose an administrative fine in the manner
 2066 provided in chapter 120 against a licensee of an assisted living
 2067 facility for a violation of any provision of this part, part II
 2068 of chapter 408, or applicable rules, or for any of the following
 2069 actions by a licensee of an assisted living facility, for the
 2070 actions of any person subject to level 2 background screening
 2071 under s. 408.809, or for the actions of any facility employee:

2072 ~~(a) An intentional or negligent act seriously affecting~~
 2073 ~~the health, safety, or welfare of a resident of the facility.~~

2074 (5) An action taken by the agency to suspend, deny, or
 2075 revoke a facility's license under this part or part II of
 2076 chapter 408, in which the agency claims that the facility owner
 2077 or an employee of the facility has threatened the health,
 2078 safety, or welfare of a resident of the facility shall be heard
 2079 by the Division of Administrative Hearings of the Department of
 2080 Management Services within 120 days after receipt of the
 2081 facility's request for a hearing, unless that time limitation is
 2082 waived by both parties. The administrative law judge must render
 2083 a decision within 30 days after receipt of a proposed
 2084 recommended order.

2085 (6) The agency shall provide to the Division of Hotels and
 2086 Restaurants of the Department of Business and Professional
 2087 Regulation, on a monthly basis, a list of those assisted living

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2088 facilities that have had their licenses denied, suspended, or
 2089 revoked or that are involved in an appellate proceeding pursuant
 2090 to s. 120.60 related to the denial, suspension, or revocation of
 2091 a license. This information may be provided electronically or
 2092 through the agency's Internet website.

2093 Section 62. Subsections (1), (4), and (5) of section
 2094 429.17, Florida Statutes, are amended to read:

2095 429.17 Expiration of license; renewal; conditional
 2096 license.—

2097 (1) ~~Limited nursing,~~ Extended congregate care, and limited
 2098 mental health licenses shall expire at the same time as the
 2099 facility's standard license, regardless of when issued.

2100 (4) In addition to the license categories available in s.
 2101 408.808, a conditional license may be issued to an applicant for
 2102 license renewal if the applicant fails to meet all standards and
 2103 requirements for licensure. A conditional license issued under
 2104 this subsection shall be limited in duration to a specific
 2105 period of time not to exceed 6 months, as determined by the
 2106 agency, ~~and shall be accompanied by an agency approved plan of~~
 2107 ~~correction.~~

2108 (5) When an extended congregate care ~~or limited nursing~~
 2109 ~~license~~ is requested during a facility's biennial license
 2110 period, the fee shall be prorated in order to permit the
 2111 additional license to expire at the end of the biennial license
 2112 period. The fee shall be calculated as of the date the
 2113 additional license application is received by the agency.

2114 Section 63. Subsection (7) of section 429.19, Florida
 2115 Statutes, is amended to read:

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2116 429.19 Violations; imposition of administrative fines;
 2117 grounds.—

2118 (7) In addition to any administrative fines imposed, the
 2119 agency may assess a survey or monitoring fee, equal to the
 2120 lesser of one half of the facility's biennial license and bed
 2121 fee or \$500, to cover the cost of conducting initial complaint
 2122 investigations that result in the finding of a violation that
 2123 was the subject of the complaint or to monitor the health,
 2124 safety, or security of residents under s. 429.07(7) monitoring
 2125 ~~visits conducted under s. 429.28(3)(c) to verify the correction~~
 2126 ~~of the violations.~~

2127 Section 64. Subsections (6) through (10) of section
 2128 429.23, Florida Statutes, are renumbered as subsections (5)
 2129 through (9), respectively, and present subsection (5) of that
 2130 section is amended to read:

2131 429.23 Internal risk management and quality assurance
 2132 program; adverse incidents and reporting requirements.—

2133 ~~(5) Each facility shall report monthly to the agency any~~
 2134 ~~liability claim filed against it. The report must include the~~
 2135 ~~name of the resident, the dates of the incident leading to the~~
 2136 ~~claim, if applicable, and the type of injury or violation of~~
 2137 ~~rights alleged to have occurred. This report is not discoverable~~
 2138 ~~in any civil or administrative action, except in such actions~~
 2139 ~~brought by the agency to enforce the provisions of this part.~~

2140 Section 65. Paragraph (a) of subsection (1) and subsection
 2141 (2) of section 429.255, Florida Statutes, are amended to read:

2142 429.255 Use of personnel; emergency care.—

2143 (1)(a) Persons under contract to the facility or facility

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2144 staff, ~~or volunteers,~~ who are licensed according to part I of
 2145 chapter 464, or those persons exempt under s. 464.022(1), and
 2146 others as defined by rule, may administer medications to
 2147 residents, take residents' vital signs, manage individual weekly
 2148 pill organizers for residents who self-administer medication,
 2149 give prepackaged enemas ordered by a physician, observe
 2150 residents, document observations on the appropriate resident's
 2151 record, report observations to the resident's physician, and
 2152 contract or allow residents or a resident's representative,
 2153 designee, surrogate, guardian, or attorney in fact to contract
 2154 with a third party, provided residents meet the criteria for
 2155 appropriate placement as defined in s. 429.26. Persons under
 2156 contract to the facility or facility staff who are licensed
 2157 according to part I of chapter 464 may provide limited nursing
 2158 services. Nursing assistants certified pursuant to part II of
 2159 chapter 464 may take residents' vital signs as directed by a
 2160 licensed nurse or physician. The facility is responsible for
 2161 maintaining documentation of services provided under this
 2162 paragraph as required by rule and ensuring that staff are
 2163 adequately trained to monitor residents receiving these
 2164 services.

