

By Senator Forman

32-33B-98

1 A bill to be entitled
2 An act relating to health quality assurance;
3 amending s. 20.42, F.S.; deleting the
4 responsibility of the Division of Health Policy
5 and Cost Control within the Agency for Health
6 Care Administration for reviewing hospital
7 budgets; abolishing the Health Care Board;
8 amending s. 112.0455, F.S., relating to the
9 Drug-Free Workplace Act; requiring background
10 screening for an applicant for licensure of
11 certain laboratories; authorizing the use of
12 certain body hair for drug testing; amending s.
13 154.304, F.S., relating to health care for
14 indigent persons; revising definitions;
15 amending s. 381.026, F.S.; requiring that a
16 patient's bill of rights be made available by a
17 facility that provides emergency services or
18 outpatient services; amending s. 381.0261,
19 F.S.; requiring that a patient's bill of rights
20 includes additional information; creating s.
21 381.60225, F.S.; requiring background screening
22 for an applicant for certification to operate
23 an organ procurement organization, a tissue
24 bank, or an eye bank; amending s. 383.302,
25 F.S., relating to the regulation of birth
26 centers; revising definitions to reflect the
27 transfer of regulatory authority from the
28 Department of Health and Rehabilitative
29 Services to the Agency for Health Care
30 Administration; amending s. 383.305, F.S.;
31 requiring background screening for an applicant

1 for licensure of a birth center; amending ss.
2 383.308, 383.309, 383.31, 383.312, 383.313,
3 383.318, 383.32, 383.324, 383.325, 383.327,
4 383.33, 383.331, F.S., relating to the
5 regulation of birth centers; conforming
6 provisions to reflect the transfer of
7 regulatory authority to the Agency for Health
8 Care Administration; amending s. 390.015, F.S.;
9 requiring background screening for an applicant
10 for licensure of an abortion clinic; amending
11 s. 391.206, F.S.; requiring background
12 screening for an applicant for licensure to
13 operate a pediatric extended care center;
14 amending s. 393.063, F.S., relating to
15 developmental disabilities; providing a
16 definition; amending s. 393.067, F.S.;
17 requiring background screening for an applicant
18 for licensure to operate an intermediate care
19 facility for the developmentally disabled;
20 amending s. 394.4787, F.S., relating to the
21 regulation of mental health facilities;
22 conforming a cross-reference to changes made by
23 the act; amending s. 394.4788, F.S., relating
24 to mental health services; updating provisions
25 relating to duties of the agency formerly
26 performed by the Health Care Cost Containment
27 Board; amending s. 394.67, F.S., relating to
28 community alcohol, drug abuse, and mental
29 health services; revising definitions; amending
30 s. 394.875, F.S.; requiring background
31 screening for an applicant for licensure of a

1 crisis stabilization unit or residential
2 treatment facility; amending ss. 394.876,
3 394.877, 394.878, 394.879, 394.90, 394.902,
4 394.903, 394.904, 394.907, F.S., relating to
5 the regulation of mental health facilities;
6 conforming provisions to reflect the transfer
7 of regulatory authority to the Agency for
8 Health Care Administration; amending s.
9 395.002, F.S., relating to hospital licensing
10 and regulation; providing definitions; creating
11 s. 395.0055, F.S.; requiring background
12 screening for an applicant for licensure of a
13 facility operated under ch. 395, F.S.; amending
14 s. 395.0163, F.S.; requiring that the agency
15 review plans and specifications for certain
16 outpatient facilities; amending s. 395.0193,
17 F.S.; revising certain requirements for peer
18 review of physicians; providing requirements
19 for reporting disciplinary actions to the
20 agency; authorizing the agency to levy
21 administrative fines; amending s. 395.0197,
22 F.S.; revising provisions relating to internal
23 risk management; defining the term "adverse
24 incident"; requiring certain reports to the
25 agency; including minors in provisions relating
26 to notification of sexual misconduct or abuse;
27 requiring facility corrective action plans;
28 providing penalties; amending s. 395.0199,
29 F.S.; requiring background screening for an
30 applicant for registration as a utilization
31 review agent; amending s. 395.1055, F.S.;

1 requiring the Agency for Health Care
2 Administration to adopt rules to assure that,
3 following a disaster, licensed hospital
4 facilities are capable of serving as shelters
5 only for patients, staff, and the families of
6 staff; providing for applicability; providing
7 for a report by the agency to the Governor and
8 Legislature; transferring, renumbering, and
9 amending ss. 626.941, 626.942, 626.943,
10 626.944, 626.945, F.S., relating to the
11 regulation of health care risk managers;
12 conforming provisions to reflect the transfer
13 of regulatory authority from the Department of
14 Insurance to the Agency for Health Care
15 Administration; providing for the Health Care
16 Risk Manager Advisory Council to be appointed
17 by the Director of Health Care Administration;
18 amending s. 395.401, F.S.; providing for
19 certain reports relating to charity care and
20 formerly made to the Health Care Board to be
21 made to the agency; amending s. 395.602, F.S.,
22 relating to rural hospitals; conforming a
23 cross-reference to changes made by the act;
24 amending s. 395.701, F.S., relating to the
25 Public Medical Assistance Trust Fund; revising
26 definitions; amending s. 400.051, F.S.;
27 conforming a cross-reference; amending s.
28 400.071, F.S.; requiring background screening
29 for an applicant for licensure of a nursing
30 home; amending s. 400.411, F.S.; requiring
31 background screening for an applicant for

1 licensure of an assisted living facility;
2 amending ss. 400.414, 400.417, 400.4174,
3 400.4176, F.S., relating to the regulation of
4 assisted living facilities; providing
5 additional grounds for denial, revocation, or
6 suspension of a license; requiring background
7 screening for employees hired on or after a
8 specified date; amending ss. 400.461, 400.462,
9 F.S., relating to the regulation of home health
10 agencies; conforming a cross-reference;
11 revising definitions; amending s. 400.464,
12 F.S.; revising licensure requirements for home
13 health agencies; specifying services that are
14 exempt from the licensure requirements;
15 amending s. 400.471, F.S.; requiring background
16 screening for an applicant for licensure of a
17 home health agency; revising requirements for
18 license renewal; amending s. 400.474, F.S.;
19 providing penalties for operating a home health
20 agency without a license; amending s. 400.484,
21 F.S.; providing a schedule for the agency to
22 use in imposing fines for various classes of
23 violations; amending s. 400.487, F.S.; revising
24 requirements for patient assessment and
25 services; amending s. 400.491, F.S.; revising
26 requirements for maintaining patient records;
27 amending s. 400.497, F.S.; revising
28 requirements for the agency in establishing
29 minimum standards; amending s. 400.506, F.S.;
30 requiring background screening for an applicant
31 for licensure of a nurse registry; amending s.

