

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_\_

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Forman moved the following amendment:

**Senate Amendment**

On page 84, line 1, through page 97, line 4, delete those lines

and insert:

Section 38. Section 400.411, Florida Statutes, is amended to read:

400.411 Initial application for license; provisional license.--

(1) Application for a license shall be made to the agency on forms furnished by it and shall be accompanied by the appropriate license fee. ~~The application shall contain sufficient information, as required by rules of the department, to establish that the applicant can provide adequate care.~~

(2) The applicant may be an individual owner, a corporation, a partnership, a firm, an association, or a governmental entity.

(3)(2) The application must shall be signed by the

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 applicant under oath and must ~~shall~~ contain the following:

2 (a) The name, address, date of birth, and social  
3 security number of the applicant and the name by which the  
4 facility is to be known. ~~Pursuant thereto:~~

5 ~~1-~~ If the applicant is a firm, partnership, or  
6 association, the application shall contain the name, address,  
7 date of birth, and social security number of every member  
8 thereof.

9 ~~2-~~ If the applicant is a corporation, the application  
10 shall contain the corporation's ~~its~~ name and address; ~~the~~  
11 name, address, date of birth, and social security number of  
12 each of its directors and officers; ~~and~~ the name and address  
13 of each person having at least a 5-percent ownership  
14 ~~10-percent~~ interest in the corporation.

15 (b) The name and address of any professional service,  
16 firm, association, partnership, or corporation that is to  
17 provide goods, leases, or services to the facility ~~for which~~  
18 ~~the application is made,~~ if a 5-percent ~~10-percent~~ or greater  
19 ownership interest in the service, firm, association,  
20 partnership, or corporation is owned by a person whose name  
21 must be listed on the application under paragraph (a).

22 (c) ~~Information that provides a source to establish~~  
23 ~~the suitable character, financial stability, and competency of~~  
24 ~~the applicant and of each person specified in the application~~  
25 ~~under subparagraph (a)1. or subparagraph (a)2. who has at~~  
26 ~~least a 10-percent interest in the firm, partnership,~~  
27 ~~association, or corporation and, if applicable, of the~~  
28 ~~administrator, including~~ The name and address of any long-term  
29 care facility with which the applicant, ~~or~~ administrator, or  
30 financial officer has been affiliated through ownership or  
31 employment within 5 years of the date of this license ~~the~~

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 application ~~for a license~~; and a signed affidavit disclosing  
2 any financial or ownership interest that the applicant, or any  
3 ~~person listed in paragraph (a) principal, partner, or~~  
4 ~~shareholder thereof~~, holds or has held within the last 5 years  
5 in any ~~other~~ facility licensed under this part, or in any  
6 other entity licensed by this ~~the~~ state or another state to  
7 provide health or residential care, which facility or entity  
8 closed or ceased to operate as a result of financial problems,  
9 or has had a receiver appointed or a license denied, suspended  
10 or revoked, or was subject to a moratorium on admissions, or  
11 has had an injunctive proceeding initiated against it.

12 (d) A description and explanation of any exclusions,  
13 permanent suspensions, or terminations of the applicant from  
14 the Medicare or Medicaid programs. Proof of compliance with  
15 disclosure of ownership and control interest requirements of  
16 the Medicaid or Medicare programs shall be accepted in lieu of  
17 this submission.

18 (e)(d) The names and addresses of ~~other~~ persons of  
19 whom the agency may inquire as to the character, ~~and~~  
20 reputation, and financial responsibility of the owner  
21 applicant and, if different from the applicant, applicable, of  
22 the administrator and financial officer.

23 ~~(e) The names and addresses of other persons of whom~~  
24 ~~the agency may inquire as to the financial responsibility of~~  
25 ~~the applicant.~~

26 (f) Identification of all other homes or facilities,  
27 including the addresses and the license or licenses under  
28 which they operate, if applicable, which are currently  
29 operated by the applicant or administrator and which provide  
30 housing, meals, and personal services to residents ~~adults~~.

31 ~~(g) Such other reasonable information as may be~~

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 ~~required by the agency to evaluate the ability of the~~  
2 ~~applicant to meet the responsibilities entailed under this~~  
3 ~~part.~~

4 ~~(g)(h)~~ The location of the facility for which a  
5 license is sought and documentation, signed by the appropriate  
6 local government official, which states that the applicant has  
7 met local zoning requirements.

8 ~~(h)(i)~~ The name, address, date of birth, social  
9 security number, education, and experience of the  
10 administrator, if different from the applicant.

