1983

Session Law 83-181

Florida Senate & House of Representatives

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### COMMITTEE RECORDS

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### Committee/Floor Tapes

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### Other Documentation

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**NOTES**
### LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

<table>
<thead>
<tr>
<th>Sess. Law #</th>
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FLORIDA INFORMATION ASSOCIATES, INC.
F. O. Box 11144
Tallahassee, FL 32303
(904) 878-0188

FLORIDA SESSION LAW HISTORY/DOCUMENTATION ABSTRACT

FIA RESEARCH PROJECT NO. L88-020
SESSION LAW/SECTION NO(S). 83-181, Section 2
AFFECTED STATUTE(S) 159.27(16)
PRIME BILL NO. HB 434
PRIME BILL SPONSOR House Regulatory Reform Committee
IDENTICAL/SIMILAR BILL NOS. CS/SB 366

NARRATIVE/COMMENTS:

This is a comprehensive nursing home and related facilities regulation act. The subject statutory section is only amended by a minor numbering change to the definition of "Health care facility." It adds reference to 381.499 and 400.614 and deletes 409.615. As this was only a minor change, no further research was done on this law. Attached is a copy of the pertinent page from 83-181 and the bill history of HB 434. No documentation checklist is included.

No further research is recommended on this law.
H 0433 GENERAL BILL BY GUSTAFSON, TITUNE
RELAT E - SUBURBAN SEMI-LIMINAL S. I. - PROVIDES APPOINTMENT TO COMPENSATE SAT LIT CITY FOR EXPANSION OF A SEWAGE TREATMENT PLANT.
CLAIM WITH APPROPRIATION: $3,715,985. - EFFECTIVE DATE: 07/01/83.
03/17/83 HOUSE PREFILED
03/17/83 HOUSE REFERRED TO JUDICIAL COMMITTEE, APPOINTMENTS
04/05/83 HOUSE REPORTED TO COMMITTEE ON JUDICIAL AFFAIRS
04/30/83 HOUSE INDEFINITELY POSTPONED W/O (SR 1209/7) WAS IN COMMITTEE ON JUDICIAL AFFAIRS

H 0434 GENERAL BILL BY APPROPRIATIONS, REGULATORY REFORM (SIMILAR CS/S 835, COMPARE CS/H 835)
CS/S 835, COMPARE CS/H 835, CS/H 835, H 835, CS/S 835
RESEARCH EXAMINATIONS; ENSI:TE AMENDMENTS PROVIDE STANDARDS FOR LAB TESTS & X-RAYS, ITEMIZED BILLING & CERTIFICATION OF NURSING ASSISTANTS; REVISES PROVISION & REGULATION OF NURSING HOMES; CHANGES "PATIENT TO "RESIDENT", ETC. AMENDS REVIEWS/REASSESSMENTS, IHC, AMENDS AMENDS 159.27, 248.1801, 20.17A. EFFECTIVE DATE: 11/01/83.
07/24/83 HOUSE PREFILED
08/03/83 HOUSE REFERRED TO APPROPRIATIONS
09/05/83 HOUSE INTRODUCED; REFERRED TO APPROPRIATIONS -HJ 00054
10/05/83 HOUSE INDEFINITELY POSTPONED W/O (SR 1209/7) WAS IN COMMITTEE ON JUDICIAL AFFAIRS

H 0435 JOINT RESOLUTION BY COMMERCE (SIMILAR S 0235, COMPARE H 0349, S 0236)
STATE FUNDS: CONSTITUTIONAL AMENDMENT TO AUTHORIZING DISBURSEMENT OF STATE FUNDS BY ELECTRONIC MEANS, MAGNETIC TAPE, OR ANY OTHER TRANSFER MEDIUM, DELETES OBSOLETE LANGUAGE RELATING TO SIGNING OF WARRANTS BY GOVERNOR, AMENDS S. 4, ART. V.
03/18/83 HOUSE PREFILED
03/28/83 HOUSE REFERRED TO APPROPRIATIONS
04/05/83 HOUSE INTRODUCED; REFERRED TO APPROPRIATIONS -HJ 00051
04/08/83 HOUSE ON COMMITTEE AGENDA; APPROPRIATIONS, 21 HOB 4:00 PM, 04/09/83
04/14/83 HOUSE REPORT: FAVORABLE, PLACED ON CALENDAR BY APPROPRIATIONS -HJ 00181
04/18/83 HOUSE INDEFINITELY POSTPONED W/O (SR 1209/7) WAS IN COMMITTEE ON JUDICIAL AFFAIRS

H 0436 GENERAL BILL BY COMMERCE (COMPARE H 0435, S 0235, S 0236)
STATE FUNDS: DELAYED REQUIREMENT THAT WARRANTS BE COUNTERSIGNED BY GOVERNOR; ESTABLISHES ACCOUNTING/RECORD-KEEPING REQUIREMENTS; REQUIRES BANKING & FINANCE DEPT. TO ADOPT RULES; DEFINES "DEPARTMENT"; REQUIRES DEPARTMENT TO ESTABLISH DIRECT DEPOSIT PROGRAM, ETC. AMENDS 17.07, 17.076, 18.02. EFFECTIVE DATE: CONTINGENT.
03/18/83 HOUSE PREFILED
03/28/83 HOUSE REFERRED TO APPROPRIATIONS
04/05/83 HOUSE INTRODUCED; REFERRED TO APPROPRIATIONS -HJ 00054
04/08/83 HOUSE ON COMMITTEE AGENDA; APPROPRIATIONS, 21 HOB 4:00 PM, 04/12/83
04/14/83 HOUSE REPORT: FAVORABLE, PLACED ON CALENDAR BY APPROPRIATIONS -HJ 00181
04/18/83 HOUSE INDEFINITELY POSTPONED W/O (SR 1209/7) WAS IN COMMITTEE ON JUDICIAL AFFAIRS
05/30/83 SECOND TIMES; AMENDMENTS ADOPTED; READ THIRD TIME; CS/S PASSED AS AMENDED; YEAS 116 NAYS 0 -HJ 00762
05/30/83 SENATE IN MESSAGES
06/03/83 SENATE RECEIVED; PLACED ON SPECIAL ORDER CALENDAR -SJ 00441
05/30/83 HOUSE TAKEN UP IN MESSAGES
05/31/83 HOUSE AMENDMENTS TO SENATE AMENDMENTS ADOPTED; CONCLUDED IN SENATE AMENDMENTS AS AMENDED; PASSED AS FURTHER AMENDMENTS YEA 43 NAY 33 NAYS 0 -HJ 00925; FURTHER ACTION REQUIRED FOR FINAL PASSAGE
06/01/83 SENATE IN MESSAGES
06/02/83 SENATE CONCLUDED; PASSED AS AMENDED 33 NAYS 0 -SJ 00844
06/02/83 HOUSE ORDERED ENRAILED; THEN ENRAILED
06/09/83 HOUSE SIGNEEN BY OFFICERS AND PRESENTED TO GOVERNOR
06/12/83 APPROVED BY GOVERNOR; CHAP. NO. 83-181

H 0437 GENERAL BILL BY COMMERCE (SIMILAR S 0295)
CONTINUED ON NEXT PAGE
H 0407 GENERAL BILL BY REGULATORY REFORM (SIMILAR S 0415) - HB 1234 - SENATE

04/13/83 HOUSE ORDERED EMENDED

04/13/83 HOUSE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR - HB 818

04/24/83 APPROVED BY GOVERNOR CH. 83-239

H 0409 GENERAL BILL BY REGULATORY REFORM (SIMILAR S 0145) - HB 1234 - SENATE

04/05/83 HOUSE INTRODUCED, REFERRED TO FINANCE & TAXATION

04/13/83 HOUSE THIRD TIME; AMENDMENTS ADOPTED; PASSED AS AMENDED

YEAS 36 NAYS 0 - SJ 00091; IMMEDIATELY CERTIFIED

04/13/83 HOUSE ORDERED EMENDED

04/13/83 HOUSE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR - HB 818

04/24/83 APPROVED BY GOVERNOR CH. 83-239

H 0410 GENERAL BILL BY REGULATORY REFORM (SIMILAR S 0416) - HB 1234 - SENATE

03/15/83 HOUSE PREFILED

03/23/83 HOUSE REFERRED TO FINANCE & TAXATION

04/05/83 HOUSE INTRODUCED, REFERRED TO SPECIAL ORDER CALENDAR

04/07/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR

04/12/83 HOUSE READ THIRD TIME; PASSED YEAS 110 NAYS 1 - HJ 00141; IMMEDIATELY CERTIFIED

04/13/83 SENATE IN MESSAGES RECEIVED SUBSTITUTED; LAY ON TABLE UNDER RULE, IDEN./SIM./COMPARE BILL PASSED, REFER TO SB 185 (CH. 83-12) - HJ 00178

H 0411 GENERAL BILL BY REGULATORY REFORM (COMPARE CS/H 0434, CS/S 036) - HB 1234 - SENATE

03/15/83 HOUSE PREFILED

03/23/83 HOUSE REFERRED TO SPECIAL ORDER CALENDAR

04/05/83 HOUSE INTRODUCED, PLACED ON SPECIAL ORDER CALENDAR

04/07/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR

04/12/83 HOUSE READ THIRD TIME; AMENDMENTS ADOPTED; PASSED AS AMENDED

YEAS 36 NAYS 0 - SJ 00090; IMMEDIATELY CERTIFIED

04/12/83 HOUSE ORDERED EMENDED

04/13/83 HOUSE SIGNED BY OFFICERS AND PRESENTED TO GOVERNOR - HB 818

04/20/83 APPROVED BY GOVERNOR CH. 83-9 - HJ 00200

H 0408 GENERAL BILL BY REGULATORY REFORM (SIMILAR S 0312, COMPARE S 0023) - HB 1234 - SENATE

03/15/83 HOUSE PREFILED

03/23/83 HOUSE REFERRED TO FINANCE & TAXATION, APPROPRIATIONS

04/05/83 HOUSE INTRODUCED, REFERRED TO FINANCE & TAXATION, APPROPRIATIONS - HJ 00181; WITHDRAWN FROM FINANCE & TAXATION

04/08/83 HOUSE ON COMMITTEE AGENDA - APPROPRIATIONS, ZL HOB, 410 PM, 04/12/83

04/14/83 HOUSE COMM. REPORT: FAVORABLE, PLACED ON CALENDAR BY APPROPRIATIONS

04/18/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR; READ SECOND TIME; AMENDMENTS ADOPTED; HJ 00188

04/21/83 HOUSE READ THIRD TIME; AMENDMENTS ADOPTED; PASSED AS AMENDED

YEAS 36 NAYS 0 - HJ 00024

04/25/83 SENATE IN MESSAGES

04/26/83 SENATE RECEIVED, REFERRED TO AGRICULTURE, APPROPRIATIONS - SJ 0016

05/04/83 SENATE ON COMMITTEE AGENDA - AGRICULTURE, TEMPORARILY Postponed

05/06/83 SENATE ON COMMITTEE AGENDA - AGRICULTURE, 05/10/83, 910 AM, RM 8

05/10/83 SENATE COMM. REPORT: FAVORABLE WITH AMENDS; AGRICULTURE; NON COMPETITION IN APPROPRIATIONS - SJ 00245

05/16/83 SENATE EXTENSION OF TIME GRANTED COMMITTEE APPROPRIATIONS

05/17/83 SENATE WITHDRAWN FROM APPROPRIATIONS - SJ 00631; PLACED ON CALENDAR

06/02/83 SENATE PLACED ON SPECIAL ORDER CALENDAR; PASSED AS AMENDED

YEAS 23 NAYS 0 - SJ 00745

CONTINUED ON NEXT PAGE
H 0456 GENERAL BILL BY LEHMAN (IDENTICAL S 0459)
MENTAL HEALTH FACILITIES—REQUIRES PROVISION FOR PSYCHIATRIC MEDICATION FOR INCOMPETENT OR INSANE DEFENDANTS WHO ARE CONDITIONALLY RELEASED FROM COMMITMENT. REQUIRES COURT TO HOLD HEARING TO REVIEW CONDITIONAL RELEASE OF INCOMPETENT OR INSANE DEFENDANTS UNDER CERTAIN CIRCUMSTANCES. AMENDS 910.17. EFFECTIVE DATE: 10/01/93.
04/16/93 HOUSE PASSED
04/28/93 HOUSE TO COMMITTEE ON CRIMINAL JUSTICE; APPROPRIATIONS
04/28/93 HOUSE IN SUBCOMMITTEE ON CRIMINAL CODE
05/03/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)

H 0457 GENERAL BILL BY LIPPMAN (IDENTICAL S 0492, SIMILAR S 0461)
ASSOCIATION OF FLORIDA REQUIRES PROVIDES FOR ASSESSMENT OF IMPROVEMENTS TO REAL PROPERTY WHICH RECEIVE CERTIFICATE OF OCCUPANCY AFTER JANUARY 1. PROVIDES THAT TAX BASED ON SUCH ASSESSMENT SHALL BE DUE NO LATER THAN JULY 1. AMENDS 212.02. EFFECTIVE DATE: 07/01/94.
03/16/93 HOUSE PREFILED
04/07/93 HOUSE INTRODUCED, REFERRED TO CRIMINAL JUSTICE, APPROPRIATIONS
04/13/93 HOUSE IN SUBCOMMITTEE ON CRIMINAL CODE
04/28/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)

H 0458 GENERAL BILL BY REGULARIZED REFORM (COMPARABLE S 0454, CS/S 0368)
MENTAL HEALTH FACILITIES—REQUIRES PROOF OF LIABILITY INSURANCE; REQUIRE NOTICE IF CHANGED, ALLOW ADMINISTRATION MODIFIES GROUNDS FOR BENEFIT, SUSPENSION, OR REVOCATION OF LICENSE; ETC. AMENDS/REVISES/ READUPTS 409/4-W/-, EFFECTIVE DATE: 10/01/93.
04/28/93 HOUSE PREFILED
04/28/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)
04/28/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)

H 0459 GENERAL BILL BY HURLBURT (IDENTICAL S 0372)
HOSPITALS—REQUIRES LICENSED HOSPITALS TO PROVIDE CHIROPRACTIC PHYSICIANS ACCESS TO ALL OUTPATIENT DIAGNOSTIC SERVICES OFFERED BY HOSPITAL BY REFERRAL IN SAME MANNER AS OTHER LICENSED PHYSICIANS WHO REFER PATIENTS TO HOSPITAL. AMENDS 395.001. EFFECTIVE DATE: 10/01/83.
03/17/93 HOUSE PREFERRED
04/28/93 HOUSE INTRODUCED, REFERRED TO HEALTH & REHABILITATIVE SERVICES, APPROPRIATIONS
04/28/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)
04/28/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)
05/11/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)
05/11/93 HOUSE INDEFINITELY POSTPONED & W/U (SR 2839)
05/03/93 HOUSE COMM. REPORT UNFAVORABLE; LAID ON TABLE UNDER RULE BY H/S REHABILITATIVE SERVICES—H 0034

H 0460 GENERAL BILL BY SAMPLE (COMPARABLE ENG'S 0065)
URGENCY LICENSED PRINTER'S DEPARTMENT FROM RELEASING DRIVER HISTORY RECORD UNLESS CERTAIN CONDITIONS ARE COMPLIED WITH. AMENDS 52.22.10.
CONTINUED ON NEXT PAGE
04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to the Special Master for Claim Bills
04/21/83 Senate Extension of Time Granted Committee the Special Master for Claim Bills
05/02/83 Senate Extension of Time Granted Committee the Special Master for Claim Bills
06/03/83 Senate Indefinitely Postponed & W/O (SJR 1209) Was in Committee on the Special Master for Claim Bills