2165 (2) In facilities licensed to provide extended congregate
 2166 care, persons under contract to the facility or, facility staff,
 2167 ~~or volunteers,~~ who are licensed according to part I of chapter
 2168 464, or those persons exempt under s. 464.022(1), or those
 2169 persons certified as nursing assistants pursuant to part II of
 2170 chapter 464, may also perform all duties within the scope of
 2171 their license or certification, as approved by the facility

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2172 administrator and pursuant to this part.

2173 Section 66. Subsection (3) of section 429.28, Florida
 2174 Statutes, is amended to read:

2175 429.28 Resident bill of rights.—

2176 ~~(3) (a) The agency shall conduct a survey to determine~~
 2177 ~~general compliance with facility standards and compliance with~~
 2178 ~~residents' rights as a prerequisite to initial licensure or~~
 2179 ~~licensure renewal.~~

2180 ~~(b) In order to determine whether the facility is~~
 2181 ~~adequately protecting residents' rights, the biennial survey~~
 2182 ~~shall include private informal conversations with a sample of~~
 2183 ~~residents and consultation with the ombudsman council in the~~
 2184 ~~planning and service area in which the facility is located to~~
 2185 ~~discuss residents' experiences within the facility.~~

2186 ~~(c) During any calendar year in which no survey is~~
 2187 ~~conducted, the agency shall conduct at least one monitoring~~
 2188 ~~visit of each facility cited in the previous year for a class I~~
 2189 ~~or class II violation, or more than three uncorrected class III~~
 2190 ~~violations.~~

2191 ~~(d) The agency may conduct periodic followup inspections~~
 2192 ~~as necessary to monitor the compliance of facilities with a~~
 2193 ~~history of any class I, class II, or class III violations that~~
 2194 ~~threaten the health, safety, or security of residents.~~

2195 ~~(e) The agency may conduct complaint investigations as~~
 2196 ~~warranted to investigate any allegations of noncompliance with~~
 2197 ~~requirements required under this part or rules adopted under~~
 2198 ~~this part.~~

2199 Section 67. Subsection (2) of section 429.35, Florida

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2200 Statutes, is amended to read:

2201 429.35 Maintenance of records; reports.—

2202 (2) Within 60 days after the date of the biennial
 2203 inspection visit required under s. 408.811 or within 30 days
 2204 after the date of any interim visit, the agency shall forward
 2205 the results of the inspection to the local ombudsman council in
 2206 whose planning and service area, as defined in part II of
 2207 chapter 400, the facility is located; to at least one public
 2208 library or, in the absence of a public library, the county seat
 2209 in the county in which the inspected assisted living facility is
 2210 located; and, when appropriate, to the district Adult Services
 2211 and Mental Health Program Offices. This information may be
 2212 provided electronically or through the agency's Internet
 2213 website.

2214 Section 68. Paragraphs (i) and (j) of subsection (1) of
 2215 section 429.41, Florida Statutes, are amended to read:

2216 429.41 Rules establishing standards.—

2217 (1) It is the intent of the Legislature that rules
 2218 published and enforced pursuant to this section shall include
 2219 criteria by which a reasonable and consistent quality of
 2220 resident care and quality of life may be ensured and the results
 2221 of such resident care may be demonstrated. Such rules shall also
 2222 ensure a safe and sanitary environment that is residential and
 2223 noninstitutional in design or nature. It is further intended
 2224 that reasonable efforts be made to accommodate the needs and
 2225 preferences of residents to enhance the quality of life in a
 2226 facility. The agency, in consultation with the department, may
 2227 adopt rules to administer the requirements of part II of chapter

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2228 408. In order to provide safe and sanitary facilities and the
 2229 highest quality of resident care accommodating the needs and
 2230 preferences of residents, the department, in consultation with
 2231 the agency, the Department of Children and Family Services, and
 2232 the Department of Health, shall adopt rules, policies, and
 2233 procedures to administer this part, which must include
 2234 reasonable and fair minimum standards in relation to:

2235 (i) Facilities holding an ~~a limited nursing,~~ extended
 2236 congregate care, or limited mental health license.

2237 (j) The establishment of specific criteria to define
 2238 appropriateness of resident admission and continued residency in
 2239 a facility holding a standard, ~~limited nursing,~~ extended
 2240 congregate care, and limited mental health license.

2241 Section 69. Subsections (1) and (2) of section 429.53,
 2242 Florida Statutes, are amended to read:

2243 429.53 Consultation by the agency.—

2244 (1) ~~The area offices of licensure and certification of the~~
 2245 agency shall provide consultation to the following upon request:

2246 (a) A licensee of a facility.

2247 (b) A person interested in obtaining a license to operate
 2248 a facility under this part.