11 ~~(4)(3)~~ The applicant shall furnish satisfactory proof  
12 of financial ability to operate and conduct the facility in  
13 accordance with the requirements of this part. A certificate  
14 of authority, pursuant to chapter 651, may be provided as  
15 proof of financial ability.~~An applicant applying for an~~  
16 ~~initial license shall submit a balance sheet setting forth the~~  
17 ~~assets and liabilities of the owner and a statement projecting~~  
18 ~~revenues, expenses, taxes, extraordinary items, and other~~  
19 ~~credits or charges for the first 12 months of operation of the~~  
20 ~~facility.~~

21 ~~(5)(4)~~ If the applicant is a continuing care facility  
22 certified under offers continuing care agreements, as defined  
23 in chapter 651, a copy of the facility's proof shall be  
24 furnished that the applicant has obtained a certificate of  
25 authority must be provided as required for operation under  
26 that chapter.

27 ~~(6)(5)~~ The applicant shall provide proof of liability  
28 insurance as defined in s. 624.605.

29 ~~(7)(6)~~ If the applicant is a community residential  
30 home, the applicant must provide proof that it has met the  
31 requirements specified in chapter 419 shall apply to community

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 ~~residential homes zoned single-family or multifamily.~~

2 ~~(8)(7) The applicant must provide the agency with~~  
3 ~~proof of legal right to occupy the property. This proof may~~  
4 ~~include, but is not limited to, copies of recorded warranty~~  
5 ~~deeds, or copies of lease or rental agreements, contracts for~~  
6 ~~deeds, quitclaim deeds, or other such documentation.~~

7 ~~(9)(8) The applicant must furnish proof that the~~  
8 ~~facility has received a satisfactory firesafety inspection.~~  
9 ~~The local fire marshal or other authority having jurisdiction~~  
10 ~~or the State Fire Marshal must conduct the inspection within~~  
11 ~~30 days after the written request by the applicant. If an~~  
12 ~~authority having jurisdiction does not have a certified~~  
13 ~~firesafety inspector, the State Fire Marshal shall conduct the~~  
14 ~~inspection.~~

15 ~~(10) The applicant must furnish documentation of a~~  
16 ~~satisfactory sanitation inspection of the facility by the~~  
17 ~~county health department.~~

18 ~~(11) The applicant must furnish proof of compliance~~  
19 ~~with level 2 background screening as required under s.~~  
20 ~~400.4174.~~

21 ~~(12)(9) A provisional license may be issued to an~~  
22 ~~applicant making initial application for licensure or making~~  
23 ~~application for a change of ownership. A provisional license~~  
24 ~~shall be limited in duration to a specific period of time not~~  
25 ~~to exceed 6 months, as determined by the agency.~~

26 ~~(13)(10) A No county or municipality may not shall~~  
27 ~~issue an occupational license that which is being obtained for~~  
28 ~~the purpose of operating a facility regulated under this part~~  
29 ~~without first ascertaining that the applicant has been~~  
30 ~~licensed to operate such facility at the specified location or~~  
31 ~~locations by the agency. The agency shall furnish to local~~

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 agencies responsible for issuing occupational licenses  
2 sufficient instruction for making such ~~the above required~~  
3 determinations.

4 Section 39. Section 400.414, Florida Statutes, is  
5 amended to read:

6 400.414 Denial, revocation, or suspension of license;  
7 imposition of administrative fine; grounds.--

8 (1) The agency may deny, revoke, or suspend any a  
9 license issued under this part, or impose an administrative  
10 fine in the manner provided in chapter 120, for. ~~At the~~  
11 ~~chapter 120 hearing, the agency shall prove by a preponderance~~  
12 ~~of the evidence that its actions are warranted.~~

13 ~~(2) any of the following actions by an assisted living~~  
14 ~~a facility, any person subject to level 2 background screening~~  
15 ~~under s. 400.4174, or facility or its employee shall be~~  
16 ~~grounds for action by the agency against a licensee:~~

17 (a) An intentional or negligent act seriously  
18 affecting the health, safety, or welfare of a resident of the  
19 facility.

20 (b) The determination by the agency that ~~the facility~~  
21 ~~owner or administrator is not of suitable character or~~  
22 ~~competency, or that the owner lacks the financial ability, to~~  
23 ~~provide continuing adequate care to residents, pursuant to the~~  
24 ~~information obtained through s. 400.411, s. 400.417, or s.~~  
25 ~~400.434.~~

26 (c) Misappropriation or conversion of the property of  
27 a resident of the facility.