5 US 3 General Bill / CS by Health and Rehabilitative Services, Giranro (similar CS/H 0324, COMPARE CS/H 0434)

Public Health: Amends provision of health-related projects; provides additional criteria for consideration by H.R.S. Department in issuance of certificates of need; provides for denial of certificate of need under certain circumstances. Amends 381.49%. Effective Date: 10/03/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Health and Rehabilitative Services
04/25/83 Senate Extension of Time Granted Committee Health and Rehabilitative Services
05/03/83 Senate Extension of Time Granted Committee Health and Rehabilitative Services
05/19/83 Senate ON COMMITTEE AGENDA-- HRS, 05/26/83 2100 PM, RA: Extension of Time Granted Committee Health and Rehabilitative Services--SJ 00071
05/23/83 Senate COMM. REPORTS C/S PLACED ON CALENDAR BY HEALTH AND REHABILITATIVE SERVICES--SJ 00335
05/25/83 Senate C/S READ FIRST TIME--SJ 00335
06/03/83 Senate INDEFINITELY POSTPONED & W/O (SJR 1209) WAS ON CALENDAR-- 155 BILLS

5 US 3 General Bill / CS by Health and Rehabilitative Services, Giranro (similar CS/H 0323)

Certificates of Need: Provides that hospitals which do not have a budget accepted by Hospital Cost Containment Board shall not be issued a certificate of need. Amends 381.69%. Effective Date: 07/03/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Health and Rehabilitative Services, Appropriations--SJ 00072
04/25/83 Senate Extension of Time Granted Committee Health and Rehabilitative Services
05/14/83 Senate ON COMMITTEE AGENDA-- HRS, 05/22/83 2100 PM, RA: Extension of Time Granted Committee Health and Rehabilitative Services
05/22/83 Senate COMM. REPORTS C/S BY HEALTH AND REHABILITATIVE SERVICES--SJ 00335
C/S READING 1ST TIME 05/25/83--SJ 00336
05/25/83 Senate EXTENSION OF TIME GRANTED COMMITTEE APPOINTMENTS
05/31/83 Senate WITHDRAWN FROM APPOINTMENTS--SJ 00074
06/03/83 Senate INDEFINITELY POSTPONED & W/O (SJR 1209) WAS ON CALENDAR

5 US 3 General Bill / CS by Health and Rehabilitative Services, Giranro (similar CS/H 0323)

Corporate Health Care: Provides for uniform, equal, & notice requirements. Amends 371.4%. Effective Date: 10/01/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Judiciary-Civil--SJ 00071
CONTINUED ON NEXT PAGE

5 US 33 General Bill / CS by Johnn (similar CS/H 0947)

Corporate Health Care: Provides for uniform, equal, & notice requirements. Amends 371.4%. Effective Date: 10/01/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Judiciary-Civil--SJ 00071
CONTINUED ON NEXT PAGE

5 US 33 General Bill / CS by Johnn (similar CS/H 0947)

Corporate Health Care: Provides for uniform, equal, & notice requirements. Amends 371.4%. Effective Date: 10/01/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Judiciary-Civil--SJ 00071
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5 US 33 General Bill / CS by Johnn (similar CS/H 0947)

Corporate Health Care: Provides for uniform, equal, & notice requirements. Amends 371.4%. Effective Date: 10/01/83.

04/06/83 Senate Filed
04/11/83 Senate Introduced, Referred to Judiciary-Civil--SJ 00071
CONTINUED ON NEXT PAGE
MEMORANDUM

TO: CHRIS POLIVKA
FROM: MARY WOLFGANG
RE: REVISIONS IN CHAPTER 400, F.S.

1982 REVISIONS

Part I - Nursing Homes

1. The major revision in the Nursing Home law was to authorize inspections and the right of entry to nursing homes by long term care ombudsman committee members.

2. Bill of Rights revision to include access to ombudsman.

3. License fees were prorated for short periods of time.

4. Nursing assistants' courses and certification was provided.

5. Certificate of Need criteria relocated from 395 to 400.

Part II - Adult Congregate Living Facilities

Revisions include:

1. Addition to personal services provisions.

2. The requirement of surety bonds when personal funds of a resident are held by a licensee.

No changes were made to Parts III and IV.
Part V - Hospices

Changes to the Hospice part of the law included:

1. Provisions regarding the employment of full time personnel and;

2. Prohibiting adoption of certain rules by the Department of HRS (particularly restricting hospital beds).

1981 REVISIONS

Adult Congregate Living Facilities

Personal services, and bonding re financial exploitation (81-152)

Nursing Homes

1. Community Care for the Elderly; contribution collection exception (81-271)

2. Emergency Medication Kits in Long Term Care Facilities (81-152)

3. Nursing Home and Long Term Care Ombudsman Committee (81-184)

Hospices

1. Certificates of Need - procedure re filing - designed to discourage local monopolies (81-271)

2. Inpatient facility of hospices; certificates of need. (81-271)

3. Specifies that hospices be nonprofit agencies - licensing requirements - requires a delivery plan. (81-271)

4. Task force re license application review, annual inspections (81-271)

(These Hospice changes took effect in July 1981 and they are directly related to some of the rules which are just now being promulgated.)

1980 REVISIONS

Hospices (80-64)

- Autonomous defined re Hospices

- Implementing time extended
According to the Florida Legislature History of Legislation, Subject Index - Bills Passed - No bills were passed relating to:

- Adult Daycare; or
- Home Health Agencies

In 1980, significant changes were made to revise the Nursing Home part of Chapter 400, F.S., and to the ACLF part of Chapter 400, F.S. They were listed in the legislative history as follows:

NURSING HOMES
ADMINISTRATIONS; LICENSE RENEWALS, ED. REQUIREMENTS
AIDES/ORDERLES: PRESERVICE TRAINING; CONTACT HOURS
BILL OF RIGHTS
COMPREHENSIVE PLAN FOR GROUP HOME/FOSTER CARE FACILITIES
GROUP LIVING HOMES; ZONING RESTRICTIONS PROHIBITED
INSPECTION WARRANTS; HEALTH/FIRE/SAFETY/ZONING/PLUMBING
VIOLATIONS
LICENSE RENEWAL APPLICATIONS; LATE FEES; PATIENT FACILITY
CONTRACTS, FORMS, ETC
LICENSES, SUPERIOR FACILITIES; NOTATION IN BLOCK LETTERS
LIFE CARE CONTRACTS; PRIORITIES RE LIENS/LEASE
AGREEMENTS/INSTALLMENT SALES
OMBSUDSMAN COMMITTEE: REAPPOINTMENTS
OMBSUDSMAN COMMITTEE RE NURSING HOMES & LONG-TERM CARE FACILITIES
ORDERLIES/AIDES: PRESERVICE TRAINING
OWNERSHIP SALE/TRANSFER; APPLICATION FOR NEW LICENSE
PERSONAL EFFECTS/FUNDS, SAFEKEEPING; WITHHOLDING/BORROWING FROM PROHIBITED
RECEIVERSHIPS, APPOINTMENT BY COURT, UNSAFE/UNHEALTHY, ETC.
STANDARDS, INVESTIGATIONS/INSPECTIONS/REPORTS RE MINIMUM OF SUPERIOR HOMES
ZONING RESTRICTIONS PROHIBITED

N.B. New Rules on Nursing Homes are just beginning to be implemented (April 1, 1982). However, the OLC sees no reason why this should affect the need for Sunset Review.
TO: Chris Polivka  
FROM: Marv Woflannd  
RE: TENTATIVE DESIGN - CHAPTER 400, Part 1, F.S. (Nursing Homes)  
DATE: June 14, 1982

I. BACKGROUND SUMMARY

The purpose of the chapter is to provide for the development, establishment, and enforcement of basic standards for the health, care, and treatment of persons in nursing homes and related health care facilities, and for the construction, maintenance, and operation of such institutions, which will insure safe and adequate care, treatment, and health of persons in nursing homes and related health care facilities, and for the construction, maintenance, and operation of such institutions which will insure safe and adequate care, treatment, and health of persons in such facilities.

The intent of the statute is to be carried out by the Department of Health and Rehabilitative Services through licensure of nursing homes in accordance with state standards.

Chapter 400 was first enacted in 1969, with numerous revisions over subsequent years. During the past three years, Part I of Chapter 400 has been closely reviewed and major bills were passed to improve nursing home regulation in 1979 and 1980, which revised significant portions of the chapter. Rules to implement that legislation became effective in April 1982.

The 1982 Legislature made the following changes to the nursing home law (Chapter 400, Part I, F.S.):

1. The major revision in the nursing home law was to authorize inspections and the right of entry to nursing homes by long term care ombudsman committee members.

2. Bill of Rights revision to include access to ombudsman.

3. License fees were prorated for short periods of time.

4. Nursing assistants' courses and certification was provided.

5. Certificate of Need criteria relocated from 395 to 400.

1981 BILLS WHICH REVISED THE NURSING HOME REGULATIONS INCLUDED:

1. Community Care for the Elderly; contribution collection exception (81-271).

2. Emergency Medication Kits in Long Term Care Facilities (81-152).

3. Regulations for membership and finances of the Nursing Home and Long Term Care Ombudsman Committee (81-184).

PROVISIONS ENACTED IN 1980 REGARDING REGULATION OF NURSING HOMES INCLUDED THE FOLLOWING:

1. A revised nursing home rating system;
2. A strengthened patient bill of rights;
3. Definition of health reservation policy, patient care plan, and patient diagnosis;
4. Expanded enforcement options.

A. NEED AND EFFECTIVENESS OF THE REGULATION

Given the nature of services provided by nursing homes, regulation is needed. Nursing homes provide services that may be life sustaining, and often serve those who are physically, mentally, or financially least able to help themselves. Further, a great deal of government money is expended in nursing homes, which gives government the prerogative to oversee how its money is being expended.

As grand jury and newspaper accounts have highlighted, over the past several years, the licensure of nursing homes has not necessarily assured that the facilities were providing quality care to their patients. Prior to the enactment of recent legislation, shortcomings in regulation were attributed to many factors, including the shortage of beds and the lack of appropriate sanctions that HRS could impose.

In the past three years, legislation addressing these and other shortcomings has been enacted. Since the regulations implementing this legislation has just recently been promulgated, it cannot be fully determined if existing law appropriately addresses nursing home regulation. In developing the Sunset Review report, historical analysis of the recent changes in current law will be made as an important part of the investigation of the need for and the effectiveness of Nursing Home Regulation.

B. PROBLEM STATEMENT RELATED TO SUNSET REVIEW

To direct the Sunset Review of the regulations governing nursing homes, the following questions must be asked:

1. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?
   a. How many nursing homes are licensed?
   b. How many persons are cared for in nursing homes?
   c. How many complaints have been received? What kinds of complaints?
   d. How is the quality of care monitored and measured?
   e. What harm to the public's health, safety and welfare was related to recent revisions in the law?
   f. Are patients' financial assets adequately protected by the bonding system?
   g. What would be the impact of deregulation?

2. Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?
   a. What has been the relationship between enforcement actions and compliance with standards?
b. What punitive actions have been taken? Describe each sanction in detail. How many of these actions have been taken?

c. How many receivership proceedings have occurred each year?

d. Explain the role of the Long Term Care Ombudsman Committee in relationship to the implementation of Chapter 400, Part I.

e. What would be the effect of less frequent inspections?

f. How does this law compare to those in other states?

3. Is there another, less restrictive, method of regulation available which could adequately protect the public?

a. How do the regulation of other states compare to Florida's?

b. What Federal Regulations impact Florida's Nursing Home law?

c. Do those directly affected by the regulation (operators, staff, patients and their families) have suggestions for less restrictive regulations?

d. What are the positions of the associations which represent each of the affected groups of people?

e. What would be the positive and negative effects of regulation by the Joint Commission on Accreditation of Hospitals?

4. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree?

a. What fees are charged?

b. What impacts do Federal and State monies have on type of service provided?

c. What does this regulatory program cost the state?

d. What is the impact of the rating system on cost and quality?

5. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

a. What is the relationship between fines and compliance?

b. What is the cost impact on the nursing home administrator?

6. Are any facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the benefit of the regulated entity?

a. Does regulation reduce competition?

b. Does regulation primarily benefit a particular type of nursing home?
II  METHODOLOGY

To address the above questions the following methods of inquiry will be employed:

1. Agency questionnaire.
2. OLC interviews with Jay Kassock and survey visits to superior and inferior facilities.
3. HRS central office interviews with aging personnel including Beth Sodak, John Stokesbury, and medicaid personnel.
4. Long Term Care Ombudsman Committee members.
5. House and Senate HRS staff.
6. Nursing home industry representatives, including: Florida Health Care Association (Ed Fortune); Florida Association of Homes for the Aging (Karen Torgenson).
7. A study of the historical development of the current law, through the examination of all available related documents.
8. Nursing home administrators opinions.
9. The opinions of nursing home patients and their families.
10. Baseline census data related to nursing home patients and facilities.
12. Analysis of federal and state monies spent on nursing home facilities, care, and regulation will be included.
13. A comparative analysis of Florida's regulations will be made with selected states.

III. TIMEFRAMES

1. Design completed - June 8
2. Interviews completed - June 24
3. Questionnaires, draft completed for review - June 25
4. Mail questionnaires - July 2
5. Data analysis draft, for review - September 3
6. Data analysis completed - September 30
7. Draft report ready for review - October 15
8. Final report ready for review - November 24
9. Final report complete - November 30
SUNSET REVIEW
OF
CHAPTER 400, PART I, FLORIDA STATUTES

NURSING HOMES

PREPARED PURSUANT TO THE REGULATORY SUNSET ACT
CHAPTER 81-318, LAWS OF FLORIDA

By Staff of
THE HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FEBRUARY 1983
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APPENDIX I ............. Copies of the OrganizationalCharts for the Department of Health and Rehabilitative Services
I. **INTRODUCTION**

The Regulatory Sunset Act, Chapter 81-318, Laws of Florida, provides for a systematic legislative review of the need for, and public benefits derived from, a program or function that licenses or regulates the initial entry into and practice of a profession, occupation, business, industry, or other endeavor and for the termination, modification, or reestablishment of such programs and functions.

The law provides that the state shall not exercise its regulatory power over these groups unless it "is necessary to protect the public health, safety, or welfare from significant and discernable harm or damage..." Further, the state's regulation must not be "in a manner which will unreasonably and adversely affect the competitive market." The law contains a schedule for the review of certain sections of the statutes. The following six criteria are to be used in determining whether there is a continuing need for the regulation:

1. Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

2. Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare?
3. Is there a less restrictive method of regulation available which would adequately protect the public?

4. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

5. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

6. Are any facets of the regulatory process designed for the purpose of, and have as their primary effect, the benefit of the regulated entity?

The act provides for the repeal of Chapter 400, Part I, Florida Statutes, relating to Nursing Home Regulation, on October 1, 1983. The purpose of this review is to determine whether the existence of Chapter 400 Part I, F.S., is necessary for the protection of the public, whether such regulation unreasonably and adversely affects the competitive market, whether such regulation is carried out efficiently and effectively, whether the benefits of the regulation outweigh the costs, and whether a different regulatory scheme could be more efficient or effective.