2249 (2) As used in this section, "consultation" includes:

2250 (a) An explanation of the requirements of this part and
 2251 rules adopted pursuant thereto;

2252 (b) An explanation of the license application and renewal
 2253 procedures;

2254 ~~(c) The provision of a checklist of general local and~~
 2255 ~~state approvals required prior to constructing or developing a~~

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2256 ~~facility and a listing of the types of agencies responsible for~~
 2257 ~~such approvals;~~

2258 ~~(d) An explanation of benefits and financial assistance~~
 2259 ~~available to a recipient of supplemental security income~~
 2260 ~~residing in a facility;~~

2261 ~~(c)(e)~~ Any other information which the agency deems
 2262 necessary to promote compliance with the requirements of this
 2263 part; and

2264 ~~(f) A preconstruction review of a facility to ensure~~
 2265 ~~compliance with agency rules and this part.~~

2266 Section 70. Subsections (1) and (2) of section 429.54,
 2267 Florida Statutes, are renumbered as subsections (2) and (3),
 2268 respectively, and a new subsection (1) is added to that section
 2269 to read:

2270 429.54 Collection of information; local subsidy.—

2271 (1) A facility that is licensed under this part must
 2272 report electronically to the agency semiannually, or more
 2273 frequently as determined by rule, data related to the facility,
 2274 including, but not limited to, the total number of residents,
 2275 the number of residents who are receiving limited mental health
 2276 services, the number of residents who are receiving extended
 2277 congregate care services, the number of residents who are
 2278 receiving limited nursing services, funding sources of the
 2279 residents, and professional staffing employed by or under
 2280 contract with the licensee to provide resident services. The
 2281 department, in consultation with the agency, shall adopt rules
 2282 to administer this subsection.

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2283 Section 71. Subsections (1) and (5) of section 429.71,
 2284 Florida Statutes, are amended to read:

2285 429.71 Classification of violations ~~deficiencies~~;
 2286 administrative fines.—

2287 (1) In addition to the requirements of part II of chapter
 2288 408 and in addition to any other liability or penalty provided
 2289 by law, the agency may impose an administrative fine on a
 2290 provider according to the following classification:

2291 (a) Class I violations are defined in s. 408.813 ~~those~~
 2292 ~~conditions or practices related to the operation and maintenance~~
 2293 ~~of an adult family care home or to the care of residents which~~
 2294 ~~the agency determines present an imminent danger to the~~
 2295 ~~residents or guests of the facility or a substantial probability~~
 2296 ~~that death or serious physical or emotional harm would result~~
 2297 ~~therefrom. The condition or practice that constitutes a class I~~
 2298 ~~violation must be abated or eliminated within 24 hours, unless a~~
 2299 ~~fixed period, as determined by the agency, is required for~~
 2300 ~~correction.~~ A class I violation ~~deficiency~~ is subject to an
 2301 administrative fine in an amount not less than \$500 and not
 2302 exceeding \$1,000 for each violation. ~~A fine may be levied~~
 2303 ~~notwithstanding the correction of the deficiency.~~

2304 (b) Class II violations are defined in s. 408.813 ~~those~~
 2305 ~~conditions or practices related to the operation and maintenance~~
 2306 ~~of an adult family care home or to the care of residents which~~
 2307 ~~the agency determines directly threaten the physical or~~
 2308 ~~emotional health, safety, or security of the residents, other~~
 2309 ~~than class I violations.~~ A class II violation is subject to an
 2310 administrative fine in an amount not less than \$250 and not

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2311 exceeding \$500 for each violation. ~~A citation for a class II~~
 2312 ~~violation must specify the time within which the violation is~~
 2313 ~~required to be corrected. If a class II violation is corrected~~
 2314 ~~within the time specified, no civil penalty shall be imposed,~~
 2315 ~~unless it is a repeated offense.~~

2316 (c) Class III violations are defined in s. 408.813 ~~those~~
 2317 ~~conditions or practices related to the operation and maintenance~~
 2318 ~~of an adult family care home or to the care of residents which~~
 2319 ~~the agency determines indirectly or potentially threaten the~~
 2320 ~~physical or emotional health, safety, or security of residents,~~
 2321 ~~other than class I or class II violations. A class III violation~~
 2322 is subject to an administrative fine in an amount not less than
 2323 \$100 and not exceeding \$250 for each violation. ~~A citation for a~~
 2324 ~~class III violation shall specify the time within which the~~
 2325 ~~violation is required to be corrected. If a class III violation~~
 2326 is corrected within the time specified, no civil penalty shall
 2327 be imposed, unless it is a repeated violation offense.

2328 (d) Class IV violations are defined in s. 408.813 ~~those~~
 2329 ~~conditions or occurrences related to the operation and~~
 2330 ~~maintenance of an adult family care home, or related to the~~
 2331 ~~required reports, forms, or documents, which do not have the~~
 2332 ~~potential of negatively affecting the residents. A provider that~~
 2333 ~~does not correct A class IV violation within the time limit~~
 2334 ~~specified by the agency is subject to an administrative fine in~~
 2335 an amount not less than \$50 and not exceeding \$100 for each
 2336 violation. Any class IV violation that is corrected during the
 2337 time the agency survey is conducted will be identified as an

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2338 agency finding and not as a violation, unless it is a repeat
 2339 violation.