1 400.509, F.S.; requiring background screening
2 for an applicant for registration as a service
3 provider who is exempt from licensure; amending
4 s. 400.512, F.S.; revising screening
5 requirements for home health agency personnel;
6 amending s. 400.555, F.S.; requiring background
7 screening for an applicant for licensure of an
8 adult day care center; creating s. 400.5572,
9 F.S.; requiring background screening for
10 employees of an adult day care center hired on
11 or after a specified date; amending s. 400.606,
12 F.S.; requiring background screening for an
13 applicant for licensure of a hospice; amending
14 s. 400.619, F.S.; revising background screening
15 requirements for an applicant for licensure of
16 an adult family care home; providing screening
17 requirements for designated relief persons;
18 amending s. 400.702, F.S.; deleting a
19 requirement that certain intermediate-level
20 care facilities accept only certain low-income
21 residents who receive subsidized housing
22 vouchers; amending s. 400.801, F.S.; requiring
23 background screening for an applicant for
24 licensure of a home for special services;
25 amending s. 400.805, F.S.; requiring background
26 screening for an applicant for licensure of a
27 transitional living facility; amending ss.
28 408.05, 408.061, 408.062, 408.063, F.S.,
29 relating to the State Center for Health
30 Statistics and the collection and dissemination
31 of health care information; updating provisions

1 to reflect the assumption by the Agency for
2 Health Care Administration of duties formerly
3 performed by the Health Care Board and the
4 former Department of Health and Rehabilitative
5 Services; authorizing the agency to conduct
6 data-based studies and make recommendations;
7 deleting obsolete provisions; amending s.
8 408.07, F.S.; deleting definitions made
9 obsolete by the repeal of requirements with
10 respect to hospital budget reviews; amending s.
11 408.08, F.S.; deleting provisions requiring the
12 Health Care Board to review the budgets of
13 certain hospitals; deleting requirements that a
14 hospital file budget letters; deleting certain
15 administrative penalties; amending s. 408.40,
16 F.S.; removing a reference to the duties of the
17 Public Counsel with respect to hospital budget
18 review proceedings; amending ss. 409.2673,
19 409.9113, F.S., relating to health care
20 programs for low-income persons and the
21 disproportionate share program for teaching
22 hospitals; updating provisions to reflect the
23 abolishment of the Health Care Cost Containment
24 Board and the assumption of its duties by the
25 agency; amending ss. 409.905, 440.13, 455.654,
26 F.S., relating to mandatory Medicaid services,
27 medical services and supplies, and referring
28 health care providers; conforming
29 cross-references to changes made by the act;
30 amending ss. 458.331, 459.015, 461.013,
31 468.505, F.S., relating to disciplinary action

1 against certain medical professionals and
2 activities exempt from regulation; updating
3 provisions and conforming cross-references;
4 amending s. 483.101, F.S.; requiring background
5 screening for an applicant for licensure of a
6 clinical laboratory; amending s. 483.106, F.S.,
7 relating to a certificate of exemption;
8 correcting terminology; amending s. 483.30,
9 F.S.; requiring background screening for an
10 applicant for licensure of a multiphasic health
11 testing center; amending ss. 641.55, 766.1115,
12 F.S., relating to internal risk management
13 programs and contracts with governmental
14 contractors; updating provisions and conforming
15 cross-references to changes made by the act;
16 repealing ss. 395.403(9), 407.61, 408.003,
17 408.072, 408.085, 455.661, F.S., relating to
18 reimbursement of state-sponsored trauma
19 centers, studies by the Health Care Board,
20 appointment of members to the Health Care
21 Board, review of hospital budgets, budget
22 reviews of comprehensive inpatient
23 rehabilitation hospitals, and designated health
24 care services; providing for retroactive
25 application of provisions of the act relating
26 to repeal of review of hospital budgets;
27 transferring the internal risk manager
28 licensure program from the Department of
29 Insurance to the Agency for Health Care
30 Administration; providing appropriations and
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1 authorizing positions; providing effective
2 dates.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Paragraphs (b), (d), and (e) of subsection
7 (2) and subsections (6) and (7) of section 20.42, Florida
8 Statutes, are amended to read:

9 20.42 Agency for Health Care Administration.--There is
10 created the Agency for Health Care Administration within the
11 Department of Business and Professional Regulation. The agency
12 shall be a separate budget entity, and the director of the
13 agency shall be the agency head for all purposes. The agency
14 shall not be subject to control, supervision, or direction by
15 the Department of Business and Professional Regulation in any
16 manner, including, but not limited to, personnel, purchasing,
17 transactions involving real or personal property, and
18 budgetary matters.

19 (2) ORGANIZATION OF THE AGENCY.--The agency shall be
20 organized as follows:

21 (b) The Division of Health Policy and Cost Control,
22 which shall be responsible for health policy, the State Center
23 for Health Statistics, the development of The Florida Health
24 Plan, certificate of need, ~~hospital budget review~~, state and
25 local health planning under s. 408.033, and research and
26 analysis.

27 ~~(d) The Health Care Board, which shall be responsible~~
28 ~~for hospital budget review, nursing home financial analysis,~~
29 ~~and special studies as assigned by the secretary or the~~
30 ~~Legislature.~~

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1 (d)~~(e)~~ The Division of Administrative Services, which
2 shall be responsible for revenue management, budget,
3 personnel, and general services.

4 ~~(6) HEALTH CARE BOARD.--The Health Care Board shall be~~
5 ~~composed of 11 members appointed by the Governor, subject to~~
6 ~~confirmation by the Senate. The members of the board shall~~
7 ~~biennially elect a chairperson and a vice chairperson from its~~
8 ~~membership. The board shall be responsible for hospital budget~~
9 ~~review, nursing home financial review and analysis, and~~
10 ~~special studies requested by the Governor, the Legislature, or~~
11 ~~the director.~~

12 ~~(6)(7) DEPUTY DIRECTOR OF ADMINISTRATIVE~~
13 ~~SERVICES.--The director shall appoint a Deputy Director of~~
14 ~~Administrative Services who shall serve at the pleasure of,~~
15 ~~and be directly responsible to, the director. The deputy~~
16 ~~director shall be responsible for the Division of~~
17 ~~Administrative Services.~~

18 Section 2. Subsection (12) and paragraph (b) of
19 subsection (13) of section 112.0455, Florida Statutes, are
20 amended to read:

21 112.0455 Drug-Free Workplace Act.--

22 (12) DRUG-TESTING STANDARDS; LABORATORIES.--

23 (a) A laboratory may analyze initial or confirmation
24 drug specimens only if:

25 1. The laboratory is licensed and approved by the
26 Agency for Health Care Administration using criteria
27 established by the United States Department of Health and
28 Human Services as general guidelines for modeling the state
29 drug testing program. Each applicant for licensure must comply
30 with the following requirements:

1 a. Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening, in
3 accordance with the level 2 standards for screening set forth
4 in chapter 435, of the managing employee, or other similarly
5 titled individual responsible for the daily operation of the
6 laboratory, and of the financial officer, or other similarly
7 titled individual who is responsible for the financial
8 operation of the laboratory, including billings for services.
9 The applicant must comply with the procedures for level 2
10 background screening as set forth in chapter 435.

11 b. The agency may require background screening of any
12 other individual who is an applicant if the agency has a
13 reasonable basis for believing that he or she has been
14 convicted of an offense prohibited under the level 2 standards
15 for screening set forth in chapter 435.

16 c. Proof of compliance with the level 2 background
17 screening requirements of chapter 435 which has been submitted
18 within the previous 5 years in compliance with any other
19 health care licensure requirements of this state is acceptable
20 in fulfillment of screening requirements.