This report contains a summary; a description of the methodology used; a review of the law and the rules; a
descriptive analysis of the implementation of the law by the Department of Health and Rehabilitative Services (hereafter referred to as the Department); an analysis of the costs and benefits of regulation; an analysis of the potential impact of deregulation and/or of different forms of regulation; a summary of conclusions and recommendations; and a bibliography. The appendix contains copies of the organizational charts for the Department of Health and Rehabilitative Services. Because Part I of Chapter 400 is so extensive, the statute is not included in the appendix, but will be made available upon request through the Committee on Regulatory Reform.
II. SUMMARY

The Nursing Home Law, Chapter 400, Part I, Florida Statutes, has matured since its inception in 1969 through major revisions in the 1970s and early 1980s to its present form, which is regarded by national groups, such as the National Citizens Coalition for Nursing Home Reform, as a model for other states. Early versions of the law did not adequately address problems such as financial exploitation, abuse, and neglect. Later versions contained a regulatory scheme that was more effective and efficient in addressing unscrupulous nursing home practices.

The Regulatory Sunset Act is designed to examine the question of whether a regulatory law is necessary to protect the health, safety, and welfare of the public of Florida, and whether the regulation is working effectively and efficiently. Findings of the Sunset Review of the Nursing Home Law indicate that this regulation is regarded by legislators, advocacy groups, industry representatives, Department of Health and Rehabilitative Services (DHRS) and agency personnel as critical in ensuring quality care for the elderly.

Most adult citizens view growing older as a personal concern, touching their own lives as well as the lives of their loved ones. This concern is particularly apparent in Florida.
Florida, because it is an attractive place to retirees, has a unique concern for older citizens. Currently, Florida is the state with the highest proportion of people who are over 65 years of age. "Florida's Decade of the Eighties," a report prepared by the Executive Office of the Governor, Office of Planning and Budgeting, indicated that in 1980 there were 1.7 million people over the age of 65 living in Florida, representing 18 percent of the state's population. The over-65 proportion of the national population is 11 percent. By 1990, Florida's elderly population is expected to increase by more than 50 percent to 2.6 million.

During the last decade, it became evident that the average age of Florida's citizens is increasing. From 1970-1980, Florida's general population increased by 39.8 percent, while the number of citizens 85 years of age and over rose by 155.3 percent. The proportion of Florida's citizens 75 years of age and over has nearly doubled in the last eight years.

Estimates indicate that 16 percent of the elderly population is in danger of being institutionalized unless intervention occurs. Even with substantial intervening measures, Florida will continue to maintain a large nursing home population. In "Older People In Florida," prepared for planners of the 1980 Governor's Conference on Aging, Carter C. Osterbind points out than in 1978 there were 54,884 persons over age 65
needing institutional care. According to Medicaid statistics, about two-thirds of these individuals (approximately 36,223) were Medicaid-sponsored patients in nursing homes. Osterbind also estimates that by 1990 there will be 85,754 individuals in nursing homes. If the current two-thirds ratio continues, one would expect 57,169 of these patients to be Medicaid-sponsored. Independently, using only Medicaid statistics, it has been estimated that there will be 58,857 Medicaid-sponsored patients in 1990, which is roughly consistent with Osterbind's estimates. At least 60 percent of these Medicaid patients in nursing homes, or 35,314 individuals, will be over 75 years of age.

Considering the current elderly population in Florida and the trend indicating substantial increase in this population during the next decade, it is clear that Florida must continue to emphasize planning to ensure both placement of the aged in nursing homes and provision of a high level of care in nursing homes in order to meet the needs of the growing elderly population.

In 1975, numerous problems surfaced regarding nursing homes, and serious concern arose about the health, safety, and welfare of the elderly in Florida. An Ad Hoc Subcommittee on Nursing Homes was established in the Health and Rehabilitative Services Committee, Florida House of Representatives, as a result of state and federal disclosures of inadequate and
abusive treatment of nursing home residents. Indicators of nursing home problems included: the introductory report of the Subcommittee on Long-Term Care of the Special Committee on Aging, United States Senate, November 1974 (Moss Report); and "Nursing Homes: Haven or Hell?" by Pat Allen, in State Government News, October 1975, pp. 2-6. This article indicated the existence of state-level investigations of nursing homes underway during 1975 in Massachusetts, New York, New Jersey, Nevada, Connecticut, Minnesota, Michigan, Rhode Island, North Dakota, Wisconsin, and Illinois. Additional indicators of inadequate regulations were: the increasing number of bills brought before the Legislature which would alter present statutes affecting nursing homes (during the 1975 Session of the Legislature 22 bills were introduced in the House and Senate which affected nursing homes); frequent constituent complaints received by legislators about nursing home care; and the yearly requests by the nursing home industry for increases in appropriations for nursing home services under the Florida Medicaid Program (Report of the Ad Hoc Subcommittee on Nursing Homes, 1976).

As the result of legislative investigation, major legislative changes have been enacted since that time to insure that minimum standards of patient care are present in nursing homes. These changes include the following:
- In 1978, the State and District Nursing Home Ombudsman Committees were given additional authority to resolve complaints related to nursing homes.

- Legislation in 1979 established greater protection of patients' rights and increasingly focused on quality care through improving licensure requirements and enforcement mechanisms.

- The 1980 Florida Legislature enacted comprehensive changes relating to receivership, patients' rights, the rating of nursing homes, civil enforcement, patient protection trust fund, application for license, late fees, administration and management, patient contracts, sale or transfer of ownership, closing of a nursing home, entry and inspection, availability of reports and records, and State and District Ombudsman Committees, (including receipt, investigation, and resolution of complaints and confidentiality).

- The 1981 Florida Legislature enacted changes relating to emergency medication kits and State and District Ombudsman Committees.

- The 1982 Florida Legislature enacted changes relating to patients' rights, license fees and late fees, license expiration, certification of nursing
assistants, property and personal affairs of patients, right of entry and inspection, and State and District Ombudsman Committees (including duties and investigation of complaints).

All of these changes were in response to problems with patient care and administrative issues raised by the Department, the Long-Term Care Ombudsman Committees, and the nursing home industry.

Findings related to the criteria set forth in the Regulatory Sunset Act are as follows:

A. The absence of this regulation would significantly endanger the public health, safety, and welfare.

The licensure of 369 nursing homes in Florida protects approximately 40,500 patients. If this regulation did not exist, those in need of long-term care would have no assurance of receiving such care in a safe and adequate facility, nor would there be any assurance that the public would receive nursing care of a quality sufficient to ensure their well-being.

The degree of potential harm would be major, since without regulation, no protection would be afforded the patient other than the protection the patient and his or her relatives could demand and secure. For example, without regulation, the
following important questions would go unanswered: What action would be taken and by whom if the physical plant is unsafe? Who will know if the physical plant is unsafe? What action would be taken and by whom if patient care is inadequate or if patients are mistreated? Will inpatient hospitalization increase if care is inadequate? Will care be adequate if staffing standards are not established? The most essential questions are: who would ensure protection for the patient; for the safety of the physical plant; and for the adequacy of care provided if this regulation did not exist?

The possibility of harm with nonregulation is great. Without regulation, each facility could decide what standards they would establish and meet and more importantly, whether any standards would be established. While the care rendered in many homes would be good regardless of the existence of regulation, unfortunately other facilities would not do as well in the absence of regulation. In this particular situation, consumers could not protect themselves because they are vulnerable and the demand for the service is significantly greater than the supply.

Sections of the law which have specific protective aspects are as follows:

   Section 400.022 (patients' rights)

   Section 400.102 (action by Department against facility; grounds)
One area in which the public does not appear to be adequately protected under the current regulatory scheme is that of private residents who exhaust all their personal savings and resources and then are forced to resort to Medicaid. In some cases, nursing homes have forced such residents out of the home, after the home administrator can document a reasonable effort to locate alternative care. This problem has been identified over the past several years by legislators, agency personnel, advocates, and Ombudsman committee members, and the problem has been documented in the 1980, 1981, and 1982 Annual Report of the Long Term Care Ombudsman Committees.

A related problem exists with requiring Medicaid eligible residents to be private-pay residents for a designated period of
time before converting to Medicaid status. This discriminates between elderly residents who have family and friends who will pay the bills for about a year and those who are alone and cannot pay for a specified time.

B. The police power of the state has a reasonable relationship to the protection of the public.

Enforcement actions have been strengthened over the past six years to enable the Department to better assure the public's health, safety, and welfare. Penalties applicable to nursing homes and related health care facility homes are provided by the following sections of the statute:

Section 400.102 - Grounds for actions
Section 400.023 - Patient's right to civil action
Section 44.121 - Administrative fines; moratorium on admissions; denial, revocation, and suspension of license
Section 400.111 - Late fee
Section 400.125 - Injunction
Section 400.126 - Receivership
Section 400.176 - Rebates prohibited; penalties
Section 400.241 - Criminal sanctions

These enforcement mechanisms are strong. They have been found to be necessary measures to protect the elderly from death, exploitation, abuse, and neglect. Other states view
Florida nursing home legislation as being far ahead relative to other states in their development and in their effectiveness.
C. There does not appear to be a less restrictive method of regulation that would adequately protect the public.

The only known alternative to the present method of regulation may be the acceptance of accreditation by the Joint Commission on the Accreditation of Hospitals (JCAH) in lieu of state-administered regulation. This is a system that has been recently discussed at the federal level. However, the potential disadvantages of accreditation by JCAH include the following:

1. Accreditation is a voluntary program; there is no enforcement except withdrawal of accreditation.

2. Only one on-site visit is made during the accreditation period.

3. Accreditation by JCAH is a peer review process, and reports of surveys are generally not made public.

4. Costs to nursing homes increase in the amount of the cost of the accreditation.

5. The JCAH survey is basically a paper compliance survey. It does not necessarily ensure quality care.

6. Contact by JCAH with facilities is too infrequent since conditions in nursing homes can change rapidly.

Thus, JCAH accreditation would probably fall short of adequately protecting the health, safety, and welfare of nursing home residents.
D. This regulation does have a substantial but necessary impact on the costs of this service.

The existence of minimum standards for the operation of a nursing home does impact on the cost of such services to the extent that licensees must expend resources in order to maintain licensure. However, when measured against the benefit of the regulation to the public welfare, the cost is outweighed by the need.

E. The increase in cost due to regulation is not as harmful as the absence of regulation.

Without adequate regulation of nursing homes, the public would be exposed (as it has been in the past) to unscrupulous practices that have resulted in death, exploitation, abuse, and neglect.

Annual nursing home licensure costs (HRS Office of Licensure and Certification) are estimated to be $1,484,979 for the Department. This figure includes $631,415 in administrative costs and $853,564 in direct survey costs. Per person, the regulation costs about $36; per facility cost is just under $4,000. In addition to licensure costs, the Environmental Health Program, the Medicaid Office, the Office of Audit Services and Quality Control, and the Office of Financial
Management include functions that are directly related to the regulation of nursing homes.

The nursing home owner/operator must bear the costs of staff, standards, and facility requirements as well as a license fee which ranges from $26 to $300. These costs do not appear to be excessive in view of the danger to life, health, and property that would exist without current safeguards. The current licensure fees ($94,616, excluding late fees) cover only a small percent of the cost of regulation.

F. This regulation has for its primary effect the protection of the public and not the benefit of the regulated entity.

Although nursing home regulation limits competition through some restrictions, these limitations are designed to benefit the consumer and to keep health care costs under control. Provisions of the law which tend to restrict the number of licensees include the following:

- License fee,
- evidence of good moral character of the applicant and no criminal convictions,
- proof of financial ability to operate,
- Surety bond or insurance,
- a license is required, and
- a certificate of need is required.
Provisions of the law that directly relate to competition include:

- a facility with a superior rating may advertise.
- it is unlawful for any holder of a license to advertise or hold out to the public that it holds a license for a facility other than that for which it actually holds a license.

The restrictive elements in the law are intended to protect the public and assure them that basic minimum standards will be safeguarded.
III. Methodology

The techniques used in this study were designed to obtain information related to the sunset criteria and included the following:

- A comprehensive agency questionnaire
- Interviews with key Department personnel at the Office of Licensure and Certification, (OLC) the Aging and Adult Services Program Office, and the Medicaid Office
- Observation of a nursing home survey and interviews with team personnel
- Interviews and meetings with representatives of the Florida Health Care Association and the Florida Association of Homes for the Aging
- Interviews with Long-Term Care Ombudsman Committee members.
- Interviews with legislative HRS Staff
- A study of the historical development of Chapter 400, F.S.
- A fiscal analysis of nursing home regulation
- A comparative analysis of other states' nursing home regulation
IV. Findings

A. The Law

1. History

Chapter 400, F.S., was first enacted by the Florida Legislature in 1969. This bill set standards for the administration and management of nursing homes, including requirements related to the type of personnel and services to be available to nursing home residents. The law required that each patient be covered by a contract that clearly defined rights and services and provided for protection of the property and personal affairs of the resident. Rebates for referrals to a nursing home were prohibited. Advertising was not allowed unless a home was licensed under this chapter. The State Board of Health was given the right of entry and inspection.

In the 1970 legislative session two bills were passed to provide stricter regulation of nursing homes. These bills established more comprehensive standards for the care and treatment of patients in nursing homes. Annual fees were specified, and provisions for application and revocation of licenses were established. Penalties for violation of the act included closing homes and transferring residents.

In the mid-seventies, legislators responded to increasing pressure from the public regarding inadequate and
abusive treatment of the elderly in nursing homes. A special subcommittee held public hearings throughout the state in 1975. Testimony from the industry, the agency, and consumers was presented bringing information about nursing home services and problems to public attention.

As a result of these problems and hearings, the Omnibus Nursing Home Reform Act of 1976 was passed to upgrade the quality of nursing home care in Florida. This act affected the operation of nursing homes in several ways: certain unfair business practices were prohibited, a rating system was established, and patients rights were more strongly protected.

This act also required the disclosure of the name and address of any person owning at least 10 percent of a corporation applying for a license to operate a nursing home, and the name and address of any business entity, in which an officer, director, or owner of a nursing home had an interest of 10 percent or more, which would be providing goods or services to the nursing home. Kickbacks, bribes, and rebates were prohibited, as was willful coercive solicitation of contributions for a nursing home (such as requiring that a contribution be made for acceptance of a specific patient). The rights and welfare of residents of a facility that voluntarily closed were protected by requiring 90-day notice of the closing in order to allow adequate time to arrange for transfer. The
Department was made responsible for the transfer of patients who received assistance under the Medicaid Program. That is, the Department was required to have a representative in the facility at least 30 days in advance of the closing and to monitor the transfer of patients to other facilities and to insure protection of patients' rights.

The law also required at least one unannounced inspection of each nursing home annually by the Department, and penalties were provided for giving advance notice of such inspections. Provisions were made to insure adequate public availability of records and reports of nursing home inspections, including a requirement that a summary of the results of the last completed inspection be posted in a facility and that a copy of the full inspection report be obtainable upon request, subject to a charge for copying. Promulgation of standards for the quality of care in nursing homes was mandated, as well as the establishment of a system of rating nursing homes. Such ratings, based on inspection results, were to be publicly posted and included in all advertising and would, in part, form the basis for levels of state assistance payments for services rendered to patients, with higher rated homes receiving higher levels of payment. A system of classifying inspection deficiencies was also mandated to allow quick recognition and understanding of the severity of a deficiency. The Department was required to publish a report, available to the public, by
January 1, 1977, and annually thereafter, which was to contain certain specified information, including the name, address, and owners of all nursing homes in Florida; the rating of these facilities, the number of beds, rooms, employees, programs, and religious affiliations of the facilities; and whether the facilities accept Medicare or Medicaid patients.