2340 ~~(5) As an alternative to or in conjunction with an~~
 2341 ~~administrative action against a provider, the agency may request~~
 2342 ~~a plan of corrective action that demonstrates a good faith~~
 2343 ~~effort to remedy each violation by a specific date, subject to~~
 2344 ~~the approval of the agency.~~

2345 Section 72. Paragraphs (b) through (e) of subsection (2)
 2346 of section 429.911, Florida Statutes, are redesignated as
 2347 paragraphs (a) through (d), respectively, and present paragraph
 2348 (a) of that subsection is amended to read:

2349 429.911 Denial, suspension, revocation of license;
 2350 emergency action; administrative fines; investigations and
 2351 inspections.—

2352 (2) Each of the following actions by the owner of an adult
 2353 day care center or by its operator or employee is a ground for
 2354 action by the agency against the owner of the center or its
 2355 operator or employee:

2356 ~~(a) An intentional or negligent act materially affecting~~
 2357 ~~the health or safety of center participants.~~

2358 Section 73. Section 429.915, Florida Statutes, is amended
 2359 to read:

2360 429.915 Conditional license.—In addition to the license
 2361 categories available in part II of chapter 408, the agency may
 2362 issue a conditional license to an applicant for license renewal
 2363 or change of ownership if the applicant fails to meet all
 2364 standards and requirements for licensure. A conditional license
 2365 issued under this subsection must be limited to a specific

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2366 period not exceeding 6 months, as determined by the agency, ~~and~~
 2367 ~~must be accompanied by an approved plan of correction.~~

2368 Section 74. Subsection (7) of section 394.4787, Florida
 2369 Statutes, is amended to read:

2370 394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788,
 2371 and 394.4789.—As used in this section and ss. 394.4786,
 2372 394.4788, and 394.4789:

2373 (7) "Specialty psychiatric hospital" means a hospital
 2374 licensed by the agency pursuant to s. 395.002(26)~~(28)~~ and part
 2375 II of chapter 408 as a specialty psychiatric hospital.

2376 Section 75. Paragraph (g) of subsection (2) of section
 2377 400.0239, Florida Statutes, is amended to read:

2378 400.0239 Quality of Long-Term Care Facility Improvement
 2379 Trust Fund.—

2380 (2) Expenditures from the trust fund shall be allowable
 2381 for direct support of the following:

2382 (g) Other initiatives authorized by the Centers for
 2383 Medicare and Medicaid Services for the use of federal civil
 2384 monetary penalties, ~~including projects recommended through the~~
 2385 ~~Medicaid "Up or Out" Quality of Care Contract Management Program~~
 2386 ~~pursuant to s. 400.148.~~

2387 Section 76. Subsection (43) of section 408.07, Florida
 2388 Statutes, is amended to read:

2389 408.07 Definitions.—As used in this chapter, with the
 2390 exception of ss. 408.031-408.045, the term:

2391 (43) "Rural hospital" means an acute care hospital
 2392 licensed under chapter 395, having 100 or fewer licensed beds
 2393 and an emergency room, and which is:

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- 2394 (a) The sole provider within a county with a population
- 2395 density of no greater than 100 persons per square mile;
- 2396 (b) An acute care hospital, in a county with a population
- 2397 density of no greater than 100 persons per square mile, which is
- 2398 at least 30 minutes of travel time, on normally traveled roads
- 2399 under normal traffic conditions, from another acute care
- 2400 hospital within the same county;
- 2401 (c) A hospital supported by a tax district or subdistrict
- 2402 whose boundaries encompass a population of 100 persons or fewer
- 2403 per square mile;
- 2404 (d) A hospital with a service area that has a population
- 2405 of 100 persons or fewer per square mile. As used in this
- 2406 paragraph, the term "service area" means the fewest number of
- 2407 zip codes that account for 75 percent of the hospital's
- 2408 discharges for the most recent 5-year period, based on
- 2409 information available from the hospital inpatient discharge
- 2410 database in the Florida Center for Health Information and Policy
- 2411 Analysis at the Agency for Health Care Administration; or
- 2412 (e) A critical access hospital.

2413

2414 Population densities used in this subsection must be based upon

2415 the most recently completed United States census. A hospital

2416 that received funds under s. 409.9116 for a quarter beginning no

2417 later than July 1, 2002, is deemed to have been and shall

2418 continue to be a rural hospital from that date through June 30,

2419 2015, if the hospital continues to have 100 or fewer licensed

2420 beds and an emergency room, ~~or meets the criteria of s.~~

2421 ~~395.602(2)(e)4.~~ An acute care hospital that has not previously

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2422 | been designated as a rural hospital and that meets the criteria
 2423 | of this subsection shall be granted such designation upon
 2424 | application, including supporting documentation, to the Agency
 2425 | for Health Care Administration.

2426 | Section 77. Paragraphs (b) and (h) of subsection (3) of
 2427 | section 430.80, Florida Statutes, are amended to read:

2428 | 430.80 Implementation of a teaching nursing home pilot
 2429 | project.—

2430 | (3) To be designated as a teaching nursing home, a nursing
 2431 | home licensee must, at a minimum:

2432 | (b) Participate in a nationally recognized accreditation
 2433 | program and hold a valid accreditation, such as the
 2434 | accreditation awarded by The Joint Commission ~~on Accreditation~~
 2435 | ~~of Healthcare Organizations;~~

2436 | (h) Maintain insurance coverage pursuant to s.
 2437 | 400.141(1) (r) ~~(s)~~ or proof of financial responsibility in a
 2438 | minimum amount of \$750,000. Such proof of financial
 2439 | responsibility may include:

2440 | 1. Maintaining an escrow account consisting of cash or
 2441 | assets eligible for deposit in accordance with s. 625.52; or

2442 | 2. Obtaining and maintaining pursuant to chapter 675 an
 2443 | unexpired, irrevocable, nontransferable and nonassignable letter
 2444 | of credit issued by any bank or savings association organized
 2445 | and existing under the laws of this state or any bank or savings
 2446 | association organized under the laws of the United States that
 2447 | has its principal place of business in this state or has a
 2448 | branch office which is authorized to receive deposits in this
 2449 | state. The letter of credit shall be used to satisfy the

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2450 obligation of the facility to the claimant upon presentment of a
 2451 final judgment indicating liability and awarding damages to be
 2452 paid by the facility or upon presentment of a settlement
 2453 agreement signed by all parties to the agreement when such final
 2454 judgment or settlement is a result of a liability claim against
 2455 the facility.