28 (d) Failure to follow the criteria and procedures  
29 provided under part I of chapter 394 relating to the  
30 transportation, voluntary admission, and involuntary  
31 examination of a facility resident.

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1           (e) One or more class I, three or more class II, or  
2 five or more repeated or recurring identical or similar class  
3 III violations that are similar or identical to violations of  
4 this part which were identified by the agency within the last  
5 2 years during the last biennial inspection, monitoring visit,  
6 or complaint investigation and which, in the aggregate, affect  
7 the health, safety, or welfare of the facility residents.

8           (f) A determination that a person subject to level 2  
9 background screening under s. 400.4174(1) does not meet the  
10 screening standards of s. 435.04 or that the facility is  
11 retaining an employee subject to level 1 background screening  
12 standards under s. 400.4174(2) who does not meet the screening  
13 standards of s. 435.03 and for whom exemptions from  
14 disqualification have not been provided by the agency.

15           (g)(f) A confirmed report of adult abuse, neglect, or  
16 exploitation, as defined in s. 415.102, which has been upheld  
17 following a chapter 120 hearing or a waiver of such  
18 proceedings where the perpetrator is an employee, volunteer,  
19 administrator, or owner, or otherwise has access to the  
20 residents of a facility, and the owner or administrator has  
21 not taken action to remove the perpetrator. Exemptions from  
22 disqualification may be granted as set forth in s. 435.07. No  
23 administrative action may be taken against the facility if the  
24 perpetrator is granted an exemption.

25           (h)(g) Violation of a moratorium.

26           (i)(h) Failure of the license applicant, the licensee  
27 during relicensure, or failure of a licensee that holds a  
28 provisional an initial or change of ownership license, to meet  
29 minimum license standards or the requirements of rules adopted  
30 under this part or related rules, at the time of license  
31 application or renewal.

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1           ~~(j)(i)~~ A fraudulent statement or omission of any  
2 material fact on an application for a license or any other  
3 document required by the agency, including the submission of a  
4 license application that conceals the fact that any board  
5 member, officer, or person owning 5 percent or more of the  
6 facility may not meet the background screening requirements of  
7 s. 400.4174, or that the applicant has been excluded,  
8 permanently suspended, or terminated from the Medicaid or  
9 Medicare programs that is signed and notarized.

10           ~~(k)(j)~~ An intentional or negligent life-threatening  
11 act in violation of the uniform firesafety standards for  
12 assisted living facilities or other firesafety standards  
13 ~~established by the State Fire Marshal,~~that threatens the  
14 health, safety, or welfare of a resident of a facility, as  
15 communicated to the agency by the ~~State Fire Marshal,~~ a local  
16 ~~fire marshal, or other~~ authority having jurisdiction or the  
17 State Fire Marshal.

18           ~~(l)~~ Exclusion, permanent suspension, or termination  
19 from the Medicare or Medicaid programs.

20           ~~(m)~~ Knowingly operating any unlicensed facility or  
21 providing without a license any service that must be licensed  
22 under this chapter.

23  
24 Administrative proceedings challenging agency action under  
25 this subsection shall be reviewed on the basis of the facts  
26 and conditions that resulted in the agency action.

27           ~~(3)~~ ~~Proceedings brought under paragraphs (2)(a), (c),~~  
28 ~~(e), and (j) shall not be subject to de novo review.~~

29           ~~(2)(4)~~ Upon notification by the ~~State Fire Marshal,~~  
30 ~~local fire marshal, or other~~ authority having jurisdiction or  
31 by the State Fire Marshal, the agency may deny or revoke the



Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 license of an assisted living a facility that fails to correct  
2 cited fire code violations ~~issued by the State Fire Marshal, a~~  
3 ~~local fire marshal, or other authority having jurisdiction,~~  
4 that affect or threaten the health, safety, or welfare of a  
5 resident of a facility.

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

20 (4) The agency shall deny or revoke the license of an  
21 assisted living facility that has two or more class I  
22 violations that are similar or identical to violations  
23 identified by the agency during a survey, inspection,  
24 monitoring visit, or complaint investigation occurring within  
25 the previous 2 years.