Adoption by a nursing home of a public statement of the rights of its patients was required. Among other things, the statement must insure each patient the following: civil and religious liberties, adequate and appropriate health care, the right to present grievances, the right to manage his or her own financial affairs, privacy in treatment and in caring for personal needs, courteous treatment, freedom from mental and physical abuse and unnecessary restraints, the right to be informed of his or her medical condition and proposed treatment, and the right of freedom of choice in selecting a health care facility.

In order to increase the skill and knowledge of health practitioners in the care and treatment of nursing home patients, the Department of Education was directed, in cooperation with the DHRS, to develop appropriate educational programs. Certified statements of the cost of providing care were required to be submitted semiannually to the DHRS by
nursing homes which contracted to provide services to indigent patients under the medical assistance programs.

In 1979, a bill was passed which required nursing homes to follow certain financial procedures which should result in improved service delivery and greater protection for patients. Nursing home facilities, for example, were required to provide patients with a quarterly accounting of transactions made on behalf of the patient when the facility holds funds of the patient in trust. License fees were increased for nursing homes, with a portion of the fees to be deposited in a Patient Protection Trust Fund to be used to pay the cost of care in an alternate facility for a patient who is removed from a facility when the Department of Health and Rehabilitative Services determines conditions in the facility require such removal. Nursing homes were required to agree to accept certain recipients of Title XIX of the Social Security Act (Medicaid) on a temporary, emergency basis as a condition of licensure. This law also increased civil penalties that could be imposed for specific deficiencies and provided for imposition of the penalty notwithstanding the correction of the deficiency under certain conditions. In addition, nursing home facilities were required to post a surety bond with the clerk of the circuit court conditioned upon the faithful compliance by the facility with provisions of law relating to the handling in trust of a patient's funds. In lieu of posting a bond, a facility was
allowed to enter into a self-insurance agreement to pool its liability for patient trust funds with other facilities.

In 1980, major statutory revisions were made relating to the rating system, inspection procedures, patient rights, and receiverships.

a) The Rating System Revisions

Between the 1975 and 1976 Legislative Sessions, the House Ad Hoc Subcommittee on Nursing Homes completed a study of the nursing home system, findings from which led to the enactment of "The Omnibus Nursing Home Reform Act of 1976." The act included a five-tiered nursing home rating system, ranging from a high AA to a low F. The Department was statutorily limited to assign the F rating to facilities whose performance was "sufficiently below minimum standards to require suspension, revocation, or denial of a license to operate." The statute did not provide any similar guidance for the AA, A, B, or C ratings. The law, however, required the Department to develop criteria for evaluating and rating facilities based on the nature and severity of deficiencies cited during inspections, and on the areas of care and performance in which nursing homes exceeded minimum standards.

In High Ridge Management Corp. v. State, the 1976 rating scale was successfully challenged by the nursing
home industry. The plaintiff facilities alleged that the system violated due process and equal protection because it was an attempt by the state to take over the nursing home industry and endorse competitors. Although the Supreme Court did not reach the same contention, the court held that: (1) subsections of the act requiring rating of nursing homes constituted an unlawful delegation of legislative authority in that they did not contain certain objective guidelines and standards for enforcement, and (2) unconstitutional subsections were severable and effect was given to portions of statute which were not constitutionally infirm.

Subsequent to High Ridge, the 1978 Legislature amended Florida's rating system to provide only two ratings: A and C. The A rating was deceptive because it indicated only that a nursing home met minimum standards; it did not assure excellence or above average quality of care, as one might assume.

The C rating was assigned to nursing homes that did not meet minimum standards and they were issued a conditional license. Although the 1978 rating scale avoided the constitutional problem of Florida's original rating system, the scale afforded no meaningful comparison among facilities that complied with standards to a greater or lesser degree.
Nursing home rating scales are used as a part of licensure for the following:

- As a consumer's guide to evaluating and selecting a facility according to relative quality

- As an incentive to facilities that provide care exceeding minimum standards

- As a disincentive to substandard facilities

The 1978 rating system fell short of achieving these purposes for reasons noted above.

The purpose of the 1980 provision was to provide the Department with statutory guidelines and standards for evaluating and rating nursing homes according to quality of care. The bill took into account the Supreme Court decision in *High Ridge Management Corp. v. State* and, as such, should withstand any legal challenges.

In the new rating system, any facility that is in substantial compliance with minimum standards and exceeds minimum standards for all critical staffing and service areas and for the majority of important staffing and service areas, as defined by the Department, will receive a superior rating. Facilities that are in substantial compliance with minimum
standards will receive an unrated license; facilities not in compliance will receive a conditional license.

This rating scale, was modeled after a rating system that has been implemented with success in Texas where 23 percent of the homes are rated superior. The nursing home industry accepted the system without any legal challenge (from House HRS Committee Staff Analysis of HB 1592).

b) **Inspection Procedures**

A 1979 Dade County Grand Jury report focused public attention on the substandard conditions that existed in some of Florida's 331 licensed nursing homes. The report described health hazards and deficiencies in patient care that allegedly have been allowed to continue for years. Of the 38 Dade County nursing homes surveyed by the Grand Jury, 60 percent provided either generally unacceptable or consistently very poor care.

The Grand Jury charged that the Department's licensure and inspection system for nursing homes was inadequate, and that as a result, the rights of residents are not adequately protected. The Jury found that sanctions against homes are invoked "rarely, timidly, and ineffectively," and that once a deficiency was identified, on-site follow-up visits were too infrequent to ensure correction. The Grand Jury also
charged that the three Department offices involved in inspection and licensure (Office of Licensure and Certification, Health Program Office, and Medical Review Teams) failed to coordinate their efforts, which further diluted the licensure process.

Another issue related to nursing homes involved annual application for license renewal. Facilities were required to submit license renewal applications to the Department 60 days prior to the license expiration date. The Department had 90 days from the date of the application for a license to approve or deny the license. Consequently, it was possible for the license to expire before the application is approved. If a nursing home did not comply with the time period set for submitting an application for license renewal, the Department did not have the authority to charge a late fee.

Another concern of the Ombudsman Committee during 1980 was the lack of specific statutory requirements for information contained in the contract executed between the facility and each patient or his or her representative. At that time, facilities were not required to include in the contract any of the following: bed reservation policies, refund policies, a listing of services provided by the facility but not included in the standard per diem rate, and the cost of services and supplies not covered by Medicaid, Medicare, or the per diem rate. To address these problems, a bill was passed in 1980
which required the Department to coordinate its nursing home inspections, conduct follow-up visits to verify the correction of deficiencies identified during the annual inspection, and to conduct four or more unannounced on-site facility reviews when deficiencies in patient care or in the physical plant of the facility when those deficiencies threatened residents' health, safety, or security. Provisions for multiple reviews have helped ensure the correction and nonrecurrence of deficiencies in problem nursing homes.

Another feature of the 1980 provisions was the requirement that certain service and policy information be included in the contract executed between the facility and each resident (from House HRS Staff Analysis for CS/HB 1384).

c) Patients Rights

Despite statutory provisions to safeguard nursing home patients' rights, a 1979 Dade County Grand Jury identified numerous deficiencies in patient care and in facility conditions that violated the rights of patients in 60 percent of the homes surveyed. A report summarizing the findings of the Grand Jury graphically described deficiencies in patient care, including lack of social, leisure, rehabilitative and therapeutic services; disregard for the personal dignity of residents; the use of chemical and physical restraints; and the lack of privacy.
While the Grand Jury investigation involved only Dade County nursing homes, the problem of inadequate care and dehumanizing living conditions for frail older people was not unique to the Miami area. Florida had 331 licensed nursing homes with a bed capacity to serve nearly 35,000 people. In 1979, the Nursing Home Ombudsman Committee received 535 complaints related to over half of these homes. Twenty-five homes in various parts of the state accounted for close to 60 percent of the complaints, most of which related to resident abuse and neglect and dissatisfaction with quality of care.

Data from a statewide telephone survey conducted January, 1980 by the Nursing Home Ombudsman Committee further revealed that in 1979 an estimated 380 nursing home residents were transferred when their status changed from private pay to Medicaid (Title XIX of the Social Security Act). Transfers were most prevalent in Districts II, VII, VIII, X, and XI. (From House HRS Staff Analysis for H.B. 1723)

As a result of the foregoing, provision was made in 1980, which provided for further detail regarding the rights of nursing home patients, including but not limited to, the right to a written and oral explanation of the home's bed reservation and refund policies and charges for services available in the home but not included in the per diem rate. The goal of this provision was to better inform patients and to
reduce involuntary patient transfers since it prohibited homes that were certified to provide services under Title XIX of the Social Security Act from transferring a resident solely because his or her savings were depleted and he or she became Medicaid eligible.

In 1980, requirements were added to the law, so that during each annual facility inspection for license renewal, licensure staff would interview nursing home residents and consult with the district Ombudsman Committee to determine if the facility was in compliance with s.400.022, Florida Statutes. Furthermore, a resident would have the explicit right to take legal action against any facility that infringed upon his or her rights. (From the House HRS Staff Analysis for H.B. 1723)

d) Receivership Provision, additional sanctions

Chapter 400, Part I, Florida Statutes contains a range of sanctions that may be invoked by the Department's Office of Licensure and Certification when nursing homes do not meet minimum standards (Chapter 10D-29, F.A.C.). Prior to 1980, the Department was unable to petition the court to appoint a receiver when conditions in a facility seriously threatened the resident's health, safety, or welfare. When a facility closed without giving notice or was closed by the Department for cause, the shortage of nursing home beds created problems related to resident transfer.
Another shortcoming of the nursing home law prior to 1980 was its failure to provide for the placement of a Department monitor in facilities when conditions exist that endanger the health, safety, or welfare of residents. The law only authorized the placement of a monitor in a facility that was voluntarily discontinuing its operation.

In 1980, receivership was added to the sanctions that could be invoked against a grossly deficient facility. Furthermore, any facility that closed was required to give the Department 90 days advance notice, in order to provide time to locate suitable alternate placements and prepare patients and their families for the transfer. Additionally, the bill authorized the Department to place a monitor in a facility when conditions threaten the health, safety, or welfare of the residents.

The bill also required that when a facility is sold or ownership is transferred, the transferor must provide the Department with 60 days advance notice. In addition, the transferor was made liable for all liabilities to the state incurred prior to the transfer unless the transferee guaranteed payment. The issuance of a license to the new owner was made contingent upon repayment of all debts to the department (from the House HRS Staff Analysis for HB 1725).
In 1981, the nursing home law was modified to authorize the maintenance of an emergency medication kit for the purpose of storing medicinal drugs. The 1982 revisions included the right of entry to nursing homes by the long term care ombudsman committee members and the authority for ombudsmen to inspect facilities. These changes came about in response to an Attorney General opinion which indicated that ombudsmen did not have the statutory authority to enter or inspect. The second major revision to the nursing home legislation in 1982 was the provision for certification of nursing assistants.

2. Intent

The intent of Chapter 400 Part I, Nursing Homes, as stated in section 400.011, F.S., is to insure safe and adequate care, treatment, and health of persons nursing homes.
3. **Provisions**

Part I of Chapter 400 contains the following provisions:

**PART I**

**NURSING HOMES**

400.011 Purpose

400.021 Definitions

400.022 Patients' rights

400.023 Civil enforcement

400.041 Nursing facilities; categories for licensing

400.051 Homes or institutions exempt from the provision of this chapter

400.061 License required; fee; disposition; display; transfer

400.063 Patient Protection Trust Fund

400.071 Application for license

400.102 Action by department against facility; grounds

400.111 Expiration of license; renewal

400.121 Denial, suspension, revocation of license; moratorium on admissions; administrative fines; procedure

400.125 Injunction proceedings authorized

400.126 Receivership proceedings

400.141 Administration and management of nursing facilities

400.151 Contracts

400.162 Property and personal affairs of patients
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>400.17</td>
<td>Bribes, kickbacks, certain solicitations prohibited</td>
</tr>
<tr>
<td>400.176</td>
<td>Rebates prohibited; penalties</td>
</tr>
<tr>
<td>400.179</td>
<td>Sale or transfer of ownership of a nursing facility</td>
</tr>
<tr>
<td>400.18</td>
<td>Closing of nursing facility</td>
</tr>
<tr>
<td>400.19</td>
<td>Right of entry and inspection</td>
</tr>
<tr>
<td>400.191</td>
<td>Availability, distribution, and posting of reports and records</td>
</tr>
<tr>
<td>400.20</td>
<td>Licensed nursing home administrator required; limitation on number of facilities to be subject to administrator's supervision</td>
</tr>
<tr>
<td>400.23</td>
<td>Rules; minimum standards; evaluation and rating system; fee for review of plans</td>
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<tr>
<td>400.241</td>
<td>Prohibited acts; penalties for violations</td>
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<td>400.25</td>
<td>Educational program authorized</td>
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<tr>
<td>400.261</td>
<td>Duty of board</td>
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<tr>
<td>400.29</td>
<td>Annual report of nursing home facilities</td>
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<tr>
<td>400.301</td>
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</tr>
<tr>
<td>400.304</td>
<td>Establishment of a State Nursing Home and Long-Term Care Facility Ombudsman Committee; duties; membership</td>
</tr>
<tr>
<td>400.307</td>
<td>District nursing home and long-term care facility ombudsman committees; duties; membership</td>
</tr>
<tr>
<td>400.311</td>
<td>Procedures for receiving complaints</td>
</tr>
<tr>
<td>400.314</td>
<td>Investigation of complaints</td>
</tr>
<tr>
<td>400.317</td>
<td>Procedures for resolving a complaint</td>
</tr>
<tr>
<td>400.321</td>
<td>Confidentiality</td>
</tr>
<tr>
<td>400.322</td>
<td>Emergency medication kits</td>
</tr>
</tbody>
</table>
400.324 Immunity

400.327 Penalty

400.33 Legislative intent

400.331 Definitions

400.332 Funds received not revenues for purpose of medical assistance program

400.333 Evaluation and report
B. Rules

Rules promulgated to carry out Chapter 400, Part 1 or directly related to the agency's regulation of nursing homes include the following:

Chapter 4A-3, F.A.C. - Standards relating to general provisions of fire prevention

Chapter 4A-11, F.A.C. - Standards relating to fire prevention regarding exits

Chapter 4A-14, F.A.C. - Standards relating to fire prevention regarding fire prevention equipment

Chapter 4A-21, F.A.C. - Standards relating to fire extinguishers

Chapter 4A-28, F.A.C. - Standards relating to fire prevention regarding general precautions against fire

Chapter 10-2, F.A.C. - HRS procedural rules

Chapter 10-5, F.A.C. - Standards relating to health planning certificates of need

Chapter 10C-7, F.A.C. - (particularly section 10C-7.48)
- Standards for nursing home providers participating in the Florida Medicaid Program

Chapter 10D-4, F.A.C. - Standards relating to water systems

Chapter 10D-3, F.A.C. - Standards relating to the control of communicable diseases

Chapter 10D-6, F.A.C. - Standards relating to individual sewage disposal systems

Chapter 10D-9, F.A.C. - Standards relating to plumbing

Chapter 10D-13, F.A.C. - Standards relating to food service
Chapter 10D-29, F.A.C.  - Standards relating to licensure
Chapter 10D-55, F.A.C.  - Standards relating to pesticides
Chapter 17-6, F.A.C.  - Standards relating to domestic and industrial waste treatment requirements
Chapter 17-7, F.A.C.  - Standards relating to resource recovery and management
Chapter 17-22, F.A.C.  - Standards relating to public drinking water systems

Those state rules which are indirectly related include:
Chapter 210, F.A.C.  - Standards relating to nursing practice
Chapter 21S, F.A.C.  - Standards relating to pharmacy
Chapter 21Z, F.A.C.  - Standards relating to nursing home administrators

The actual promulgation of rules have lagged behind statutory changes over the past several years, with the most recent rules having gone into effect April 1, 1982.