2456 Section 78. Paragraph (a) of subsection (2) of section
 2457 440.13, Florida Statutes, is amended to read:

2458 440.13 Medical services and supplies; penalty for
 2459 violations; limitations.—

2460 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

2461 (a) Subject to the limitations specified elsewhere in this
 2462 chapter, the employer shall furnish to the employee such
 2463 medically necessary remedial treatment, care, and attendance for
 2464 such period as the nature of the injury or the process of
 2465 recovery may require, which is in accordance with established
 2466 practice parameters and protocols of treatment as provided for
 2467 in this chapter, including medicines, medical supplies, durable
 2468 medical equipment, orthoses, prostheses, and other medically
 2469 necessary apparatus. Remedial treatment, care, and attendance,
 2470 including work-hardening programs or pain-management programs
 2471 accredited by the Commission on Accreditation of Rehabilitation
 2472 Facilities or The Joint Commission ~~on the Accreditation of~~
 2473 ~~Health Organizations~~ or pain-management programs affiliated with
 2474 medical schools, shall be considered as covered treatment only
 2475 when such care is given based on a referral by a physician as
 2476 defined in this chapter. Medically necessary treatment, care,
 2477 and attendance does not include chiropractic services in excess

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2478 of 24 treatments or rendered 12 weeks beyond the date of the
 2479 initial chiropractic treatment, whichever comes first, unless
 2480 the carrier authorizes additional treatment or the employee is
 2481 catastrophically injured.

2482
 2483 Failure of the carrier to timely comply with this subsection
 2484 shall be a violation of this chapter and the carrier shall be
 2485 subject to penalties as provided for in s. 440.525.

2486 Section 79. Section 483.294, Florida Statutes, is amended
 2487 to read:

2488 483.294 Inspection of centers.—In accordance with s.
 2489 408.811, the agency shall biennially, ~~at least once annually~~,
 2490 inspect the premises and operations of all centers subject to
 2491 licensure under this part.

2492 Section 80. Subsection (1) of section 627.645, Florida
 2493 Statutes, is amended to read:

2494 627.645 Denial of health insurance claims restricted.—

2495 (1) No claim for payment under a health insurance policy
 2496 or self-insured program of health benefits for treatment, care,
 2497 or services in a licensed hospital which is accredited by The
 2498 Joint Commission ~~on the Accreditation of Hospitals~~, the American
 2499 Osteopathic Association, or the Commission on the Accreditation
 2500 of Rehabilitative Facilities shall be denied because such
 2501 hospital lacks major surgical facilities and is primarily of a
 2502 rehabilitative nature, if such rehabilitation is specifically
 2503 for treatment of physical disability.

2504 Section 81. Paragraph (c) of subsection (2) of section
 2505 627.668, Florida Statutes, is amended to read:

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2506 627.668 Optional coverage for mental and nervous disorders
2507 required; exception.—

2508 (2) Under group policies or contracts, inpatient hospital
2509 benefits, partial hospitalization benefits, and outpatient
2510 benefits consisting of durational limits, dollar amounts,
2511 deductibles, and coinsurance factors shall not be less favorable
2512 than for physical illness generally, except that:

2513 (c) Partial hospitalization benefits shall be provided
2514 under the direction of a licensed physician. For purposes of
2515 this part, the term "partial hospitalization services" is
2516 defined as those services offered by a program accredited by The
2517 Joint Commission ~~on Accreditation of Hospitals (JCAH)~~ or in
2518 compliance with equivalent standards. Alcohol rehabilitation
2519 programs accredited by The Joint Commission ~~on Accreditation of~~
2520 ~~Hospitals~~ or approved by the state and licensed drug abuse
2521 rehabilitation programs shall also be qualified providers under
2522 this section. In any benefit year, if partial hospitalization
2523 services or a combination of inpatient and partial
2524 hospitalization are utilized, the total benefits paid for all
2525 such services shall not exceed the cost of 30 days of inpatient
2526 hospitalization for psychiatric services, including physician
2527 fees, which prevail in the community in which the partial
2528 hospitalization services are rendered. If partial
2529 hospitalization services benefits are provided beyond the limits
2530 set forth in this paragraph, the durational limits, dollar
2531 amounts, and coinsurance factors thereof need not be the same as
2532 those applicable to physical illness generally.

2533 Section 82. Subsection (3) of section 627.669, Florida

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2534 Statutes, is amended to read:

2535 627.669 Optional coverage required for substance abuse
2536 impaired persons; exception.-

2537 (3) The benefits provided under this section shall be
2538 applicable only if treatment is provided by, or under the
2539 supervision of, or is prescribed by, a licensed physician or
2540 licensed psychologist and if services are provided in a program
2541 accredited by The Joint Commission ~~on Accreditation of Hospitals~~
2542 or approved by the state.