21 d. A provisional license may be granted to an
22 applicant when each individual required by this section to
23 undergo background screening has met the standards for the
24 abuse registry background check and the Department of Law
25 Enforcement background check, but the agency has not yet
26 received background screening results from the Federal Bureau
27 of Investigation, or a request for a disqualification
28 exemption has been submitted to the agency as set forth in
29 chapter 435 but a response has not yet been issued. A license
30 may be granted to the applicant upon the agency's receipt of a
31 report of the results of the Federal Bureau of Investigation

1 background screening for each individual required by this
2 section to undergo background screening which confirms that
3 all standards have been met, or upon the granting of a
4 disqualification exemption by the agency as set forth in
5 chapter 435. Any other person who is required to undergo level
6 2 background screening may serve in his or her capacity
7 pending the agency's receipt of the report from the Federal
8 Bureau of Investigation. However, the person may not continue
9 to serve if the report indicates any violation of background
10 screening standards and a disqualification exemption has not
11 been requested of and granted by the agency as set forth in
12 chapter 435.

13 e. Each applicant must submit to the agency, with its
14 application, a description and explanation of any exclusions,
15 permanent suspensions, or terminations of the applicant from
16 the Medicare or Medicaid programs. Proof of compliance with
17 the requirements for disclosure of ownership and control
18 interests under the Medicaid or Medicare programs shall be
19 accepted in lieu of this submission.

20 f. Each applicant must submit to the agency a
21 description and explanation of any conviction of an offense
22 prohibited under the level 2 standards of chapter 435 by a
23 member of the board of directors of the applicant, its
24 officers, or any individual owning 5 percent or more of the
25 applicant. This requirement does not apply to a director of a
26 not-for-profit corporation or organization if the director
27 serves solely in a voluntary capacity for the corporation or
28 organization, does not regularly take part in the day-to-day
29 operational decisions of the corporation or organization,
30 receives no remuneration for his or her services on the
31 corporation or organization's board of directors, and has no

1 financial interest and has no family members with a financial
2 interest in the corporation or organization, provided that the
3 director and the not-for-profit corporation or organization
4 include in the application a statement affirming that the
5 director's relationship to the corporation satisfies the
6 requirements of this sub-subparagraph.

7 g. A license may not be granted to any applicant if
8 the applicant or managing employee has been found guilty of,
9 regardless of adjudication, or has entered a plea of nolo
10 contendere or guilty to, any offense prohibited under the
11 level 2 standards for screening set forth in chapter 435,
12 unless an exemption from disqualification has been granted by
13 the agency as set forth in chapter 435.

14 h. The agency may deny or revoke licensure if the
15 applicant:

16 (I) Has falsely represented a material fact in the
17 application required by sub-subparagraph e. or
18 sub-subparagraph f., or has omitted any material fact from the
19 application required by sub-subparagraph e. or
20 sub-subparagraph f.; or

21 (II) Has had prior action taken against the applicant
22 under the Medicaid or Medicare program as set forth in
23 sub-subparagraph e.

24 i. An application for license renewal must contain the
25 information required under sub-subparagraphs e. and f.

26 2. The laboratory has written procedures to ensure
27 chain of custody.

28 3. The laboratory follows proper quality control
29 procedures, including, but not limited to:

30 a. The use of internal quality controls including the
31 use of samples of known concentrations which are used to check

1 the performance and calibration of testing equipment, and
2 periodic use of blind samples for overall accuracy.

3 b. An internal review and certification process for
4 drug test results, conducted by a person qualified to perform
5 that function in the testing laboratory.

6 c. Security measures implemented by the testing
7 laboratory to preclude adulteration of specimens and drug test
8 results.

9 d. Other necessary and proper actions taken to ensure
10 reliable and accurate drug test results.

11 (b) A laboratory shall disclose to the employer a
12 written test result report within 7 working days after receipt
13 of the sample. All laboratory reports of a drug test result
14 shall, at a minimum, state:

15 1. The name and address of the laboratory which
16 performed the test and the positive identification of the
17 person tested.

18 2. Positive results on confirmation tests only, or
19 negative results, as applicable.

20 3. A list of the drugs for which the drug analyses
21 were conducted.

22 4. The type of tests conducted for both initial and
23 confirmation tests and the minimum cutoff levels of the tests.

24 5. Any correlation between medication reported by the
25 employee or job applicant pursuant to subparagraph (8)(b)2.
26 and a positive confirmed drug test result.

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28 No report shall disclose the presence or absence of any drug
29 other than a specific drug and its metabolites listed pursuant
30 to this section.

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1 (c) The laboratory shall submit to the Agency for
2 Health Care Administration a monthly report with statistical
3 information regarding the testing of employees and job
4 applicants. The reports shall include information on the
5 methods of analyses conducted, the drugs tested for, the
6 number of positive and negative results for both initial and
7 confirmation tests, and any other information deemed
8 appropriate by the Agency for Health Care Administration. No
9 monthly report shall identify specific employees or job
10 applicants.

11 (d) Laboratories shall provide technical assistance to
12 the employer, employee, or job applicant for the purpose of
13 interpreting any positive confirmed test results which could
14 have been caused by prescription or nonprescription medication
15 taken by the employee or job applicant.

16 (13) RULES.--

17 (b) The following standards and procedures are
18 established related to hair testing:

19 1. Hair cutoff levels for initial drug-screening
20 tests.--The following initial cutoff levels must be used when
21 screening hair specimens to determine whether they are
22 negative for these drugs or their metabolites:

23 a. Marijuana: 10 pg/10 mg of hair;

24 b. Cocaine: 5 ng/10 mg of hair; and

25 c. Opiate/synthetic narcotics and metabolites: 5
26 ng/10 mg of hair. For the purpose of this section, opiate and
27 metabolites include the following:

28 (I) Codeine;

29 (II) Heroin, monoacetylmorphine ~~monoacetylmorphine~~
30 (heroin metabolites);

31 (III) Morphine;

1 d. Phencyclidine: 3 ng/10 mg of hair; and
2 e. Amphetamines: 5 ng/10 mg of hair. For the purpose
3 of this section, amphetamines include the following:
4 (I) Amphetamines;
5 (II) Methamphetamine;
6 2. Hair cutoff levels for drug confirmation testing.--
7 a. All specimens identified as positive on the initial
8 test must be confirmed using gas chromatography/mass
9 spectrometry (GC/MS), mass spectrometry/mass spectrometry
10 (MS/MS) at the following cutoff levels for these drugs on
11 their metabolites. All confirmations must be by quantitative
12 analysis.
13 (I) Marijuana metabolites: 1 pg/10 mg of hair
14 (Delta-9-tetrahydrocannabinol-0-carboxylic acid).
15 (II) Cocaine: must be at or above 5 ng/10 mg of hair.
16 Cocaine metabolites if present will be recorded at the
17 following minimum levels:
18 (A) Benzoyllecgonine at 1 ng/10 mg of hair; and
19 (B) Cocaethlyene at 1 ng/10 mg of hair.
20 (III) Opiate/synthetic narcotics and metabolites: 5
21 ng/10 mg of hair; opiate and metabolites include the
22 following:
23 (A) Codeine;
24 (B) 6-Monoacetylmorphine (heroin metabolite); and
25 (C) Morphine.
26 (IV) Phencyclidine: 3 ng/10 mg of hair.
27 (V) Amphetamines: 5 ng/10 mg of hair. For the
28 purpose of this section, amphetamines include the following:
29 (A) Amphetamines; and
30 (B) Methamphetamines.
31

1 b. All hair specimens undergoing confirmation must be
2 decontaminated using a wash procedure which has been published
3 in the peer-reviewed literature which, as a minimum, has an
4 initial 15-minute organic solvent wash followed by multiple
5 (minimum of three) 30-minute aqueous washes.