Rules to implement the rating system were delayed for complex reasons. Chapter 80-211, Laws of Florida, amended section 400.23, F.S., and required the Department to develop a rating system for nursing homes. The amendment identified three rating levels: superior, unrated, and conditional, and directed the Department to develop minimum standards in fourteen areas that the Legislature identified as essential to evaluating the environment, services, and patient care in nursing homes. The amendment also directed the Department to provide criteria for
determining when a facility has exceeded minimum standards and to address other areas necessary for implementation.

Pursuant to this direction, the Department reviewed the existing nursing home standards (Chapter 10D-29, F.A.C.), with particular attention to the existing standards relating to the 14 areas specified in the legislation. As a result of this review, it was determined that the existing standards would need to be upgraded in order to develop a rating system that was both meaningful and in keeping with the statutory direction.

To accomplish the task, the Department formed a task force during July 1980, consisting of an outside consultant with expertise in nursing home services and public health, as well as several knowledgable Department staff. Representatives of all affected programs, as well as representatives of the nursing home industry, participated in the development of the revised standards.

The initial draft of the revised standards proved to have significant fiscal impact. The cost was determined by data collected by the Department's Office of Evaluation during a survey of all nursing homes conducted between September 22 and October 8, 1980. Data were collected on all aspects of nursing home operations, and whenever possible, current expenditures were compared with new costs under the proposed standard. As a result of the fiscal impact, and in response to comments
received by the industry and Department staff, a second draft was prepared. This draft was widely distributed during December 1980, and a public workshop was held in Orlando on February 5, 1981, to receive comments on the document.

In response to comments received during the public workshop, further revisions were made and a third draft prepared. This draft had limited fiscal impact and was the basis for the Department's Title XIX nursing home services supplementary budget request for FY 1981 through FY 1983.

Funds were not appropriated, however, to implement the proposed changes, and a final draft was prepared that removed all fiscal impact. The Department began the rule promulgation procedure on September 28, 1981, with the filing of the proposed rule (final draft) with the Secretary of State.

Two public hearings on the proposed changes were held: On October 26, 1981 in Tallahassee and in Orlando on November 12, 1981. In response to comments received during the public hearings' comment periods (which was extended to December 11, 1981 by the hearing officer), final revisions were made to the proposed rule. The rule was filed in final form with the Secretary of State on January 9, 1982. An effective date of April 1, 1982 was established, rather than the usual 20 days after filing, to provide all affected parties with time to become acquainted with the revised requirements.
C. **Findings**

1. **Agency Structure**

The Department has the primary responsibility for the regulation of nursing homes. Within that department, the Office of Licensure and Certification (OPLC) is the organizational unit responsible for implementing Chapter 400, Part I, F.S. (See Appendix 1, for a copy of the Department Organizational Chart and a copy of the OPLC Organizational Chart, which details the agency structure established to implement the law.)

At the present time, there are approximately 135 persons working out of OPLC who are involved in the Nursing Home Licensure and Certification Process. Recent budget cuts have forced the loss of 40 positions in OPLC over the past year, which has left the staff at a bare minimum.

The responsibilities for regulation of nursing homes are specified in Florida Statute, 400 Part I, Section 400.062 (1): "It is unlawful to operate or maintain a facility without first obtaining from the Department of Health and Rehabilitative Services a license authorizing such operations."

This statute also provides for the establishment of rules, minimum standards, evaluation and rating system, and fees for the review of plans. The enforcement of this statute is
embodied in the survey process. Nursing homes apply for and receive an annual license. The issuance of this annual license is done through an administrative process conducted by personnel in the Office of Licensure and Certification's Central Office, Licensure Subsection. The determination that the facility is conforming to state statutes and regulations is conducted through four area offices located throughout the state through on-site surveys conducted by professional staff members. Currently, an annual licensure survey is conducted for each nursing home with many follow-up surveys being conducted, depending upon the severity of existing conditions that require correction as a result of the annual survey. This, in effect, creates a variable number of on-site surveys required per year; additionally, the number and types of professional staff may vary according to the types of deficiencies noted.

The nursing home deals with a broad aspect of individual personnel needs and, therefore, must provide an equal range of professional services in caring for an individual who may only require personal or custodial care to a patient requiring extensive nursing services 24-hours-a-day. The evaluation of these services is best conducted by a team made up of appropriate professional background and experience. Therefore, the Office of Licensure and Certification decided upon a team consisting of a Hospital Consultant I, serving as Team Leader, a Public Health Nurse Consultant, a Public Health
Nutrition Consultant, a Social and Economics Services Program Consultant I, a Drug Inspector, and a Fire Protection Specialist to conduct its evaluations of the nursing home facilities in Florida.

The OPLC has estimated that 9,858 total person days per year are necessary to complete the nursing home survey cycle each year for the approximately 372 facilities, as shown in Table 1.
<table>
<thead>
<tr>
<th>PROFESSIONAL PERSON-DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NURSING HOME</td>
</tr>
<tr>
<td>HOSPITAL CONSULTANT</td>
</tr>
<tr>
<td>PUBLIC HEALTH NURSE</td>
</tr>
<tr>
<td>NUTRITIONAL CONSULTANT</td>
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<tr>
<td>DRUG INSPECTOR</td>
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<tr>
<td>LIFE SAFETY INSPECTOR</td>
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<tr>
<td>SOCIAL AND ECONOMIC SERVICES CONSULTANT</td>
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<tr>
<td>ADDITIONAL CONSULTANT</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>
2. **Fiscal Analysis**

Cost, quality, and availability of nursing homes, both presently and in the future, are primary issues in any public study of nursing homes. Questions such as, "How is nursing home care financed?" and, "Will quality care be available at a reasonable cost in 50 years?" are basic, especially in Florida where almost 20 percent of the population is over 65 years of age.

This section will briefly discuss the characteristics of nursing homes and their consumers, nursing home financing, and the relationship between cost and quality of care.

a) **The Industry and Its Consumers**

In Florida there are 369 licensed community nursing homes, with 40,449 licensed beds. Over 70 percent of these beds are proprietary (for profit). The other 30 percent are private-nonprofit and church-owned. According to the DHRS Health Planning Office, there are roughly 20 beds per 1,000 elderly people (65 years and over). This compares with an average number of beds per 1,000 of 51 in other states. Roughly 11 of those 20 beds in Florida are for private paying patients. The other beds are paid for by Medicaid.
Because the demand for private-pay beds is constant, increases in the number of beds means increases in the number of Medicaid beds. The DHRS Planning Office does, in fact, plan to issue enough certificates of need to increase the number of beds to 27 per 1,000 by 1985, the maximum number projected to be needed by 1990. This plan is based on a trend analysis of Medicaid and non-Medicaid patient days through 1990. Currently, Medicaid days account for 56.3 percent of all nursing home days, compared to projected 65 percent in 1985.

According to a 1980 study sponsored by the American College of Physicians, the total population is projected to grow by 40 percent between 1977 and 2030, while the elderly population will more than double. Nursing home use increases dramatically among those over the age of 75, and the proportion of the aged who are over 75 is rising. By 2035, that percentage is expected to increase from 38 percent to 45 percent.

According to a Departmental study in 1980, over 60 percent of the Medicaid nursing home residents in Florida are 75 years of age or older and 32 percent are 85 years of age or older. The majority of nursing home residents are females. Eighty percent have two or more medical conditions; 29 percent
have three medical conditions; and 12 percent have four or more conditions.

Costs in the nursing home industry have been increasing much faster than the cost of living. In the 1970s, for example, expenditures grew 77.5 percent, compared with increases in the Consumer Price Index (CPI) of 36.3 percent and in the Gross National Product of 44.4 percent. Public expenditures doubled, while private expenditures increased 76 percent (Health Care Financing Review, Fall 1980). In spite of this spending, the growth in the number of beds has not kept pace with the growth in the elderly population.

Currently, private paying patients spend between $40 and $45 a day for their care. Medicaid currently reimburses a maximum of $35.97 per day. (This rate changes periodically.)

The industry is characterized by a very low bankruptcy rate (except for cases of fraud by owners and managers), low capital overhead, low pay for its employees, and high rates of return on equity. Since the onset of availability of Medicaid monies, the industry has been growing rapidly. A 1980 report prepared by Merrill Lynch, Pierce, Fennes & Smith, Inc., concluded that the nursing home industry is the fastest growing segment of the health care field. (Institutional Report, 1979).
It should be pointed out that alternate forms of care exist for certain segments of potential consumers of nursing homes. For example, Adult Congregate Living Facilities (ACLFs), and Home Health Care Programs can provide care for some of these consumers. Medicaid reimbursement, however, has been notably poor for these programs. Additionally, private-pay life-care retirement communities provide care for those who can afford it.

b) Medicaid Financing of Nursing Homes

Approximately 33 percent of the state's $600 million Medicaid budget is spent on nursing home care. Over half of the nursing home beds in the state are paid for by Medicaid, and the figure will go up to 65 percent by 1985, according to projections by HRS's Health Planning Section.

The federal government pays 56 percent of the total Medicaid bill, while the state pays 44 percent.

Medicaid reimburses nursing home care at three levels: Skilled, Intermediate Care I, and Intermediate Care II. (For each level, staffing ratios are different.) The new reimbursement plan, to begin operating in April 1983, will have the following characteristics.

Two kinds of cost ceilings will be established: an administrative-costs ceiling and a patient-care ceiling. The
ceiling will be more liberal for patient care and more conservative for administrative costs. Ceilings will be established for two geographic areas and two size characteristics (1-100 beds, 101-more beds) in each area.

Two kinds of incentives will be built into reimbursement: an incentive for cost and an incentive for quality. The cost incentive will provide for reimbursement of part of the differential between a home's cost and the ceiling rate. The quality incentive will provide for an additional reimbursement of this differential if the home has a superior rating from the Licensure Office of the Department.

The new reimbursement plan will also use an industry-specific inflation factor instead of the Consumer Price Index and will provide a return on equity for private nonprofit facilities, as well as for for-profit facilities.

In 1981, the Department audited (or contracted to audit) 98 percent of all nursing homes with Medicaid patients -- roughly 300 homes. Of the $326 million claimed in Medicaid, $26 million was disallowed. This year, fewer homes will be scrutinized, according to the Department. However, all homes will undergo a desk audit, in which the current year's figures are compared with those of the latter year to check for consistency.
Problems cited by the Department officials in carrying out Medicaid reimbursement include the following:

- Detecting fraud

- Deciding how to avoid excessive charges on capital

- Providing meaningful cost and quality incentives

c) Cost and Quality

What is the relationship between quality of care and cost of care, number of Medicaid patients, nursing home ownership, and size?

According to the Department's Licensure Office, no clear relationships have been established between quality and either number of Medicaid patients or nursing home ownership. However, nursing home administrators have argued that the cost of care is higher for private-pay patients since they cross-subsidize Medicaid patients. Some experts argue, though, that Medicaid patients cross-subsidize private-pay patients, since Medicaid patients are sometimes provided lower quality of care. The industry has argued that at least 50 percent of patients must be private-pay for the institution to keep from losing money. But some low-cost, privately-owned
providers consistently have high proportions of Medicaid patients. In addition, low occupancy has been shown to be associated with high costs (Urban Institute, 1980).

The new reimbursement system to take effect in April 1983 is the result of negotiation between the Department and the nursing home industry. This reimbursement plan will cost the state $20 million more in 1983 than the current plan.

According to the Department, the adoption of this new plan has been the impetus for nursing home chains such as Beverly Enterprises to move into the state. As a result, the percentage of for-profit nursing homes, already at 70 percent, will probably increase to 80 or 90 percent in the next decade, since the chains are not only applying for certificates of need, but are also acquiring existing operations. (The 1980 Merrill Lynch report states that because of the severe and growing financial problems of non-profit organizations and local governments, the proprietary segment should continue to account for an increasing proportion of the nursing home industry.)

No clear relationship has been established between quality of care and ownership, but experts agree that quality of care and size of home may be related. Optional size cited is between 100 and 150 beds. According to the DHRS Licensure Office, homes with 300 or more beds have often had problems with quality of care.
According to the Department, certificates of need are issued with a requirement that the home accept Medicaid patients.

In general, projections show a strong need for nursing homes in South Florida. Applicants prefer the Central Florida area because of less adverse economic conditions.

According to the Medicaid Fraud Unit (90 percent federally funded), numerous opportunities for fraud continue to exist in the Medicaid reimbursement system, and continued improvement in auditing is needed.

Some Medicaid experts contend that a viable way to keep costs down is to increase Medicaid reimbursement for alternative forms of lower cost care, such as ACLFs and Home Health Care.

d) Administrative Costs

The Department has estimated the annual nursing home licensure costs to be $1,484,979. Of that total, direct survey costs are $853,564 and administrative costs are $631,415.

1. Central Office Administration

Administrative costs are divided into a central OLC function with four central program sections responsible for statewide program operations and four area offices with regional
responsibilities for delivery of services. These organizational entities are engaged in 17 definable program areas (statewide) that share in both central office and area office administrative costs. These program areas include the following:

- Hospital Licensure (includes ambulatory surgical centers)
- Nursing Home Licensure (includes Intermediate Care Facilities for the Mentally Retarded)
- Home Health Agencies (includes Hospices)
- Multiphasic Health Testing Center Licensure
- Laboratory Licensure and State Certification
- Medicare Rehabilitation Clinic Certification
- Medicare Hospital Certification (includes Portable X-rays)
- Medicare Nursing Home Certification
- Medicare End State Renal Disease Certification
- Medicare Home Health Agency Certification
- Medicaid Nursing Home Certification
- Swimming Pool/Bathing Places permits
- Hearing Aid Dealer Licensure
- Drug Registration/Permits
- Pharmacy Warehouse
- Nursing Home Plans Review
- Hospices Plans Review
While the central office performs the administrative functions for all the identifiable programs, each program requires a different proportion of administrative costs. Nursing home licensure responsibilities consume the highest proportion of senior management staff time. These responsibilities require extra time on the part of senior management and staff members in both the central office and the four area offices in performing routine daily functions, as well as in responding to departmental assignments, due to both internal interest, legislative interests, monthly meetings with local and state level Ombudsman Committees, special meetings with facility owners or representatives, legal problems requiring time in courts, or administrative hearings.

In view of the factors noted above, roughly 50 percent of the central office staff and facilities and services' section time is directed to nursing home licensure (these sections' costs are combined in Table 2).