2543 Section 83. Paragraph (a) of subsection (1) of section
2544 627.736, Florida Statutes, is amended to read:

2545 627.736 Required personal injury protection benefits;
2546 exclusions; priority; claims.-

2547 (1) REQUIRED BENEFITS.-Every insurance policy complying
2548 with the security requirements of s. 627.733 shall provide
2549 personal injury protection to the named insured, relatives
2550 residing in the same household, persons operating the insured
2551 motor vehicle, passengers in such motor vehicle, and other
2552 persons struck by such motor vehicle and suffering bodily injury
2553 while not an occupant of a self-propelled vehicle, subject to
2554 the provisions of subsection (2) and paragraph (4)(e), to a
2555 limit of \$10,000 for loss sustained by any such person as a
2556 result of bodily injury, sickness, disease, or death arising out
2557 of the ownership, maintenance, or use of a motor vehicle as
2558 follows:

2559 (a) Medical benefits.-Eighty percent of all reasonable
2560 expenses for medically necessary medical, surgical, X-ray,
2561 dental, and rehabilitative services, including prosthetic

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2562 devices, and medically necessary ambulance, hospital, and
 2563 nursing services. However, the medical benefits shall provide
 2564 reimbursement only for such services and care that are lawfully
 2565 provided, supervised, ordered, or prescribed by a physician
 2566 licensed under chapter 458 or chapter 459, a dentist licensed
 2567 under chapter 466, or a chiropractic physician licensed under
 2568 chapter 460 or that are provided by any of the following persons
 2569 or entities:

2570 1. A hospital or ambulatory surgical center licensed under
 2571 chapter 395.

2572 2. A person or entity licensed under ss. 401.2101-401.45
 2573 that provides emergency transportation and treatment.

2574 3. An entity wholly owned by one or more physicians
 2575 licensed under chapter 458 or chapter 459, chiropractic
 2576 physicians licensed under chapter 460, or dentists licensed
 2577 under chapter 466 or by such practitioner or practitioners and
 2578 the spouse, parent, child, or sibling of that practitioner or
 2579 those practitioners.

2580 4. An entity wholly owned, directly or indirectly, by a
 2581 hospital or hospitals.

2582 5. A health care clinic licensed under ss. 400.990-400.995
 2583 that is:

2584 a. Accredited by The Joint Commission ~~on Accreditation of~~
 2585 ~~Healthcare Organizations~~, the American Osteopathic Association,
 2586 the Commission on Accreditation of Rehabilitation Facilities, or
 2587 the Accreditation Association for Ambulatory Health Care, Inc. ;
 2588 or

2589 b. A health care clinic that:

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2590 (I) Has a medical director licensed under chapter 458,
 2591 chapter 459, or chapter 460;

2592 (II) Has been continuously licensed for more than 3 years
 2593 or is a publicly traded corporation that issues securities
 2594 traded on an exchange registered with the United States
 2595 Securities and Exchange Commission as a national securities
 2596 exchange; and

2597 (III) Provides at least four of the following medical
 2598 specialties:

2599 (A) General medicine.

2600 (B) Radiography.

2601 (C) Orthopedic medicine.

2602 (D) Physical medicine.

2603 (E) Physical therapy.

2604 (F) Physical rehabilitation.

2605 (G) Prescribing or dispensing outpatient prescription
 2606 medication.

2607 (H) Laboratory services.

2608

2609 The Financial Services Commission shall adopt by rule the form
 2610 that must be used by an insurer and a health care provider
 2611 specified in subparagraph 3., subparagraph 4., or subparagraph
 2612 5. to document that the health care provider meets the criteria
 2613 of this paragraph, which rule must include a requirement for a
 2614 sworn statement or affidavit.

2615

2616 Only insurers writing motor vehicle liability insurance in this
 2617 state may provide the required benefits of this section, and no

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2010

2618 such insurer shall require the purchase of any other motor
 2619 vehicle coverage other than the purchase of property damage
 2620 liability coverage as required by s. 627.7275 as a condition for
 2621 providing such required benefits. Insurers may not require that
 2622 property damage liability insurance in an amount greater than
 2623 \$10,000 be purchased in conjunction with personal injury
 2624 protection. Such insurers shall make benefits and required
 2625 property damage liability insurance coverage available through
 2626 normal marketing channels. Any insurer writing motor vehicle
 2627 liability insurance in this state who fails to comply with such
 2628 availability requirement as a general business practice shall be
 2629 deemed to have violated part IX of chapter 626, and such
 2630 violation shall constitute an unfair method of competition or an
 2631 unfair or deceptive act or practice involving the business of
 2632 insurance; and any such insurer committing such violation shall
 2633 be subject to the penalties afforded in such part, as well as
 2634 those which may be afforded elsewhere in the insurance code.

2635 Section 84. Subsection (12) of section 641.495, Florida
 2636 Statutes, is amended to read:

2637 641.495 Requirements for issuance and maintenance of
 2638 certificate.—

2639 (12) The provisions of part I of chapter 395 do not apply
 2640 to a health maintenance organization that, on or before January
 2641 1, 1991, provides not more than 10 outpatient holding beds for
 2642 short-term and hospice-type patients in an ambulatory care
 2643 facility for its members, provided that such health maintenance
 2644 organization maintains current accreditation by The Joint
 2645 Commission on Accreditation of Health Care Organizations, the

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2646 Accreditation Association for Ambulatory Health Care, or the
 2647 National Committee for Quality Assurance.