6 c. After hair is washed, the drug entrapped in the
7 hair is released either by digestion (chemical or enzymatic)
8 or by multiple solvent extractions. The resulting digest or
9 pooled solvent extracts are then screened and confirmed by
10 approved methods.

11 d. All confirmation analysis methods must eliminate
12 the melanin fraction of the hair before analysis. If a
13 nondigestion method is used, the laboratory must present
14 published data in the peer-reviewed literature from a large
15 population study which indicates that the method of extraction
16 does not possess a statistically significant hair-color bias.

17 e. Additional hair samples may be collected to
18 reconfirm the initial report. The recollected sample shall be
19 retested as specified; however, the confirmation analysis must
20 be performed even if the screening test is negative. A second
21 positive report must be made if the drug concentration in the
22 digest by confirmation methods exceeds the limit of
23 quantitation of the testing laboratory's method. A second test
24 must be offered to anyone disputing a positive hair test
25 result.

26 3. Hair specimen collection procedures.--

27 a. Designation of collection site.--Each drug-testing
28 program shall have one or more designated collection sites
29 which have all necessary personnel, materials, equipment,
30 facilities, and supervision to provide for the collection,
31

1 security, temporary storage, and shipping or transportation of
2 hair specimens to a licensed drug-testing facility.

3 b. Security.--While security is important with any
4 collection, in the case of hair, only the temporary storage
5 area in the designated collection site needs to be secure.

6 c. Chain of custody.--Chain-of-custody standardized
7 forms shall be properly executed by authorized collection site
8 personnel upon receipt of specimens. Handling and
9 transportation of hair specimens from one authorized
10 individual or place to another shall always be accomplished
11 through chain-of-custody procedures. Every effort shall be
12 made to minimize the number of persons handling specimens.

13 d. Access to authorized personnel only.--The hair
14 collection site need be off limits to unauthorized personnel
15 only during the actual collection of specimens.

16 e. Privacy.--Procedures for collecting hair should be
17 performed on one individual at a time to prevent substitutions
18 or interference with the collection of reliable samples.
19 Procedures must ensure that the hair collection does not
20 infringe on the individual's privacy.

21 f. Integrity and identity of specimen.--Precautions
22 must be taken to ensure that the root end of a hair specimen
23 is indicated for the laboratory which performs the testing.
24 The maximum length of hair that shall be tested is 3.9 cm
25 distal from the head, which on average represents a 3-month
26 time window. The following minimum precautions must be taken
27 when collecting a hair specimen to ensure that specimens are
28 obtained and correctly identified:

29 (I) When an individual arrives at the collection site,
30 the collection site personnel shall request the individual to
31 present photo identification. If the individual does not have

1 proper photo identification, the collection site personnel
2 shall contact the supervisor of the individual, the
3 coordinator of the drug testing program, or any other employer
4 official who can positively identify the individual. If the
5 individual's identity cannot be established, the collection
6 site personnel shall not proceed with the collection.

7 (II) If the individual fails to arrive at the assigned
8 time, the collection site personnel shall contact the
9 appropriate authority to obtain guidance on the action to be
10 taken.

11 (III) The collection site personnel shall note any
12 unusual behavior or appearance on the chain-of-custody form.

13 (IV) Hair shall be cut as close to the scalp or body,
14 excluding the pubic area, as possible. Upon taking the
15 specimen from the individual, the collection site personnel
16 shall determine that it contains approximately 1/2 -inch of
17 hair when fanned out on a ruler (about 40 mg of hair).

18 (V) Both the individual being tested and the
19 collection site personnel shall keep the specimen in view at
20 all times prior to the specimen container being sealed with a
21 tamper-resistant seal and labeled with the individual's
22 specimen number and other required information.

23 (VI) The collection site personnel shall label the
24 container which contains the hair with the date, the
25 individual's specimen number, and any other identifying
26 information provided or required by the drug-testing program.

27 (VII) The individual shall initial the container for
28 the purpose of certifying that it is the specimen collected
29 from the individual.

30 (VIII) The collection site personnel shall indicate on
31 the chain-of-custody form all information identifying the

1 specimen. The collection site personnel shall sign the
2 chain-of-custody form next to the identifying information or
3 the chain of custody on the specimen container.

4 (IX) The individual must be asked to read and sign a
5 statement certifying that the specimen identified as having
6 been collected from the individual is in fact that specimen
7 the individual provided.

8 (X) The collection site personnel shall complete the
9 chain-of-custody form.

10 g. Collection control.--To the maximum extent
11 possible, collection site personnel shall keep the
12 individual's specimen container within sight both before and
13 after collection. After the specimen is collected, it must be
14 properly sealed and labeled. An approved chain-of-custody form
15 must be used for maintaining control and accountability of
16 each specimen from the point of collection to final
17 disposition of the specimen. The date and purpose must be
18 documented on an approved chain-of-custody form each time a
19 specimen is handled or transferred and every individual in the
20 chain must be identified. Every effort must be made to
21 minimize the number of persons handling specimens.

22 h. Transportation to the testing facility.--Collection
23 site personnel shall arrange to transport the collected
24 specimens to the drug-testing facility. The specimens shall be
25 placed in containers which shall be securely sealed to
26 eliminate the possibility of undetected tampering. The
27 collection site personnel shall ensure that the
28 chain-of-custody documentation is sealed separately from the
29 specimen and placed inside the container sealed for transfer
30 to the drug-testing facility.

31 4. Quality assurance and quality control.--

1 a. Quality assurance.--Testing facilities shall have a
2 quality assurance program which encompasses all aspects of the
3 testing process, including, but not limited to, specimen
4 acquisition, chain of custody, security and reporting of
5 results, initial and confirmatory testing, and validation of
6 analytical procedures. Quality assurance procedures shall be
7 designed, implemented, and reviewed to monitor the conduct of
8 each step of the process of testing for drugs.

9 b. Quality control.--

10 (I) Each analytical run of specimens to be screened
11 shall include:

12 (A) Hair specimens certified to contain no drug;

13 (B) Hair specimens fortified with known standards; and

14 (C) Positive controls with the drug or metabolite at
15 or near the threshold (cutoff).

16 (II) In addition, with each batch of samples, a
17 sufficient number of standards shall be included to ensure and
18 document the linearity of the assay method over time in the
19 concentration area of the cutoff. After acceptable values are
20 obtained for the known standards, those values must be used to
21 calculate sample data. Implementation of procedures to ensure
22 that carryover does not contaminate the testing of an
23 individual's specimen must be documented. A minimum of 5
24 percent of all test samples must be quality control specimens.
25 The testing facility's quality control samples, prepared from
26 fortified hair samples of determined concentration, must be
27 included in the run and must appear as normal samples to
28 drug-screen testing facility analysis. One percent of each
29 run, with a minimum of at least one sample, must be the
30 testing facility's own quality control samples.