One other consideration must be made in estimating the state costs for this program. According to data from central financial services, the federal participation for Title XVIII (Medicare) and Title XIX (Medicaid) certification programs together contribute an average of 45 percent of these total costs. Therefore, the nursing home licensure cost estimates are reduced accordingly in Table 2. With the changing
federal funding allocations, this percentage figure becomes extremely unstable.

Nursing home licensure costs for the Central Office also include a plans review function for the construction of new facilities and renovations and additions to these facilities. The Plans and Construction Section is responsible for these reviews for state licensure of nursing home facilities. This section's project records continue to reflect 60 percent of its workload as involving hospital licensure, with 40 percent remaining for nursing home and hospice licensure. The hospice workload for this section is estimated at about one-half percent. Therefore, costs for the nursing home licensure represents 39.5 percent.

Using data from the State Automated Management Accounting System (SAMAS) report for June 1982, the central office administrative costs for the nursing home share of administrative costs are shown in Table 2.

2. **Area (Field) Office Administration**

Area administrative costs include support through four area offices of field survey professional staff. Each area office consists of a Licensure and Certification Supervisor, a Hospital Consultant II, and 4.5 secretaries per office. Therefore, administrative costs for an area office
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Estimated Nursing Home Licensure Costs</td>
<td>$575,234</td>
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<tr>
<td>Federal Cost Sharing Deduction</td>
<td>-258,856</td>
</tr>
<tr>
<td>State Nursing Licensure Costs</td>
<td>$316,378</td>
</tr>
<tr>
<td>Plans and Construction Review Costs</td>
<td>+139,714</td>
</tr>
<tr>
<td><strong>TOTAL NURSING HOME LICENSURE COSTS</strong></td>
<td><strong>$456,092</strong></td>
</tr>
</tbody>
</table>
would be a proration of these 6.5 positions for personnel salaries and expenses.

Area office administrative costs are based upon an estimated 50 percent of time being devoted to nursing homes. The state share of costs for nursing home licensure is 55 percent. Costs, which are shown in Table 3, are based upon mid-range salaries for one area office support staff's annual salaries and fringe benefits. Expenses are also annualized for one office. Total costs would be multiplied by four, since there are four area offices, annualized for one office. Total costs would be multiplied by four area offices: Jacksonville, Miami, Tampa, and Winter Park.

3. Direct Survey Costs

The major expense related to the Nursing Home Licensure Program is the survey process itself. This requires a team, on the average, consisting of six professional members: a Hospital Consultant; a Nurse Consultant; a Nutrition Consultant, a Drug Inspector; a Life Safety Specialist and a Social and Economics Services Program Consultant. The team is headed by the Hospital Consultant I. Each professional specialty is responsible for its sphere of expertise at the facility for notes, records, and documentation of findings; for reviewing the facility records prior to visiting the facility to ascertain previous problems; and for submitting findings and
## TABLE 3: AREA OFFICE ADMINISTRATIVE PERSONNEL SALARY AND FRINGE ANNUAL COSTS

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>MID-RANGE</th>
<th>+ 18% FRINGE</th>
<th>= TOTAL</th>
<th>NO POSITIONS</th>
<th>TOTAL ANNUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SALARIES</td>
<td>+ 18% FRINGE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensure &amp; Certification</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervisor</td>
<td>$23,041</td>
<td>$4,147</td>
<td>$27,188</td>
<td>1</td>
<td>$27,188</td>
</tr>
<tr>
<td>Hospital Consultant II</td>
<td>20,337</td>
<td>3,661</td>
<td>23,998</td>
<td>1</td>
<td>23,998</td>
</tr>
<tr>
<td>Secretary II</td>
<td>9,532</td>
<td>1,716</td>
<td>11,248</td>
<td>4.5</td>
<td>50,616</td>
</tr>
<tr>
<td></td>
<td>$52,910</td>
<td>$9,524</td>
<td>$62,434</td>
<td>6.5</td>
<td>$101,802</td>
</tr>
</tbody>
</table>

Administrative Costs for one office $101,802 times four (4) equals total Administrative Costs $407,208 Nursing Home Licensure estimated costs of this is 50%, or $203,604, of which 55% state share is $111,982 and 45% federal share is $91,622.

TOTAL STATE NURSING HOME LICENSURE - SALARY/FRINGE ADMINISTRATIVE COSTS

Expenses for the above administrative personnel are outlined below as professional and clerical expenses. These figures are based on guides provided for the FY 81-83 Biennial Budget, increased 10% for inflation.

<table>
<thead>
<tr>
<th>EXPENSE</th>
<th>COST</th>
<th>2 PROFESSIONALS</th>
<th>4.5 SECRETARIAL</th>
<th>TOTAL EXPENSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone - Regular</td>
<td>$1,233</td>
<td>$2,466</td>
<td>$5,549</td>
<td>$8,015</td>
</tr>
<tr>
<td>Telephone - Long Distance</td>
<td>74</td>
<td>148</td>
<td>333</td>
<td>481</td>
</tr>
<tr>
<td>Postage</td>
<td>629</td>
<td>1,258</td>
<td>2,831</td>
<td>4,089</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>376</td>
<td>752</td>
<td>1,692</td>
<td>2,444</td>
</tr>
<tr>
<td>Duplication/Reproduction</td>
<td>420</td>
<td>840</td>
<td>1,890</td>
<td>2,730</td>
</tr>
<tr>
<td>Repairs/Maintenance</td>
<td>140</td>
<td>280</td>
<td>630</td>
<td>910</td>
</tr>
<tr>
<td>Travel</td>
<td>6,052</td>
<td>12,104</td>
<td>---</td>
<td>12,104</td>
</tr>
<tr>
<td>Rental Equipment</td>
<td>230</td>
<td>460</td>
<td>1,035</td>
<td>1,495</td>
</tr>
<tr>
<td>Other Current Charges</td>
<td>46</td>
<td>92</td>
<td>207</td>
<td>299</td>
</tr>
<tr>
<td></td>
<td>$9,200</td>
<td>$18,400</td>
<td>$14,167</td>
<td>$32,567</td>
</tr>
</tbody>
</table>

Expenses for administrative personnel for one office is $32,567 x 4 = Total annual expenses for all $130,268, of which 50% is chargeable to nursing home licensure, totaling $65,134. State Nursing Home Licensure cost of which 55% state share is $35,824 and 45% federal share is $29,310.
recommendations to the team leader. The team leader is responsible for conducting an exit interview in which team members and facility staff participate and problem areas are discussed. Upon completion of the survey, the team leader consolidates all findings into an official document which is given to the facility. A Plan of Correction is then requested from the facility. All team members usually conduct follow-up visits reflected in Table 4 under Section A--Workload, Item 3. Adjustments to the team make-up may be dependent on a professional problem area or on availability of staff.

The survey activities outlined in Table 4 represent the annual professional visits required to complete an average nursing home licensure survey cycle. Item 4 reflects the shared 55 percent state costs and 45 percent federal costs for nursing home licensure.

Salaries, expenses, total professional costs per person, and annual nursing home direct survey costs by professional staff are shown in Table 5 through Table 8.
### TABLE 4

**SECTION A - WORKLOAD**

1. Workload - The number of facilities to be surveyed annually and the number of visits (average) required to complete the survey cycle for one facility per year.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Number to be licensed</th>
<th>Annual Survey</th>
<th>Follow-up Visits</th>
<th>Complaint Visits</th>
<th>Consultation, Surveillance, Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nursing Home</td>
<td>372</td>
<td>372</td>
<td>372</td>
<td>372</td>
<td>372</td>
</tr>
</tbody>
</table>

2. Number of Professional Visits Per Year - This table presents the number of man-days required by professional specialty, broken into major work components of the survey process in order to complete a typical licensure survey cycle for the nursing home type facility.

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>HOSP CONSL</th>
<th>PH NURSE CONSL</th>
<th>NUTR CONSL</th>
<th>DRUG CONSL</th>
<th>INSP CONSL</th>
<th>SAFETY CONSL</th>
<th>SES CONSL</th>
<th>ADD CONSL</th>
<th>TOTAL MAN/DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANNUAL SURVY - Prep</td>
<td>.5</td>
<td>1</td>
<td>.05</td>
<td>.05</td>
<td>.05</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>5.5</td>
</tr>
<tr>
<td>Survey</td>
<td>3.5</td>
<td>2.9</td>
<td>.45</td>
<td>.45</td>
<td>.45</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>13.0</td>
</tr>
<tr>
<td>Travel</td>
<td>1.5</td>
<td>1.5</td>
<td>.5</td>
<td>.5</td>
<td>.5</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Reports</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.0</td>
</tr>
<tr>
<td>TOTAL MAN/DAYS</td>
<td>5.5</td>
<td>3.5</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td>--</td>
<td>--</td>
<td>13.0</td>
</tr>
<tr>
<td>FOLLOW-UP - Prep</td>
<td>.1</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>.1</td>
</tr>
<tr>
<td>Visit</td>
<td>1.0</td>
<td>1.0</td>
<td>.5</td>
<td>.5</td>
<td>.5</td>
<td>1.0</td>
<td>--</td>
<td>--</td>
<td>4.0</td>
</tr>
<tr>
<td>Travel</td>
<td>1.5</td>
<td>.5</td>
<td>.5</td>
<td>.5</td>
<td>.5</td>
<td>1.0</td>
<td>--</td>
<td>--</td>
<td>3.0</td>
</tr>
<tr>
<td>Reports</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>TOTAL MAN/DAYS</td>
<td>2.0</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td>--</td>
<td>--</td>
<td>7.5</td>
</tr>
<tr>
<td>COMPLAINTS - Prep</td>
<td>.1</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>.1</td>
</tr>
<tr>
<td>Survey</td>
<td>.0</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>.0</td>
</tr>
<tr>
<td>Travel</td>
<td>.5</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>.5</td>
</tr>
<tr>
<td>Reports</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>TOTAL MAN/DAYS</td>
<td>1.5</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.5</td>
</tr>
<tr>
<td>APPRAISAL - Prep</td>
<td>.75</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.75</td>
</tr>
<tr>
<td>(Consultation/ Visit</td>
<td>.75</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.5</td>
</tr>
<tr>
<td>Surveillance Travel</td>
<td>.5</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.0</td>
</tr>
<tr>
<td>Reports</td>
<td>.25</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>.25</td>
</tr>
<tr>
<td>TOTAL MAN/DAYS</td>
<td>1.5</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>1.75</td>
</tr>
<tr>
<td>TOTAL MAN-DAYS/NURSING HOMES/YEAR</td>
<td>10.5</td>
<td>5.0</td>
<td>2.0</td>
<td>2.0</td>
<td>2.0</td>
<td>2.0</td>
<td>3.0</td>
<td>26.5</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 5: SALARIES

SALARIES (Mid-Range by class plus 18% fringe benefits) (210 Person-Days/Year)

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>SALARY AND FRINGE ANNUAL</th>
<th>SALARY &amp; FRINGE PER MAN-DAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Consultant I</td>
<td>$22,532</td>
<td>$107.30</td>
</tr>
<tr>
<td>Public Health Nurse Consultant</td>
<td>27,965</td>
<td>133.16</td>
</tr>
<tr>
<td>Public Health Nutrition Consultant</td>
<td>23,998</td>
<td>114.27</td>
</tr>
<tr>
<td>Drug Inspector (Pharmacist II)</td>
<td>27,188</td>
<td>129.47</td>
</tr>
<tr>
<td>Fire Protection Specialist</td>
<td>17,715</td>
<td>84.36</td>
</tr>
<tr>
<td>SES Program Consultant I</td>
<td>21,164</td>
<td>100.78</td>
</tr>
<tr>
<td><strong>TOTAL FOR AVERAGE TEAM</strong></td>
<td><strong>$140,562</strong></td>
<td><strong>$669.34</strong></td>
</tr>
</tbody>
</table>

TABLE 6: EXPENSES

EXPENSES - Expenses are for one professional position on maximum travel status and long distance telephone service as outlined in the FY 81-83 Biennial Budget Request guidelines, plus 10% inflation factor.

<table>
<thead>
<tr>
<th>EXPENSE ITEM</th>
<th>AMOUNT</th>
<th>EXPENSES FOR ONE PROFESSIONAL PER PERSON-DAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone - Reg.</td>
<td>$1,233</td>
<td></td>
</tr>
<tr>
<td>Telephone - LD</td>
<td>74</td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td>629</td>
<td></td>
</tr>
<tr>
<td>Office Supplies</td>
<td>376</td>
<td></td>
</tr>
<tr>
<td>Duplication/reproduction</td>
<td>420</td>
<td></td>
</tr>
<tr>
<td>Repairs/maintenance</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>Travel</td>
<td>6,052</td>
<td></td>
</tr>
<tr>
<td>Rental Equipment</td>
<td>230</td>
<td></td>
</tr>
<tr>
<td>Other Current Charges</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,200</strong></td>
<td><strong>210 Person-Days/Year = Cost per Person-Day $43.81</strong></td>
</tr>
</tbody>
</table>
### TABLE 7: TOTAL PROFESSIONAL COST PER PERSON/DAY

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>SALARY/FRINGE EXPENSES PERSON-DAY</th>
<th>EXPENSES PERSON-DAY</th>
<th>PERSON-DAY COSTS BY PROFESSIONAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Consultant I</td>
<td>$107.30</td>
<td>$43.81</td>
<td>$151.11</td>
</tr>
<tr>
<td>Public Health Nurse Consultant</td>
<td>133.16</td>
<td>43.81</td>
<td>176.97</td>
</tr>
<tr>
<td>Public Health Nutrition Consultant</td>
<td>114.27</td>
<td>43.81</td>
<td>158.08</td>
</tr>
<tr>
<td>Drug Inspector (Pharmacist II)</td>
<td>129.47</td>
<td>43.81</td>
<td>173.28</td>
</tr>
<tr>
<td>Fire Protection Specialist</td>
<td>84.36</td>
<td>43.81</td>
<td>128.17</td>
</tr>
<tr>
<td>SES Program Consultant I</td>
<td>100.78</td>
<td>43.81</td>
<td>144.59</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$669.34</strong></td>
<td><strong>$262.86</strong></td>
<td>$932.20</td>
</tr>
</tbody>
</table>

### TABLE 8: SURVEY COSTS

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>COST PER PERSON-DAY</th>
<th>REQUIRED PERSON-DAYS YEAR</th>
<th>ANNUAL NURSING HOME SURVEY COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital Consultant I</td>
<td>$151.11</td>
<td>4,464</td>
<td>$674,555</td>
</tr>
<tr>
<td>Public Health Nurse Consultant</td>
<td>176.97</td>
<td>2,418</td>
<td>427,914</td>
</tr>
<tr>
<td>Public Health Nutrition Consultant</td>
<td>158.08</td>
<td>744</td>
<td>117,612</td>
</tr>
<tr>
<td>Drug Inspector (Pharmacist II)</td>
<td>173.28</td>
<td>744</td>
<td>128,920</td>
</tr>
<tr>
<td>Fire Protection Specialist</td>
<td>128.17</td>
<td>744</td>
<td>95,358</td>
</tr>
<tr>
<td>SES Program Consultant I</td>
<td>144.59</td>
<td>744</td>
<td>107,575</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$932.20</strong></td>
<td><strong>9,858</strong></td>
<td><strong>$1,551,934</strong></td>
</tr>
</tbody>
</table>

DEDUCT FOR FEDERAL COST SHARING (45%) 668,370

STATE NURSING HOME LICENSURE COSTS (55%) 853,574
The current license fee is $2.00 per bed per year. The fee range is a minimum of $26.00 and a maximum of $300.00. The license fee is submitted with the licensure application for both initial licensure and renewals. When licenses are to be issued for less than one year, the license fee is adjusted according to the number of months to be covered by the license. If an application for license renewal is not submitted on time, a late fee of 50 percent of the fee in effect on the last preceding regular renewal date, per days late, up to a maximum of $5,000.00, is levied. The total fees, including late fees, collected for the 1981-82 fiscal year were $122,401.