2648 Section 85. Subsection (13) of section 651.118, Florida
 2649 Statutes, is amended to read:

2650 651.118 Agency for Health Care Administration;
 2651 certificates of need; sheltered beds; community beds.—

2652 (13) Residents, as defined in this chapter, are not
 2653 considered new admissions for the purpose of s.

2654 400.141(1) (n) ~~(e)~~ 1.d.

2655 Section 86. Subsection (2) of section 766.1015, Florida
 2656 Statutes, is amended to read:

2657 766.1015 Civil immunity for members of or consultants to
 2658 certain boards, committees, or other entities.—

2659 (2) Such committee, board, group, commission, or other
 2660 entity must be established in accordance with state law or in
 2661 accordance with requirements of The Joint Commission ~~on~~
 2662 ~~Accreditation of Healthcare Organizations~~, established and duly
 2663 constituted by one or more public or licensed private hospitals
 2664 or behavioral health agencies, or established by a governmental
 2665 agency. To be protected by this section, the act, decision,
 2666 omission, or utterance may not be made or done in bad faith or
 2667 with malicious intent.

2668 Section 87. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Regulation

2 Representative(s) Hudson offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Between lines 779 and 780, insert:

6 (f) Be allowed and encouraged by the agency to provide
7 other needed services under certain conditions. If the facility
8 has a standard licensure status, ~~and has had no class I or class~~
9 ~~II deficiencies during the past 2 years~~ or has been awarded a
10 Gold Seal under the program established in s. 400.235, it may ~~be~~
11 ~~encouraged by the agency to provide services, including, but not~~
12 ~~limited to, respite and adult day services, which enable~~
13 ~~individuals to move in and out of the facility. A facility is~~
14 ~~not subject to any additional licensure requirements for~~
15 ~~providing these services.~~

16 1. Respite care may be offered to persons in need of
17 short-term or temporary nursing home services. ~~Respite care must~~
18 ~~be provided in accordance with this part and rules adopted by~~
19 ~~the agency. However, the agency shall, by rule, adopt modified~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1143 (2010)

Amendment No. 1

20 ~~requirements for resident assessment, resident care plans,~~
21 ~~resident contracts, physician orders, and other provisions, as~~
22 ~~appropriate, for short-term or temporary nursing home~~
23 ~~services.~~ For each person admitted under the respite care
24 program, the facility licensee must:

25 a. Have a written abbreviated plan of care that, at a
26 minimum, includes nutritional requirements, medication orders,
27 physician orders, nursing assessments, and dietary preferences.
28 The nursing or physician assessments may take the place of all
29 other assessments required for full time residents.

30 b. Have a contract which, at a minimum, includes the
31 services to be provided to the respite resident including:
32 charges for services, activities, equipment, emergency medical
33 services, and the administration of medications. If multiple
34 respite admissions for a single person are anticipated, the
35 original contract may be good for one year from the date of
36 execution.

37 c. Ensure that each resident is released to his or her
38 caregiver or an individual designated in writing by the
39 caregiver.

40 2. Persons admitted under the respite care program are:

41 a. Exempt from requirements in rule related to discharge
42 planning.

43 b. Covered by the resident's rights in section 400.022,
44 other than (1)(p), (q), (u) and (v). Funds or property of the
45 respite resident shall not be considered trust funds subject to
46 the requirements of section 400.022(1)(h), until the resident
47 has been in the facility for more than 14 consecutive days.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1143 (2010)

Amendment No. 1

48 c. Allowed to use their personal medications for the
49 respite stay if permitted by facility policy. The facility must
50 obtain physician's orders for the medications. The caregiver may
51 provide information regarding the medications as part of the
52 nursing assessment, which must agree with the physician's
53 orders. Medications should be released with the resident upon
54 discharge in accordance with current orders.

55 3. A person receiving respite care shall be entitled to a
56 total of 60 days in the facility within a contract year or a
57 calendar year if the contract is for less than 12 months.
58 However, each single stay shall not exceed 14 days. If a stay
59 exceeds 14 consecutive days, the facility must comply with all
60 assessment and care planning requirements applicable to nursing
61 home residents.

62 4. Persons receiving respite care shall reside in a
63 licensed nursing home bed.

64 5. A prospective respite resident must provide medical
65 information from a physician, a physician assistant, or nurse
66 practitioner and other information from the primary caregiver as
67 may be required by the facility, prior to or at the time of
68 admission to receive respite care. The medical information must
69 include a physician's order for respite care and proof of a
70 physical examination by a licensed physician, physician
71 assistant, or nurse practitioner. The physician's order and
72 physical examination may be used to provide intermittent respite
73 care for up to 12 months from the date the order is written.

74 6. The facility must assume the duties of the primary care
75 giver. To ensure continuity of care and services, the respite

Amendment No. 1

76 resident shall be entitled to retain his or her personal
77 physician and must have access to medically necessary services
78 such as physical therapy, occupational therapy or speech therapy
79 as needed. The facility must arrange for transportation to these
80 services if necessary.