31 5.a. Proficiency testing.--

1 (I) Each hair drug-testing facility shall enroll and
2 demonstrate satisfactory performance in a proficiency-testing
3 program established by an independent group.

4 (II) The drug-testing facility shall maintain records
5 which document the handling, processing, and examination of
6 all proficiency-testing samples for a minimum of 2 years from
7 the date of testing.

8 (III) The drug-testing facility shall ensure that
9 proficiency-testing samples are analyzed at least three times
10 each year using the same techniques as those employed for
11 unknown specimens.

12 (IV) The proficiency-testing samples must be included
13 with the routine sample run and tested with the same frequency
14 as unknown samples by the individuals responsible for testing
15 unknown specimens.

16 (V) The drug-testing facility may not engage in
17 discussions or communications concerning proficiency-testing
18 results with other drug-testing facilities, nor may they send
19 proficiency-testing samples or portions of the samples to
20 another drug-testing facility for analysis.

21 b. Satisfactory performance.--

22 (I) The drug-testing facility shall maintain an
23 overall testing-event score equivalent to passing proficiency
24 scores for other drug-testing matrices.

25 (II) Failure to participate in a proficiency-testing
26 event shall result in a score of 0 percent for that testing
27 event.

28 c. Unsuccessful performance.--Failure to achieve
29 satisfactory performance in two consecutive testing events, or
30 two out of three consecutive testing events, is determined to
31 be unsuccessful performance.

1
2 This section shall not be construed to eliminate the
3 bargainable rights as provided in the collective bargaining
4 process where applicable.

5 Section 3. Subsections (1) and (8) of section 154.304,
6 Florida Statutes, are amended to read:

7 154.304 Definitions.--For the purpose of this act:

8 (1) "Agency" means the Agency for Health Care
9 Administration~~"Board" means the Health Care Board as~~
10 ~~established in chapter 408.~~

11 (8) "Participating hospital" means a hospital which is
12 eligible to receive reimbursement under the provisions of this
13 act because it has been certified by the agency board as
14 having met its charity care obligation and has either:

15 (a) A formal signed agreement with a county or
16 counties to treat such county's indigent patients; or

17 (b) Demonstrated to the agency board that at least 2.5
18 percent of its uncompensated charity care, as reported to the
19 board, is generated by out-of-county residents.

20 Section 4. Subsection (6) of section 381.026, Florida
21 Statutes, is amended to read:

22 381.026 Florida Patient's Bill of Rights and
23 Responsibilities.--

24 (6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.--Any
25 health care provider who treats a patient in an office or any
26 health care facility licensed under chapter 395 that provides
27 emergency services and care or outpatient services and care to
28 a patient, or admits and treats a patient, shall adopt and
29 make available to the patient public, in writing, a statement
30 of the rights and responsibilities of patients, including:
31

1 SUMMARY OF THE FLORIDA PATIENT'S BILL
2 OF RIGHTS AND RESPONSIBILITIES
3

4 Florida law requires that your health care provider or
5 health care facility recognize your rights while you are
6 receiving medical care and that you respect the health care
7 provider's or health care facility's right to expect certain
8 behavior on the part of patients. You may request a copy of
9 the full text of this law from your health care provider or
10 health care facility. A summary of your rights and
11 responsibilities follows:

12 A patient has the right to be treated with courtesy and
13 respect, with appreciation of his or her individual dignity,
14 and with protection of his or her need for privacy.

15 A patient has the right to a prompt and reasonable
16 response to questions and requests.

17 A patient has the right to know who is providing
18 medical services and who is responsible for his or her care.

19 A patient has the right to know what patient support
20 services are available, including whether an interpreter is
21 available if he or she does not speak English.

22 A patient has the right to know what rules and
23 regulations apply to his or her conduct.

24 A patient has the right to be given by the health care
25 provider information concerning diagnosis, planned course of
26 treatment, alternatives, risks, and prognosis.

27 A patient has the right to refuse any treatment, except
28 as otherwise provided by law.

29 A patient has the right to be given, upon request, full
30 information and necessary counseling on the availability of
31 known financial resources for his or her care.

1 A patient who is eligible for Medicare has the right to
2 know, upon request and in advance of treatment, whether the
3 health care provider or health care facility accepts the
4 Medicare assignment rate.

5 A patient has the right to receive, upon request, prior
6 to treatment, a reasonable estimate of charges for medical
7 care.

8 A patient has the right to receive a copy of a
9 reasonably clear and understandable, itemized bill and, upon
10 request, to have the charges explained.

11 A patient has the right to impartial access to medical
12 treatment or accommodations, regardless of race, national
13 origin, religion, physical handicap, or source of payment.

14 A patient has the right to treatment for any emergency
15 medical condition that will deteriorate from failure to
16 provide treatment.

17 A patient has the right to know if medical treatment is
18 for purposes of experimental research and to give his or her
19 consent or refusal to participate in such experimental
20 research.

21 A patient has the right to express grievances regarding
22 any violation of his or her rights, as stated in Florida law,
23 through the grievance procedure of the health care provider or
24 health care facility which served him or her and to the
25 appropriate state licensing agency.

26 A patient is responsible for providing to the health
27 care provider, to the best of his or her knowledge, accurate
28 and complete information about present complaints, past
29 illnesses, hospitalizations, medications, and other matters
30 relating to his or her health.

31

1 A patient is responsible for reporting unexpected
2 changes in his or her condition to the health care provider.

3 A patient is responsible for reporting to the health
4 care provider whether he or she comprehends a contemplated
5 course of action and what is expected of him or her.

6 A patient is responsible for following the treatment
7 plan recommended by the health care provider.

8 A patient is responsible for keeping appointments and,
9 when he or she is unable to do so for any reason, for
10 notifying the health care provider or health care facility.

11 A patient is responsible for his or her actions if he
12 or she refuses treatment or does not follow the health care
13 provider's instructions.

14 A patient is responsible for assuring that the
15 financial obligations of his or her health care are fulfilled
16 as promptly as possible.

17 A patient is responsible for following health care
18 facility rules and regulations affecting patient care and
19 conduct.

20 Section 5. Section 381.0261, Florida Statutes, is
21 amended to read:

22 381.0261 ~~Distribution of~~ Summary of patient's bill of
23 rights; distribution; penalty.--

24 (1) The Agency for Health Care Administration
25 ~~Department of Health and Rehabilitative Services~~ shall have
26 printed and made continuously available to health care
27 facilities licensed under chapter 395, physicians licensed
28 under chapter 458, osteopathic physicians licensed under
29 chapter 459, and podiatrists licensed under chapter 461 a
30 summary of the Florida Patient's Bill of Rights and
31 Responsibilities. In adopting and making available to

1 ~~patients public~~ the summary of the Florida Patient's Bill of
2 Rights and Responsibilities, health care providers and health
3 care facilities are not limited to the format in which the
4 Agency for Health Care Administration ~~Department of Health and~~
5 ~~Rehabilitative Services~~ prints and distributes the summary.