Upon receipt of the license fee, a split deposit is made; that is, half of the fee up to a maximum of $75 is deposited in General Revenue and half, up to a maximum of $225 is deposited in the Patient Protection Trust Fund. Late fees are deposited in the Patient Protection Trust Fund only. Fees deposited in General Revenue are expended as appropriated by the Legislature.

Licensing revenues for the past five years are shown in Table 9.
TABLE 9: LICENSING REVENUES

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>7-1-81 - 6-30-82</td>
<td>$122,401*</td>
</tr>
<tr>
<td>7-1-80 - 6-30-81</td>
<td>78,879</td>
</tr>
<tr>
<td>7-1-79 - 6-30-80</td>
<td>70,757</td>
</tr>
<tr>
<td>7-1-78 - 6-30-79</td>
<td>23,111</td>
</tr>
<tr>
<td>7-1-77 - 6-30-78</td>
<td>22,168</td>
</tr>
</tbody>
</table>

*Late fees account for $27,785 of this figure.
e) The Patient Protection Trust Fund

Fees deposited in the Patient Protection Trust Fund are expended as necessary for the appropriate alternate placement, care, and treatment of patients who are removed from a deficient facility or for the maintenance of patients in a facility in receivership. Section 400.063, F.S., contains the conditions under which these funds may be disbursed. As of August 5, 1982, the Patient Protection Trust Fund contained $610,708.

The Department has used the funds from the Patient Protection Trust Funds on two occasions. If this source of funds had not been available on those two occasions, the Department would have had to seek and use funds from General Revenue. The existence of the Patient Protection Trust Fund provides a ready source of funds that have proven to be extremely useful in responding to situations that present immediate danger to the health, safety, or security of nursing home patients.

Other costs borne by the Department in the regulation of nursing homes are discussed below.

a. Costs related to the regulation of all nursing homes are incurred primarily by the following organizational entities:
- Environmental Health Program. The Environmental Health sections of the county health units are responsible for food service and general sanitation inspection of nursing homes. Food service inspections are conducted bimonthly or quarterly, and general sanitation inspections are conducted at least annually. Included in the general sanitation inspection responsibility is the task of monitoring water supply and sewage disposal. County health unit sanitarians also respond to complaints received in their area of responsibility.

- Medicaid Office. The Program Analysis Cost Reimbursement Section is responsible for making determination of an applicant's financial ability to operate.

b. Costs related to the regulation (certification) of Title XIX participating nursing homes are incurred primarily by the following organizational entities:

- Medicaid Office

  (a) The Program Analysis Cost Reimbursement Section is responsible for establishing the Title XIX per diem rate for each participating facility.

  (b) The Program Development Section is responsible for establishing and interpreting program policy and managing provider contracts.
(c) The Program Integrity Section is responsible for institutional utilization control, surveillance, and fraud and abuse activities.

- The Office of Audit Services and Quality Control. The Audit Services Section is responsible for the audit of a nursing home's cost report to determine allowable costs and, in instances of overpayment, calculation of the amount of overpayment.

- The Office of Financial Management. The Accounts Receivable Section is responsible for collection of any Medicaid liabilities such as overpayments and recapture of depreciation.

Fines may be imposed not to exceed $500 per violation per day. In no event shall any fine aggregate more than $5,000 (Section 400.121, F.S.). These fines are placed in the Patient Protection Trust Fund.

f) Federal Budget Reduction Impact

Table 10 shows federal funding for OPLC from FFY 1981 to FFY 1982. This material is organized to provide the reader with an understanding of the overall funding decrease OPLC has experienced.
Medicare reductions occurred at the beginning of the fourth quarter of FFY 81: therefore, spending reductions in the amount of $259,784 had to be achieved by freezing all positions as they became vacant and putting restrictions on travel. Twenty-three positions were held vacant on average during the last three months of FFY 1981. On July 1, 1981, the Medicare allocation was increased by $41,640, thereby reducing the required reduction in spending to $218,144. The ratio of General Revenue to federal dollars in the OPLC budget went from 47 percent federal, 53 percent state General Revenue at the beginning of the federal year to 42 percent federal, and 58 percent General Revenue at the end of the federal year.
### TABLE 10

#### Federal Allocations for OPLC FFY 82

<table>
<thead>
<tr>
<th></th>
<th>Medicare</th>
<th>Medicaid</th>
</tr>
</thead>
<tbody>
<tr>
<td>FFY 82 Original</td>
<td>$ 690,900</td>
<td>$ 811,200</td>
</tr>
<tr>
<td>Revised August 81</td>
<td>$ 636,900</td>
<td>$ 736,700</td>
</tr>
<tr>
<td>Revised November 81</td>
<td>$ 558,753</td>
<td>$ 736,700</td>
</tr>
<tr>
<td>Revised December 81</td>
<td>$ 531,030</td>
<td>$ 736,700</td>
</tr>
</tbody>
</table>

As a result of continuing reductions in OPLC's federal allocation, continued emphasis had to be placed on restricting travel and freezing positions as they became vacant. During the majority of FFY 1982, as many as 48 positions have been held vacant, including 32 positions that were deleted during the year.

The ratio of General Revenue to federal dollars in OPLC's budget went from 42 percent federal and 58 percent...
General Revenue at the end of FFY 1981 to 31 percent federal and 69 percent General Revenue. There has been a significant decrease in federal dollars available, from $2,073,715 at the beginning of FFY 1981 to $1,267,730 at the close of FFY 82 or a 39 percent reduction.

During this two-year period, General Revenue allocation was increased by $494,873. Out of this allocation came pay raises for FY 1981-82, as well as increased travel required to implement changes in the nursing home rule (10D-29).

The General Revenue figures used in this report include all operations within OPLC. If the ratio of General Revenue utilized for the survey function were only to be compared to the federal allocation that is related only to survey activities, the ratio would be more dramatic.

To summarize, OPLC has faced a significantly increased workload and a decrease in budget and positions. To date, OPLC has been able to maintain its statutorily-mandated and federally-contracted activities by placing restrictions on travel and related expenses and by holding positions vacant.

3. **Agency Practices**

The Department licenses 369 nursing homes with a licensed capacity of 40,449 persons. New applicants for nursing home licensure must first apply for a Certificate of Need (CON).
Once the CON is obtained, OPLC reviews the application, then the facility construction must be approved. For new buildings or for additions, conversions, renovations, or alterations that affect structural integrity, life or fire safety, or use of space in existing buildings, the initial physical plant inspection requires review and approval of proposed construction plans followed by an on-site inspection upon completion of the construction project to determine if construction was according to prescribed plans and codes. For existing buildings, the annual physical plant inspection is conducted by visually checking the facility during the survey visit. Sixty-three items on the survey checklist apply to the physical plant.

After the facility has been approved, the initial licensure becomes the same as the relicensure process. A license fee is collected from the application, and a survey visit is conducted, when deficiencies are listed. A plan of correction is prepared, and then approved, resulting in approval and issuance of the license.

The survey team also makes recommendations on Medicaid and/or Medicare certification based on their inspection checklists.

In January 1982, the most recent month for which the most complete information is available, the Medicaid nursing home caseload totalled 20,386, indicating that approximately 50
percent of the licensed beds were filled by Medicaid recipients, at a cost of $15,124,843.

The nursing home survey team consists of the following members: a Hospital Consultant I, a Public Health Nurse Consultant, a Public Health Nutrition Consultant, a Drug Inspector (Pharmacist II), a Fire Protection Specialist, and a Social and Economic Services Program Consultant I.

Their main job is to do a thorough inspection. When deficiencies are found, especially serious or numerous deficiencies, some or all team members may have to go to see if those deficiencies have been corrected. When deficiencies have not been corrected, an administrative sanction would be recommended.
a) Complaints and Deficiencies

Upon receipt, a complaint is assigned to the appropriate OPLC area office for investigation. All complaints, including those filed anonymously, are investigated. The OPLC area supervisor assigns appropriate personnel to investigate the complaint, and a report of the investigation is required to be filed within 30 days unless a shorter time frame is mandated. If the complaint is verified, a deficiency citation is prepared and sent to the facility, with the requirement that a plan of correction be submitted; administrative action may also be initiated. Follow-up visits as necessary are made to verify correction. The complainant, the facility, and all those mandated in section 400.191, F.S., are given copies as of the results of the investigation.

When multiple complaints have been received against a nursing home, the Department can use a variety of enforcement tools, which result in either corrections or closing the facility.

The following are some case examples of multiple complaints against a nursing home:

**Case A: North Florida Nursing Home**

Deficiencies included:
- staffing shortages, physical plant problems,
- dietary problems, patient care in general.
The facility filed bankruptcy. Administrative fines and moratorium on admissions were imposed. Problems were corrected.

**Case B: South Florida Nursing Home**

Deficiencies included staffing shortages, physical plant and dietary problems, care generally inadequate. Administrative fines and moratorium on admissions were imposed. The facility was placed under Department monitor and closed in 1980.

**Case C: Central Florida Nursing Home**

Problems involved were violation of patients' rights, inadequate supplies, and inadequate maintenance. An administrative fine was imposed. Corrections were made.

**Case D: East Coast Nursing Home**

Complaints included inadequate staff, physical plant problems, poor patient care, and financial problems. Administrative fines and moratorium on admissions were imposed. The facility filed for reorganization in federal court (bankruptcy) and a receiver was appointed. Corrections were made, however, financial difficulties still exist. The Department is monitoring.

The licensure requirement of Section 400.062, F.S., is enforced by the Department through administrative oversight. Specific operational requirements, as established by section 400.141, F.S. (administration and management), section 400.23, F.S. (minimum standards), section 400.241, F.S.
(prohibited acts), and administrative rules promulgated pursuant to the above statutory authorities, are enforced through inspections conducted by the OPLC, and through personnel and reports issued pursuant to such inspections. Enforcement remedies are found in section 400.125, F.S. (injunction proceedings), section 400.126, F.S. (receivership proceedings), section 400.18, F.S. (closing of nursing facility) section 400.19, F.S. (right of entry and inspection), and section 400.241, F.S. (penalties for violations).

The agency's actions since 1977 against nursing homes regarding suspensions, revocations, administrative fines, injunctive proceedings, and receivership proceedings are reported below.

a. License Suspensions

There have been no license suspensions.

b. License Revocations

Case 1. Revocation of license; one month receivership and change of ownership in April 1981.

Case 2. Patient care problems resulted in the facility being closed in 1981 with the agreement that no patients would be admitted until deficiencies were corrected. The facility made physical plan corrections, but could not
satisfactorily provide evidence of financial ability to operate. The license, which expired December 31, 1981, was not renewed. The facility remains closed.

c. **Moratorium on Admissions**

There have been 52 moratoriums on admissions.

d. **Administrative Fines**

There have been 306 administrative fines levied. They have ranged from $100 for housekeeping/maintenance types of deficiencies to over $22,000 for multiple deficiencies involving multiple patient care violations and repeated, uncorrected violations of a serious nature.
## Receiverships and Injunctive Proceedings

<table>
<thead>
<tr>
<th>Date</th>
<th>Facility</th>
<th>Action</th>
<th>Deficiency</th>
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</thead>
<tbody>
<tr>
<td>5/82</td>
<td>1</td>
<td>Complaint for injunction; deficiencies corrected; complaint withdrawn</td>
<td>Patient Care</td>
</tr>
<tr>
<td>4/82</td>
<td>2</td>
<td>Complaint for temporary injunction; deficiencies corrected; complaint withdrawn</td>
<td>Patient Care</td>
</tr>
<tr>
<td>12/8</td>
<td>3</td>
<td>Receivership; court retained jurisdiction</td>
<td>Financial Problems</td>
</tr>
<tr>
<td>11/81</td>
<td>4</td>
<td>Receivership; trustee in bankruptcy</td>
<td>Patient Care and Financial Problems</td>
</tr>
<tr>
<td>9/81</td>
<td>5</td>
<td>Receivership; receiver terminated</td>
<td>Financial Problems</td>
</tr>
<tr>
<td>Date</td>
<td>Facility</td>
<td>Action</td>
<td>Deficiency</td>
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<td>------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>4/81</td>
<td>6</td>
<td>Injunction and receivership; surrender license; change of ownership</td>
<td>Patient Care</td>
</tr>
<tr>
<td>10/81</td>
<td>7</td>
<td>Injunction and Receivership; change of ownership</td>
<td>Patient Care; Physical Plant</td>
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<tr>
<td>8/80</td>
<td>8</td>
<td>Injunction receivership; pending court action</td>
<td>Patient Care; Physical Plant</td>
</tr>
<tr>
<td>6/80</td>
<td>9</td>
<td>Injunction and Receivership; receiver appointed</td>
<td>Financial Problems</td>
</tr>
<tr>
<td>12/79</td>
<td>10</td>
<td>Injunction; deficiencies</td>
<td>Housekeeping; Sanitation</td>
</tr>
<tr>
<td>11/79</td>
<td>11</td>
<td>Complaint for Injunction; deficiencies corrected</td>
<td>Patient Care</td>
</tr>
</tbody>
</table>

It has been reported that the Department lacks the authority to adequately address the involuntary discharge of residents due to the depletion of their personal financial resources and become Medicaid-sponsored. Apparently, Medicaid reimbursement rates are often several hundred dollars lower than the private pay rate. The current statute permits the transfer or discharge of patients if "the facility, as documented in the patients' medical record, makes a reasonable effort to arrange
for appropriate continued care in the community or through another nursing home" (Section 400.022(k), F.S.).

Federal regulations do not include conversion from private-pay status to Medicaid status as a condition of transfer or discharge. This problem, commonly referred to as "dumping Medicaid recipients" has been documented across the country and has been addressed differently in various states. Minnesota requires that Medicaid-certified homes not charge more for private paying residents than the Medicaid rate. This eliminates discrimination based on the source of payment.

New Jersey requires as a condition of licensure that facilities accept Medicaid recipients and not transfer those who must convert to Medicaid. Massachusetts prohibits the transfer or discharge of residents who convert to medical assistance. Ohio requires Medicaid certified facilities to accept or retain residents who are a part of the the medical assistance program.

The Ombudsman Committee reports have highlighted this problem over the past three years, and in their most recent report, the following specific examples are cited.

A resident of a facility on Florida's southern gulf coast was scheduled for discharge after she converted to Medicaid status, even though her physician stated that this transfer and discharge would be medically unwise.
A resident of a Jacksonville area facility who had depleted her private resources in purchasing nursing home care was to be allowed readmission to the facility following a hospital stay only if certain conditions were met. However, this resident died while hospitalized.

A resident of a Palm Beach area facility had lived in a particular facility for two and one-half years, and was depleting her funds. The resident's family was informed that she would be transferred out of the facility when she became an eligible Medicaid recipient.