81 7. The agency shall allow for shared programming and
82 staff in a facility which meets minimum standards and offers
83 services pursuant to this paragraph, but, if the facility is
84 cited for deficiencies in patient care, may require additional
85 staff and programs appropriate to the needs of service
86 recipients. A person who receives respite care may not be
87 counted as a resident of the facility for purposes of the
88 facility's licensed capacity unless that person receives 24-hour
89 respite care. A person receiving either respite care for 24
90 hours or longer or adult day services must be included when
91 calculating minimum staffing for the facility. Any costs and
92 revenues generated by a nursing home facility from
93 nonresidential programs or services shall be excluded from the
94 calculations of Medicaid per diems for nursing home
95 institutional care reimbursement.

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Amendment No. 1

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D I R E C T O R Y A M E N D M E N T

106

Remove lines 772-775 and insert:

107

Section 25. Paragraphs (o) through (w) of subsection (1) of
108 section 400.141, Florida Statutes, are redesignated as
109 paragraphs (n) through (u), respectively, and present paragraphs
110 (f), (g), (j), (n), and (o) of that subsection are amended, to
111 read:

112

113

114

115

T I T L E A M E N D M E N T

116

Remove line 59 and insert:

117

400.141, F.S.; providing criteria for the provision of respite
118 services by nursing homes; requiring a written plan of care;
119 requiring a contract for services; requiring resident release to
120 caregivers so designated in writing; providing an exemption to
121 the application of discharge planning rules; providing for
122 residents' rights; providing for use of personal mediations;
123 providing terms of respite stay; providing for communication of
124 patient information; requiring a physician order; providing for
125 services for respite patients; conforming a reference; requiring

Amendment No. 2

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Hudson offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 308-318 and insert:

7 accredited by the Commission on Accreditation of Rehabilitation
8 Facilities~~CARF the Rehabilitation Accreditation Commission.~~

9 (b) Any mental health facility licensed by the agency or
10 any substance abuse component licensed by the department that is
11 accredited by ~~The Joint Commission on Accreditation of~~
12 ~~Healthcare Organizations,~~ the Commission on Accreditation of
13 Rehabilitation Facilities~~CARF the Rehabilitation Accreditation~~
14 ~~Commission,~~ or the Council on Accreditation of ~~Children and~~
15 ~~Family Services.~~

16 (c) Any network of providers from which the department or
17 the agency purchases behavioral health care services accredited
18 by ~~The Joint Commission on Accreditation of Healthcare~~

Amendment No. 2

19 ~~Organizations, the Commission on Accreditation of Rehabilitation~~

20 ~~Facilities~~~~CARF-the Rehabilitation Accreditation Commission,~~

21

22

23

24

T I T L E A M E N D M E N T

25

Remove line 42 and insert:

26

Accreditation of Healthcare Organizations, CARF-the

27

Rehabilitation Accreditation Commission and the Council

Amendment No. 3

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Hudson offered the following:
4

5 **Amendment (with directory and title amendments)**

6 Between lines 372 and 373, insert:

7 (2)

8 (b) The agency shall, at the request of a licensee that is
9 a teaching hospital as defined in s. 408.07(45), issue a single
10 license to a licensee for facilities that have been previously
11 licensed as separate premises, provided such separately licensed
12 facilities, taken together, constitute the same premises as
13 defined in s. 395.002(22)~~395.002(23)~~. Such license for the
14 single premises shall include all of the beds, services, and
15 programs that were previously included on the licenses for the
16 separate premises. The granting of a single license under this
17 paragraph shall not in any manner reduce the number of beds,
18 services, or programs operated by the licensee.
19

Amendment No. 3

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D I R E C T O R Y A M E N D M E N T

Remove line 366 and insert:

Section 7. Paragraph (c) of subsection (1) and paragraph (b) of
subsection (2) of section

T I T L E A M E N D M E N T

Remove line 13 and insert:

395.003, F.S.; deleting an obsolete provision; conforming a
cross-reference; amending s.

Amendment No. 4

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Health Care Regulation Policy
Committee

Representative(s) Hudson offered the following:

Amendment (with directory and title amendments)

Between lines 870 and 871, insert:

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

D I R E C T O R Y A M E N D M E N T

Remove line 775 and insert:

(g), (j), (n), ~~and (o)~~, and (r) of that subsection are amended,

Amendment No. 4

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T I T L E A M E N D M E N T

Remove line 63 and insert:
related to management companies to the agency; deleting
requirement for facilities to notify the agency of certain
bankruptcy filings to conform to changes made by the act;
amending s.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1143 (2010)

Amendment No. 5

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee
3 Representative(s) Hudson offered the following:

4
5 **Amendment**
6 Remove line 1730 and insert:
7 III, or class IV violation. Unless otherwise specified in law,
8 the amount of the fine shall not

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1143 (2010)

Amendment No. 6

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Hudson offered the following:

4

5 **Amendment**

6 Remove line 1745 and insert:

7 a period of up to 30 days for the sole purpose of allowing the

Amendment No. 7

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Health Care Regulation Policy
2 Committee

3 Representative(s) Hudson offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 1680-1683 and insert:

7 payment of a late fee. If an application is received after the
8 required filing date and exhibits a hand-canceled postmark
9 obtained from a United States post office dated on or before the
10 required filing date, no fine will be levied.

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T I T L E A M E N D M E N T

15 Remove lines 121-123 and insert:

16 impending expiration of a license; requiring payment of