26 ~~(5) The agency may deny a license to an applicant who~~  
27 ~~owns 25 percent or more of, or operates, a facility which,~~  
28 ~~during the 5 years prior to the application for a license, has~~  
29 ~~had a license denied, suspended, or revoked pursuant to~~  
30 ~~subsection (2), or, during the 2 years prior to the~~  
31 ~~application for a license, has had a moratorium imposed on~~

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 ~~admissions, has had an injunctive proceeding initiated against~~  
2 ~~it, has had a receiver appointed, was closed due to financial~~  
3 ~~inability to operate, or has an outstanding fine assessed~~  
4 ~~under this part.~~

5 ~~(5)(6)~~ An action taken by the agency to suspend, deny,  
6 or revoke a facility's license under this part, in which the  
7 agency claims that the facility owner or an employee of the  
8 facility has threatened the health, safety, or welfare of a  
9 resident of the facility, ~~shall, upon receipt of the~~  
10 ~~facility's request for a hearing, be heard by the Division of~~  
11 ~~Administrative Hearings of the Department of Management~~  
12 ~~Services within 120 days after receipt of the facility's the~~  
13 ~~request for a hearing, unless that time limitation period is~~  
14 ~~waived by both parties. The administrative law judge must~~  
15 ~~render a decision within 30 days after receipt of a proposed~~  
16 ~~recommended order the hearing.~~

17 ~~(6)(7)~~ The agency shall provide to the Division of  
18 Hotels and Restaurants of the Department of Business and  
19 Professional Regulation, on a monthly basis, a list of those  
20 assisted living facilities that ~~which~~ have had their licenses  
21 denied, suspended, or revoked or ~~that which~~ are involved in an  
22 appellate proceeding pursuant to s. 120.60 related to the  
23 denial, suspension, or revocation of a license.

24 (7) Agency notification of a license suspension or  
25 revocation, or denial of a license renewal, shall be posted  
26 and visible to the public at the facility.

27 Section 40. Section 400.417, Florida Statutes, is  
28 amended to read:

29 400.417 Expiration of license; renewal; conditional  
30 license.--

31 (1) Biennial licenses ~~issued for the operation of a~~

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 facility, unless sooner suspended or revoked, shall expire  
2 automatically 2 years from the date of issuance. Limited  
3 nursing, extended congregate care, and limited mental health  
4 licenses shall expire at the same time as the facility's  
5 standard license, regardless of when issued.The agency shall  
6 notify the facility by certified mail at least 120 days prior  
7 to ~~the expiration of the license~~ that a renewal license  
8 ~~relicensure~~ is necessary to continue operation. Ninety days  
9 prior to the expiration date, an application for renewal shall  
10 be submitted to the agency. ~~A license shall be renewed upon~~  
11 ~~the filing of an application on forms furnished by the agency~~  
12 ~~if the applicant has first met the requirements established~~  
13 ~~under this part and all rules promulgated under this part.~~ The  
14 failure to file a timely renewal application shall result in a  
15 late fee charged to the facility in an amount equal to 50  
16 percent of the current fee, ~~in effect on the last preceding~~  
17 ~~regular renewal date.~~ Late fees shall be deposited into the  
18 ~~Health Care Trust Fund as provided in s. 400.418.~~ The  
19 ~~facility shall file with the application satisfactory proof of~~  
20 ~~ability to operate and conduct the facility in accordance with~~  
21 ~~the requirements of this part.~~

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

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 screening requirements of s. 400.4174.

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

25       ~~(4)(2)~~ A licensee against whom a revocation or  
26 suspension proceeding is pending at the time of license  
27 renewal may be issued a conditional license effective until  
28 final disposition by the agency ~~of such proceeding~~. If  
29 judicial relief is sought from the final disposition, the  
30 court having jurisdiction may issue a conditional license for  
31 the duration of the judicial proceeding.

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1           ~~(5)(3)~~ A conditional license may be issued to an  
2 applicant for license renewal ~~if when~~ the applicant fails to  
3 meet all standards and requirements for licensure. A  
4 conditional license issued under this subsection shall be  
5 limited in duration to a specific period of time not to exceed  
6 6 months, as determined by the agency, and shall be  
7 accompanied by an agency-approved ~~approved~~ plan of correction.

8           (6) When an extended care or limited nursing license  
9 is requested during a facility's biennial license period, the  
10 fee shall be prorated in order to permit the additional  
11 license to expire at the end of the biennial license period.  
12 The fee shall be calculated as of the date the additional  
13 license application is received by the agency.

14           Section 41. Section 400.4174, Florida Statutes, is  
15 amended to read:

16           400.4174 Background screening; exemptions; reports of  
17 abuse in facilities.--

18           (1)(a) Level 2 background screening must be conducted  
19 on each of the following persons, who shall be considered  
20 employees for the purposes of conducting screening under  
21 chapter 435:

22           1. The facility owner if an individual; the  
23 administrator; and the financial officer.