6 (2) Health care providers and health care facilities,
7 if requested, shall inform patients of the address and
8 telephone number of each state agency responsible for
9 responding to patient complaints about a health care provider
10 or health care facility's alleged noncompliance with state
11 licensing requirements established pursuant to law.

12 (3) Health care facilities shall adopt policies and
13 procedures to ensure that inpatients are provided the
14 opportunity during the course of admission to receive
15 information regarding their rights and how to file complaints
16 with the facility and appropriate state agencies.

17 (4) An administrative fine may be imposed by the
18 agency when any health care provider or health care facility
19 fails to make available to patients a summary of their rights,
20 pursuant to s. 381.026 and this section. Initial nonwillful
21 violations are subject to corrective action and are not
22 subject to an administrative fine. The agency may levy a fine
23 of up to \$5,000 for repeated nonwillful violations, and up to
24 \$25,000 for intentional and willful violations. Each
25 intentional and willful violation constitutes a separate
26 violation and is subject to a separate fine.

27 (5) In determining the amount of fine to be levied for
28 a violation, as provided in subsection (4), the following
29 factors shall be considered:

30 (a) The scope and severity of the violation, including
31 the number of patients found to have not received notice of

1 patient rights, and whether the failure to provide notice to
2 patients was willful.

3 (b) Actions taken by the health care provider or
4 health care facility to correct the violations or to remedy
5 complaints.

6 (c) Any previous violations of this section by the
7 health care provider or health care facility.

8 Section 6. Section 381.60225, Florida Statutes, is
9 created to read:

10 381.60225 Background screening.--

11 (1) Each applicant for certification must comply with
12 the following requirements:

13 (a) Upon receipt of a completed, signed, and dated
14 application, the Agency for Health Care Administration shall
15 require background screening, in accordance with the level 2
16 standards for screening set forth in chapter 435, of the
17 managing employee, or other similarly titled individual
18 responsible for the daily operation of the organization,
19 agency, or entity, and financial officer, or other similarly
20 titled individual who is responsible for the financial
21 operation of the organization, agency, or entity, including
22 billings for services. The applicant must comply with the
23 procedures for level 2 background screening as set forth in
24 chapter 435.

25 (b) The Agency for Health Care Administration may
26 require background screening of any other individual who is an
27 applicant if the Agency for Health Care Administration has a
28 reasonable basis for believing that he or she has been
29 convicted of a crime or has committed any other offense
30 prohibited under the level 2 standards for screening set forth
31 in chapter 435.

1 (c) Proof of compliance with the level 2 background
2 screening requirements of chapter 435 which has been submitted
3 within the previous 5 years in compliance with any other
4 health care licensure requirements of this state is acceptable
5 in fulfillment of the requirements of paragraph (a).

6 (d) A provisional certification may be granted to the
7 organization, agency, or entity when each individual required
8 by this section to undergo background screening has met the
9 standards for the abuse registry background check and the
10 Department of Law Enforcement background check, but the agency
11 has not yet received background screening results from the
12 Federal Bureau of Investigation, or a request for a
13 disqualification exemption has been submitted to the agency as
14 set forth in chapter 435 but a response has not yet been
15 issued. A standard certification may be granted to the
16 organization, agency, or entity upon the agency's receipt of a
17 report of the results of the Federal Bureau of Investigation
18 background screening for each individual required by this
19 section to undergo background screening which confirms that
20 all standards have been met, or upon the granting of a
21 disqualification exemption by the agency as set forth in
22 chapter 435. Any other person who is required to undergo level
23 2 background screening may serve in his or her capacity
24 pending the agency's receipt of the report from the Federal
25 Bureau of Investigation. However, the person may not continue
26 to serve if the report indicates any violation of background
27 screening standards and a disqualification exemption has not
28 been requested of and granted by the agency as set forth in
29 chapter 435.

30 (e) Each applicant must submit to the agency, with its
31 application, a description and explanation of any exclusions,

1 permanent suspensions, or terminations of the applicant from
2 the Medicare or Medicaid programs. Proof of compliance with
3 the requirements for disclosure of ownership and control
4 interests under the Medicaid or Medicare programs shall be
5 accepted in lieu of this submission.

6 (f) Each applicant must submit to the agency a
7 description and explanation of any conviction of an offense
8 prohibited under the level 2 standards of chapter 435 by a
9 member of the board of directors of the applicant, its
10 officers, or any individual owning 5 percent or more of the
11 applicant. This requirement does not apply to a director of a
12 not-for-profit corporation or organization if the director
13 serves solely in a voluntary capacity for the corporation or
14 organization, does not regularly take part in the day-to-day
15 operational decisions of the corporation or organization,
16 receives no remuneration for his or her services on the
17 corporation or organization's board of directors, and has no
18 financial interest and has no family members with a financial
19 interest in the corporation or organization, provided that the
20 director and the not-for-profit corporation or organization
21 include in the application a statement affirming that the
22 director's relationship to the corporation satisfies the
23 requirements of this paragraph.

24 (g) The agency may not certify any organization,
25 agency, or entity if any applicant or managing employee has
26 been found guilty of, regardless of adjudication, or has
27 entered a plea of nolo contendere or guilty to, any offense
28 prohibited under the level 2 standards for screening set forth
29 in chapter 435, unless an exemption from disqualification has
30 been granted by the agency as set forth in chapter 435.

31

1 (h) The agency may deny or revoke certification of any
2 organization, agency, or entity if the applicant:

3 1. Has falsely represented a material fact in the
4 application required by paragraph (e) or paragraph (f), or has
5 omitted any material fact from the application required by
6 paragraph (e) or paragraph (f); or

7 2. Has had prior action taken against the applicant
8 under the Medicaid or Medicare program as set forth in
9 paragraph (e).

10 (i) An application for renewal of certification must
11 contain the information required under paragraphs (e) and (f).

12 (2) An organ procurement organization, tissue bank, or
13 eye bank certified by the Agency for Health Care
14 Administration in accordance with ss. 381.6021 and 381.6022 is
15 not subject to the requirements of this section if the entity
16 has no direct patient-care responsibilities and does not bill
17 patients or insurers directly for services under the Medicare
18 or Medicaid programs, or for privately insured services.

19 Section 7. Section 383.302, Florida Statutes, is
20 amended to read:

21 383.302 Definitions of terms used in ss.
22 383.30-383.335.--As used in ss. 383.30-383.335, ~~unless the~~
23 ~~context otherwise requires,~~the term:

24 (1) "Agency" means the Agency for Health Care
25 Administration.

26 (2)(1) "Birth center" means any facility, institution,
27 or place, which is not an ambulatory surgical center or a
28 hospital or in a hospital, in which births are planned to
29 occur away from the mother's usual residence following a
30 normal, uncomplicated, low-risk pregnancy.

31

1 (3)~~(2)~~ "Clinical staff" means individuals employed
2 full time or part time by a birth center who are licensed or
3 certified to provide care at childbirth.

4 (4)~~(3)~~ "Consultant" means a physician licensed
5 pursuant to chapter 458 or chapter 459 who agrees to provide
6 advice and services to a birth center and who either:

7 (a) Is certified or eligible for certification by the
8 American Board of Obstetrics and Gynecology, or

9 (b) Has hospital obstetrical privileges.