A resident of a Tampa Bay area facility was admitted as a Medicare beneficiary but was subsequently denied coverage. The facility in which she resided stated that no Medicaid beds were available. The Office of Licensure and Certification contacted the facility's administrator and reminded him that the facility was dually certified and therefore the facility did have a Medicaid bed. The administrator then allowed the elderly resident to remain in the facility, but has recently applied for and received Medicaid certification for only part of the facility's beds.

Another seventy-two-year-old resident of a Tampa Bay area facility was a double amputee and also had a pacemaker. The resident's family was presented with a bill for over $600 for occupational therapy, pharmaceuticals and other supplies. The family also received a letter stating that if the bill was not paid within 15 days the resident would be discharged. Following investigation, the Ombudsman Committee determined that the bill for supplies was a billing error and that the pharmacy charges had been approved by the Medicaid program. The family had only verbally agreed to the occupational therapy. With the Committee's intervention, the facility agreed not to discharge the resident.

(Draft Report, 1982)
Accepting and retaining Medicaid patients is not clearly required in the present regulatory scheme. Thus, neither the agency nor the nursing home industry is out of compliance with the law when a Medicaid recipient is discharged or transferred. This, however, is one problem with Chapter 400 by which the health, safety, and welfare of the public appears to fall short of adequate protection.

b) The Rating System

In developing the rating system, decisions were made relating to its structure and focus. The primary decisions made were that a deficiency threshold was basic to a facility's rating, and that the criteria for meeting, exceeding, or failing to meet minimum standards needed to be as objective as possible.

Developing criteria for exceeding minimum standards proved to be the most challenging aspect of the rating system development. In this effort, primary consideration was given to developing criteria that were meaningful to patient care; that facilities could reasonably be expected to attain with no or minimal additional cost; and that provided sufficient flexibility.

Once criteria were established, guidelines were developed and distributed to all interested or affected parties. Representatives from the nursing home industry and the Long-Term
Care Ombudsman Committee, as well as Department staff from Public Health Nursing, Medicaid, and the Office of Licensure and Certification, participated in development of the guidelines. The final document represented the consensus of this group.

The rating system was implemented beginning with facilities surveyed on and after April 1, 1982. As of December 1, 1982, 148 facilities have been rated (28-Superior, 31-Unrated, 89-Conditional). The rating is determined by the use of the licensure survey report form, the "Guidelines for Determining when a Facility Exceeds Minimum Standards", and a rating worksheet that summarizes the survey findings and the interviews with interested parties. If a facility is found to have more than five Class III deficiencies in any of the 14 categorized areas of survey, a total of more than 20 deficiencies overall, or any Class I or II deficiencies, a conditional rating is issued. If deficiencies are corrected within the required time, the conditional rating is cancelled and an unrated license issued. If the facility was cited for fewer than the above mentioned deficiencies, the rating worksheet is retained in the area survey office until the correction of any cited deficiencies is verified. If all deficiencies are corrected within the time mandated, an unrated license, or if warranted, a superior rated license, is issued.
Implementation of the rating system has lengthened the survey process at a time (FY 1981-82) during which funding reductions required a decrease of 32 positions in OPLCO.

4. Agency Compliance

The Department appears to be complying with the requirements of the law. The OPLC has worked towards uniform application of the law through a standard survey instrument and a performance review process.

The survey instrument developed for the licensure survey is based on the provisions of Chapter 10D-29, F.A.C., and is used statewide by all surveyors.

In addition, the Office of Licensure and Certification OPLC has implemented a performance review process. The review process includes a review of the activities of individual survey staff members both prior to and after a survey is conducted. The review process also includes a systematic review of each of the OPLC area offices to determine consistency in activities.
5. Practitioner Compliance and Concerns

Nursing homes appear to be working to improve their services and their public image. The data supplied by the Department on administrative sanctions indicate that at least a certain percentage of nursing homes have difficulty maintaining minimum standards. While the care rendered in many nursing homes would be good regardless of the licensure and regulation process, unfortunately many other facilities that would not do as well if the regulatory mechanism of inspection and enforcement were discontinued.

a) Practitioners Concerns

The two major nursing home industry groups in Florida include the Florida Association of Homes for the Aging (FAHA) and the Florida Health Care Association (FHCA). These groups continue to modify their recommendations as the legislative session approaches. Their initial responses to Sunset Review will be briefly described in this section.

In response to the Sunset Review Research, FAHA, which primarily represents the nonprofit nursing homes in the state, recommended that the statute remain as it is, particularly to give the rating system time to be implemented.

FHCA (or the industry) proposed certain changes in the law. Generally, these industry representatives responded
to the Sunset Review process from their perspective of reducing unnecessary or overburdensome regulations.

**Annual inspections.** The industry recommended striking the annual inspections.

**Rating system.** The industry recommended that it be easier to get a superior rating. More specifically, they recommended deleting the following requirement from section 400.23: "(3)(a) exceeds minimum standards" (as a requirement for superior rating). The industry proposed striking specific methods of determining the rating system to make the superior rating criteria more "flexible" and easier to obtain.

The FHCA group also recommended that the following rating items be struck:

(3)(a)(2) staffing ratio of aides and orderlies

(3)(a)(7) housekeeping and maintenance

(3)(a)(9) recreational therapy

(3)(a)(12) professional consultant services

(3)(a)(14) notification and monitoring of visitation by physicians

**Unrated license** - FHCA suggested changing the unrated license to a standard license. The industry does not
want the license to be required to be displayed near the entrance to the facility.

**Patients rights**  - The industry proposed certain modifications in the patients' rights section that appear to weaken patients' rights and strengthen the rights of the nursing home. One example, under Section 400.022(1)(k), was to include "failure to comply with the facility's rules and regulations" as grounds for discharge or transfer.

**Legislative Intent**  - The nursing home representatives recommended the following rewrite of legislative intent regarding the Ombudsman Committees in an attempt to upgrade the industry's image:

The Legislature finds and declares that conditions in nursing homes in Florida are such that the personal and health care needs of residents are not insured either by regulation of the Department of Health and Rehabilitative Services or the good faith of the nursing home industry. Furthermore, there is no formal mechanism whereby a nursing home resident or his representative may make a complaint against a nursing home facility or its employees 400.301(1), F.S.

**Enforcement**  - The industry recommended that the enforcement actions of the department be made more "flexible" by changing the mandated "shall" to the optional "may" when considering conditions in a facility for fines or other administrative actions by the Department. They proposed
narrowing the types of violations against which the Department may take action from any violation of the chapter to include only like threatening and repeated violations.

**Reductions in fines** - The industry recommended reducing Class I deficiency fines to $500 (down from $1,000) and reducing the cap, so that each deficiency is not fined separately. The industry also recommended that Class II and Class III deficiencies be cut in half and that caps be limited. Finally, the industry recommended elimination of the provision that each day would be considered a separate offense.

**Use fine to improve facility** - The nursing home industry representatives stated that their most prominent recommendation to demonstrate their concern for patient care is to permit the Department to allow a deficient nursing home to use the money it has been fined to make improvements within the nursing home.

**Ombudsman Committees** - The industry recommended eliminating the authority of the Ombudsman Committees to discover complaints and eliminating acceptance by Ombudsman Committee members of anonymous complaints.

**Receivership** - The industry also recommended amending the receivership section to require the Department to reimburse a facility for care of Title XIX patients after the
closing date, when the Department has been notified 60 days prior to that date.

**Late Fee** - The industry proposed reducing the late fee cap of $5,000.

Prior to the 1982 Legislative Session, no cap was specified. Although the industry stated that the $5,000 cap was an improvement over having no cap, they recommended it should be further reduced. Their proposal was an amount equal to the renewal fee and recommended that it be a discretionary rather than a mandatory fee by changing the "shall" to "may". The industry also recommended clarification of the renewal section by allowing the postmarked date to be considered as the filing date.

**Disbursement of funds at death** - In the event of a patient's death, the industry recommended placing patient funds that are more than $300 in an interest bearing account, because the administrative costs of separate accounts may be greater than the actual amount of the patients' funds.

**Transfer** - When a facility is to be closed, the industry recommended that the facility's responsibility be reduced to "attempting to secure" rather than actually securing suitable transfer of the patients.
Administrative impact - Representatives of the nursing home industry recommended that the Department include a summary of administrative impact on facilities in its proposed rules.

Nursing assistants - The industry recommended limiting the nursing assistant certification requirement to newly-employed assistants, to reduce turnover and to "grandfather" in experienced, competent nursing assistants who are currently rendering good care and service.

Building Plans. The industry recommended including the provision that once building plans and construction have been approved, alterations would not be required, except in life-threatening situations.

Optional Report - The industry recommended making the Department's required annual nursing home report optional.

Paperwork - The industry recommended reducing some of the paperwork related to employee records by striking part of Section 400.077(2)(f). They reported that such records are not used. They stated, however, that if employment checks were used to eliminate owners/employees with bad reputations, these types of records might have some value.
D. Costs and Benefits of Regulation

The costs of nursing home regulation are undoubtedly substantial.

The license fee ranges from $26 to $300. For FY 1981-1982, those fees totaled $122,401, which includes $27,785 for late fees.

Annual nursing home licensure costs are estimated to be $1,484,979. This figure includes $631,415 for administrative costs and $853,564 for direct survey costs. The federal share of the cost would be an additional 45 percent.

Costs to the facilities for the establishment and maintenance of minimum standards are substantial in such areas as staffing requirements and facility requirements. On the other hand, nursing homes have the potential of making large profits, as evidenced by the promotion of stocks in large corporations that run nursing homes.

The benefits derived from the regulations of nursing homes far outweigh the costs when one considers the potential hazards, including possible abuse and neglect of the elderly (which has at times resulted in death and serious bodily harm, as well as financial exploitation). Recent Grand Jury Reports have documented substantial threats to the public health, safety, and welfare. Conditions that have been uncovered by
grand jury reports within the past three years indicate that the benefits derived from this regulation relate to the basic right to life itself as well as to some minimum quality of life.

Conditions found in Duval County nursing homes in 1979 included conditions that varied dramatically from home to home. Some nursing homes exhibited few deficiencies; others suffered nearly all. Some nursing homes evidenced sincere efforts to improve; others showed signs of impending deterioration. The following are some graphic descriptions from the 1979 Duval County Grand Jury Report that underline the necessity of state regulation of nursing homes.

**Physical Environment**

Facility age was absolutely no indicator of quality. Some newer homes rank as the most serious offenders; and some of the oldest were highly rated.

The following are examples of deficiencies in the physical environment of some Duval County nursing homes:

1. Deferred maintenance, resulting in alarmingly sub-minimal care and major health hazards, frequently caused patients severe physical and mental harm.

   a. Nonfunctioning heaters in winter and air conditioning in summer; long-neglected, occasioned dehydration; skin breakdown; and other heat/cold-related illnesses were found among patients.

   b. Inoperative plumbing facilities, such as baths; hot water heaters being inefficient, broken or providing
inadequate hot water for sanitation purposes, overtly endangered residents' health, comfort, and safety from contagion.

(2) Sanitation was deplorable in common areas, such as kitchens, baths, storage areas and even patient rooms and beds.

(a) Long-term tolerance of shocking stench; filth-ridden floors and carpets; and closets and storage areas accumulating trash and debris constituted severe health hazards and, occasionally, inhumane conditions. Frequently, minimum cleaning needs and disinfectants were unavailable, and when finally provided, were watered down or insufficient.

(b) Unchecked insect and rodent infestation created health hazards beyond cognition. Lax housekeeping and pest control drove dangers to maximal levels when roaches, rats, and mice were seen directly contacting medical equipment, water vessels and food.

(c) Incontinent patients lay in wet linens because dry and clean ones were not on hand. Nurses sometimes tore strips off sheets for washcloths to clean patients because towels and washcloths were in critically short supply. (In one instance, employees hid linens in ceilings to assure available supplies for the most needy.

(d) Eating utensils were few in number, inferior in quality and frequently unclean, again raising the spectre of communicable disease.

(e) Despite health regulations and inspections, food storage, kitchens and bathrooms would often be described as unsanitary.

(3) Non-medical and maintenance staffing generally appeared inadequate in all categories.

(a) Orderlies and housekeeping assistants were seldom adequate; and on evening shifts; there were frequently health and sanitation practices.

(b) Nighttime staffing was sometimes so low that patients suffering accidents or serious health deterioration during the night were not discovered until the following morning.

(4) Frequently, basic nutrition was insufficient in quantity, variety, quality and timeliness.

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The 1979 Dade County Grand Jury made the following findings as to nursing homes:

1. As might be expected, the quality of care in Dade County nursing homes varies greatly. Some homes consistently provide very good quality of care; others generally provide good quality of care; still others do not generally provide acceptable quality of care; and yet others consistently provide very poor and unacceptable quality of care.

2. Most nursing home patients, approximately 60 percent, reside in homes which either do not generally provide acceptable quality of care or which consistently provide very poor and unacceptable quality of care. The average nursing home resident resides in a facility that is, at best, mediocre.

3. Inadequate quality of care tends to predominate in larger homes and in those homes with large proportions of Medicaid patients. Acceptable or good quality of care is more likely to be found in smaller homes and in those homes with high proportions of private patients.

4. While, in general Dade County's nursing homes tend to meet minimum standards for physical safety for the residents and minimum standards of physician and nursing care, the homes are seriously deficient in meeting the social and mental needs of the residents. Most nursing home residents are housed in drab surroundings and can look forward only to brief interaction with poorly-trained and generally insensitive nursing aides and they can expect few, if any, enjoyable activities. Since most nursing homes residents have little or no interaction with visitors or the outside world, the effect of months and years of mental and social inactivity accelerates, rather than retards, the deterioration of the average nursing home resident.

These types of occurrences provide evidence that this regulation must be maintained to assure at least minimum standards of care for elderly citizens.
E. Potential Impact of No Regulation

Some nursing homes would continue to provide good patient care if regulation were discontinued. Others, experts predict, would rapidly deteriorate and cut costs at the expense of patient care. As noted earlier in this report, the potential for abuse (physical, emotional and financial) to ill, and often dependent, older persons is great.

F. Alternatives to the Present Method of Regulation

As proposed at the federal level, accreditation by the Joint Commission on the Accreditation of Hospitals (JCAH) is one possible alternative. However, this proposal has several serious drawbacks.

The Department-supported use of JCAH accreditation for hospitals was adopted in the 1982 Sunset review of Chapter 395, F.S. However, the Department feels that a very different situation exists in nursing homes and would, therefore, strongly oppose the acceptance of JCAH accreditation in lieu of state-administered regulation.

Experience with regard to patient care problems has been considerably more disturbing for nursing homes than for hospitals, it is believed that the present state licensure program, which provides for closer monitoring of nursing homes, is not only warranted but effective. Departmental staff are
frequently in nursing homes. Communication has been greatly improved between all staff involved, and staff has responded swiftly and efficiently to numerous crises in nursing homes during the past two years. Facilities have been closed that could no longer provide adequate care and were unsafe from the physical plant standpoint. The OPLC has been instrumental in securing for six different facilities the court appointment of a receiver to ensure that adequate care be provided to the patients. In numerous other situations, the quick action of departmental staff has prevented further deterioration of situations in nursing homes and has provided assistance to the facility staff to correct the deficient conditions. The Department believes the present system should continue to be improved rather than replaced.
155 positions planned to be transferred to Districts.
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Office of Licensure and Certification (OPLC)

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