24           2. An officer or board member if the facility owner is  
25 a firm, corporation, partnership, or association, or any  
26 person owning 5 percent or more of the facility if the agency  
27 has probable cause to believe that such person has been  
28 convicted of any offense prohibited by s. 435.04. For each  
29 officer, board member, or person owning 5 percent or more who  
30 has been convicted of any such offense, the facility shall  
31 submit to the agency a description and explanation of the

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 conviction at the time of license application. This  
2 subparagraph does not apply to a board member of a  
3 not-for-profit corporation or organization if the board member  
4 serves solely in a voluntary capacity, does not regularly take  
5 part in the day-to-day operational decisions of the  
6 corporation or organization, receives no remuneration for his  
7 or her services, and has no financial interest and has no  
8 family members with a financial interest in the corporation or  
9 organization, provided that the board member and facility  
10 submit a statement affirming that the board member's  
11 relationship to the facility satisfies the requirements of  
12 this subparagraph.

13 (b) Proof of compliance with level 2 screening  
14 standards which has been submitted within the previous 5 years  
15 to meet any facility or professional licensure requirements of  
16 the agency or the Department of Health satisfies the  
17 requirements of this subsection, provided that such proof is  
18 accompanied, under penalty of perjury, by an affidavit of  
19 compliance with the provisions of chapter 435. Proof of  
20 compliance with the background screening requirements of the  
21 Department of Insurance for applicants for a certificate of  
22 authority to operate a continuing care retirement community  
23 under chapter 651, submitted within the last 5 years,  
24 satisfies the Department of Law Enforcement and Federal Bureau  
25 of Investigation portions of a level 2 background check.

26 (c) The agency may grant a provisional license to a  
27 facility applying for an initial license when each individual  
28 required by this subsection to undergo screening has completed  
29 the abuse registry and Department of Law Enforcement  
30 background checks, but has not yet received results from the  
31 Federal Bureau of Investigation, or when a request for an

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 exemption from disqualification has been submitted to the  
2 agency pursuant to s. 435.07, but a response has not been  
3 issued.

4 (2) The owner or administrator of an assisted living  
5 facility must conduct level 1 background screening, as set  
6 forth in chapter 435, on all employees hired on or after  
7 October 1, 1998, who perform personal services as defined in  
8 s. 400.402(16). The agency may exempt an individual from  
9 employment disqualification as set forth in chapter 435. Such  
10 persons shall be considered as having met this requirement if:

11 (a) Proof of compliance with level 1 screening  
12 requirements obtained to meet any professional license  
13 requirements in this state is provided and accompanied, under  
14 penalty of perjury, by a copy of the person's current  
15 professional license and an affidavit of current compliance  
16 with the background screening requirements.

17 (b) The person required to be screened has been  
18 continuously employed in the same type of occupation for which  
19 the person is seeking employment without a breach in service  
20 which exceeds 180 days, and proof of compliance with the level  
21 1 screening requirement which is no more than 2 years old is  
22 provided. Proof of compliance shall be provided directly from  
23 one employer or contractor to another, and not from the person  
24 screened. Upon request, a copy of screening results shall be  
25 provided by the employer retaining documentation of the  
26 screening to the person screened.

27 (c) The person required to be screened is employed by  
28 a corporation or business entity or related corporation or  
29 business entity that owns, operates, or manages more than one  
30 facility or agency licensed under chapter 400, and for whom a  
31 level 1 screening was conducted by the corporation or business

Bill No. CS for CS for SB 714

Amendment No. \_\_\_\_

1 entity as a condition of initial or continued employment.

2       (3) When an employee, volunteer, administrator, or  
3 owner of a facility is the subject of ~~has~~ a confirmed report  
4 of adult abuse, neglect, or exploitation, as defined in s.  
5 415.102, ~~or child abuse or neglect, as defined in s. 415.503,~~  
6 and the protective investigator knows that the individual is  
7 an employee, volunteer, administrator, or owner of a facility,  
8 the agency shall be notified of the confirmed report.

9       Section 42. Section 400.4176, Florida Statutes, is  
10 amended to read:

11       400.4176 Notice of change of administrator.--If,  
12 during the period for which a license is issued, the owner  
13 changes administrators, the owner must notify the agency of  
14 the change within 10 45 days ~~thereof~~ and ~~must~~ provide  
15 documentation within 90 days that the new administrator has  
16 completed the applicable core educational requirements under  
17 s. 400.452. Background screening shall be completed on any  
18 new administrator ~~to establish that the individual is of~~  
19 ~~suitable character~~ as specified in s. 400.4174 ss.  
20 ~~400.411(2)(c) and 400.456.~~

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