10 ~~(4) "Department" means the Department of Health.~~

11 (5) "Governing body" means any individual, group,
12 corporation, or institution which is responsible for the
13 overall operation and maintenance of a birth center.

14 (6) "Governmental unit" means the state or any county,
15 municipality, or other political subdivision or any
16 department, division, board, or other agency of any of the
17 foregoing.

18 (7) "Licensed facility" means a facility licensed in
19 accordance with s. 383.305.

20 (8) "Low-risk pregnancy" means a pregnancy which is
21 expected to result in an uncomplicated birth, as determined
22 through risk criteria developed by rule of the department, and
23 which is accompanied by adequate prenatal care.

24 (9) "Person" means any individual, firm, partnership,
25 corporation, company, association, institution, or joint stock
26 association and means any legal successor of any of the
27 foregoing.

28 (10) "Premises" means those buildings, beds, and
29 facilities located at the main address of the licensee and all
30 other buildings, beds, and facilities for the provision of
31 maternity care located in such reasonable proximity to the

1 main address of the licensee as to appear to the public to be
2 under the dominion and control of the licensee.

3 Section 8. Section 383.305, Florida Statutes, is
4 amended to read:

5 383.305 Licensure; issuance, renewal, denial,
6 suspension, revocation; fees; background screening.--

7 (1)(a) Upon receipt of an application for a license
8 and the license fee, the agency ~~department~~ shall issue a
9 license if the applicant and facility have received all
10 approvals required by law and meet the requirements
11 established under ss. 383.30-383.335 and by rules promulgated
12 hereunder.

13 (b) A provisional license may be issued to any birth
14 center that is in substantial compliance with ss.
15 383.30-383.335 and with the rules of the agency ~~department~~. A
16 provisional license may be granted for a period of no more
17 than 1 year from the effective date of rules adopted by the
18 agency ~~department~~, shall expire automatically at the end of
19 its term, and may not be renewed.

20 (c) A license, unless sooner suspended or revoked,
21 automatically expires 1 year from its date of issuance and is
22 renewable upon application for renewal and payment of the fee
23 prescribed, provided the applicant and the birth center meet
24 the requirements established under ss. 383.30-383.335 and by
25 rules promulgated hereunder. A complete application for
26 renewal of a license shall be made 90 days prior to expiration
27 of the license on forms provided by the agency ~~department~~.

28 (2) An application for a license, or renewal thereof,
29 shall be made to the agency ~~department~~ upon forms provided by
30 it and shall contain such information as the agency ~~department~~

31

1 reasonably requires, which may include affirmative evidence of
2 ability to comply with applicable laws and rules.

3 (3)(a) Each application for a birth center license, or
4 renewal thereof, shall be accompanied by a license fee. Fees
5 shall be established by rule of the agency ~~department~~. Such
6 fees are payable to the agency ~~department~~ and shall be
7 deposited in a trust fund administered by the agency
8 ~~department~~, to be used for the sole purpose of carrying out
9 the provisions of ss. 383.30-383.335.

10 (b) The fees established pursuant to ss.
11 383.30-383.335 shall be based on actual costs incurred by the
12 agency ~~department~~ in the administration of its duties under
13 such sections.

14 (4) Each license is valid only for the person or
15 governmental unit to whom or which it is issued; is not
16 subject to sale, assignment, or other transfer, voluntary or
17 involuntary; and is not valid for any premises other than
18 those for which it was originally issued.

19 (5) Each license shall be posted in a conspicuous
20 place on the licensed premises.

21 (6) Whenever the agency ~~department~~ finds that there
22 has been a substantial failure to comply with the requirements
23 established under ss. 383.30-383.335 or in rules adopted under
24 those sections promulgated hereunder, it is authorized to
25 deny, suspend, or revoke a license.

26 (7) Each applicant for licensure must comply with the
27 following requirements:

28 (a) Upon receipt of a completed, signed, and dated
29 application, the agency shall require background screening, in
30 accordance with the level 2 standards for screening set forth
31 in chapter 435, of the managing employee, or other similarly

1 titled individual who is responsible for the daily operation
2 of the center, and of the financial officer, or other
3 similarly titled individual who is responsible for the
4 financial operation of the center, including billings for
5 patient care and services. The applicant must comply with the
6 procedures for level 2 background screening as set forth in
7 chapter 435.

8 (b) The agency may require background screening of any
9 other individual who is an applicant if the agency has a
10 reasonable basis for believing that he or she has been
11 convicted of a crime or has committed any other offense
12 prohibited under the level 2 standards for screening set forth
13 in chapter 435.

14 (c) Proof of compliance with the level 2 background
15 screening requirements of chapter 435 which has been submitted
16 within the previous 5 years in compliance with any other
17 health care licensure requirements of this state is acceptable
18 in fulfillment of the requirements of paragraph (a).

19 (d) A provisional license may be granted to an
20 applicant when each individual required by this section to
21 undergo background screening has met the standards for the
22 abuse registry background check and the Department of Law
23 Enforcement background check, but the agency has not yet
24 received background screening results from the Federal Bureau
25 of Investigation, or a request for a disqualification
26 exemption has been submitted to the agency as set forth in
27 chapter 435 but a response has not yet been issued. A standard
28 license may be granted to the applicant upon the agency's
29 receipt of a report of the results of the Federal Bureau of
30 Investigation background screening for each individual
31 required by this section to undergo background screening which

1 confirms that all standards have been met, or upon the
2 granting of a disqualification exemption by the agency as set
3 forth in chapter 435. Any other person who is required to
4 undergo level 2 background screening may serve in his or her
5 capacity pending the agency's receipt of the report from the
6 Federal Bureau of Investigation. However, the person may not
7 continue to serve if the report indicates any violation of
8 background screening standards and a disqualification
9 exemption has not been requested of and granted by the agency
10 as set forth in chapter 435.

11 (e) Each applicant must submit to the agency, with its
12 application, 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 the requirements for disclosure of ownership and control
16 interests under the Medicaid or Medicare programs shall be
17 accepted in lieu of this submission.

18 (f) Each applicant must submit to the agency a
19 description and explanation of any conviction of an offense
20 prohibited under the level 2 standards of chapter 435 by a
21 member of the board of directors of the applicant, its
22 officers, or any individual owning 5 percent or more of the
23 applicant. This requirement does not apply to a director of a
24 not-for-profit corporation or organization if the director
25 serves solely in a voluntary capacity for the corporation or
26 organization, does not regularly take part in the day-to-day
27 operational decisions of the corporation or organization,
28 receives no remuneration for his or her services on the
29 corporation or organization's board of directors, and has no
30 financial interest and has no family members with a financial
31 interest in the corporation or organization, provided that the

1 director and the not-for-profit corporation or organization
2 include in the application a statement affirming that the
3 director's relationship to the corporation satisfies the
4 requirements of this paragraph.

5 (g) A license may not be granted to an applicant if
6 the applicant or managing employee has been found guilty of,
7 regardless of adjudication, or has entered a plea of nolo
8 contendere or guilty to, any offense prohibited under the
9 level 2 standards for screening set forth in chapter 435,
10 unless an exemption from disqualification has been granted by
11 the agency as set forth in chapter 435.

12 (h) The agency may deny or revoke licensure if the
13 applicant:

14 1. Has falsely represented a material fact in the
15 application required by paragraph (e) or paragraph (f), or has
16 omitted any material fact from the application required by
17 paragraph (e) or paragraph (f); or

18 2. Has had prior action taken against the applicant
19 under the Medicaid or Medicare program as set forth in
20 paragraph (e).

21 (i) An application for license renewal must contain
22 the information required under paragraphs (e) and (f).

23 Section 9. Paragraph (a) of subsection (2) of section
24 383.308, Florida Statutes, is amended to read:

25 383.308 Birth center facility and equipment;
26 requirements.--

27 (2)(a) A birth center shall be equipped with those
28 items needed to provide low-risk maternity care and readily
29 available equipment to initiate emergency procedures in
30 life-threatening events to mother and baby, as defined by rule
31 of the agency ~~department~~.

1 Section 10. Section 383.309, Florida Statutes, is
2 amended to read:

3 383.309 Minimum standards for birth centers; rules and
4 enforcement.--

5 (1) The agency ~~department~~ shall adopt, ~~amend,~~
6 ~~promulgate,~~ and enforce rules to administer ss. 383.30-383.335
7 ~~implement the provisions of this act~~, which rules shall
8 include, but are not limited to, reasonable and fair minimum
9 standards for ensuring that:

10 (a) Sufficient numbers and qualified types of
11 personnel and occupational disciplines are available at all
12 times to provide necessary and adequate patient care and
13 safety.

14 (b) Infection control, housekeeping, sanitary
15 conditions, disaster plan, and medical record procedures that
16 will adequately protect patient care and provide safety are
17 established and implemented.

18 (c) Construction, maintenance, repair, and renovation
19 of licensed facilities are governed by rules of the agency
20 ~~department~~ which use ~~utilize~~ the most recently adopted,
21 nationally recognized codes wherever feasible. Facilities
22 licensed under s. 383.305 are exempt from local construction
23 standards to the extent that those standards are in conflict
24 with the standards adopted by rule of the agency ~~department~~.

25 (d) Licensed facilities are established, organized,
26 and operated consistent with established programmatic
27 standards.

28 (2) Any licensed facility that ~~which~~ is in operation
29 at the time of adoption ~~promulgation~~ of any applicable rule
30 under ss. 383.30-383.335 shall be given a reasonable time
31 under the particular circumstances, not to exceed 1 year after

1 ~~from~~ the date of such adoption promulgation, within which to
2 comply with such rule.

3 Section 11. Paragraph (b) of subsection (1) and
4 paragraph (b) of subsection (2) of section 383.31, Florida
5 Statutes, are amended to read:

6 383.31 Selection of clients; informed consent.--

7 (1)

8 (b) The criteria for the selection of clients and the
9 establishment of risk status shall be defined by rule of the
10 agency department.

11 (2)

12 (b) The agency department shall develop a client
13 informed-consent form to be used by the center to inform the
14 client of the benefits and risks related to childbirth outside
15 a hospital.

16 Section 12. Subsection (1) of section 383.312, Florida
17 Statutes, is amended to read:

18 383.312 Prenatal care of birth center clients.--

19 (1) A birth center shall ensure that its clients have
20 adequate prenatal care, as defined by the agency department,
21 and shall ensure that serological tests are administered as
22 required by this chapter.

23 Section 13. Subsection (1) of section 383.313, Florida
24 Statutes, is amended to read:

25 383.313 Performance of laboratory and surgical
26 services; use of anesthetic and chemical agents.--

27 (1) LABORATORY SERVICES.--A birth center may collect
28 specimens for those tests that are requested under protocol.
29 A birth center may perform simple laboratory tests, as defined
30 by rule of the agency department, and is exempt from the
31 requirements of chapter 483, provided no more than five

1 physicians are employed by the birth center and testing is
2 conducted exclusively in connection with the diagnosis and
3 treatment of clients of the birth center.

4 Section 14. Subsection (1) of section 383.318, Florida
5 Statutes, is amended to read:

6 383.318 Postpartum care for birth center clients and
7 infants.--

8 (1) A mother and her infant shall be dismissed from
9 the birth center within 24 hours after the birth of the
10 infant, except in unusual circumstances as defined by rule of
11 the agency ~~department~~. If a mother or infant is retained at
12 the birth center for more than 24 hours after the birth, a
13 report shall be filed with the agency ~~department~~ within 48
14 hours of the birth describing the circumstances and the
15 reasons for the decision.

16 Section 15. Subsection (3) of section 383.32, Florida
17 Statutes, is amended to read:

18 383.32 Clinical records.--

19 (3) Clinical records shall be kept confidential in
20 accordance with s. 455.241 and exempt from the provisions of
21 s. 119.07(1). A client's clinical records shall be open to
22 inspection only under the following conditions:

23 (a) A consent to release information has been signed
24 by the client; or

25 (b) The review is made by the agency ~~department~~ for a
26 licensure survey or complaint investigation.

27 Section 16. Section 383.324, Florida Statutes, is
28 amended to read:

29 383.324 Inspections and investigations; inspection
30 fees.--

31

1 (1) The agency ~~department~~ shall make or cause to be
2 made such inspections and investigations as it deems
3 necessary.

4 (2) Each facility licensed under s. 383.305 shall pay
5 to the agency ~~department~~, at the time of inspection, an
6 inspection fee established by rule of the agency ~~department~~.

7 (3) The agency ~~department~~ shall coordinate all
8 periodic inspections for licensure made by the agency
9 ~~department~~ to ensure that the cost to the facility of such
10 inspections and the disruption of services by such inspections
11 is minimized.

12 Section 17. Subsection (3) of section 383.325, Florida
13 Statutes, is amended to read:

14 383.325 Inspection reports.--

15 (3) A licensed facility shall, upon the request of any
16 person who has completed a written application with intent to
17 be admitted to such facility or any person who is a patient of
18 such facility, or any relative, spouse, or guardian of any
19 such person, furnish to the requester a copy of the last
20 inspection report issued by the agency ~~department~~ or an
21 accrediting organization, whichever is most recent, pertaining
22 to the licensed facility, as provided in subsection (1),
23 provided the person requesting such report agrees to pay a
24 reasonable charge to cover copying costs.

25 Section 18. Subsection (4) of section 383.327, Florida
26 Statutes, is amended to read:

27 383.327 Birth and death records; reports.--

28 (4) A report shall be submitted annually to the agency
29 ~~department~~. The contents of the report shall be prescribed by
30 rule of the agency ~~department~~.

31

1 Section 19. Section 383.33, Florida Statutes, is
2 amended to read:

3 383.33 Administrative penalties; emergency orders;
4 moratorium on admissions.--

5 (1)(a) The agency ~~department~~ may deny, revoke, or
6 suspend a license, or impose an administrative fine not to
7 exceed \$500 per violation per day, for the violation of any
8 provision of ss. 383.30-383.335 or any rule adopted under ss.
9 383.30-383.335 ~~promulgated hereunder~~. Each day of violation
10 constitutes a separate violation and is subject to a separate
11 fine.

12 (b) In determining the amount of the fine to be levied
13 for a violation, as provided in paragraph (a), the following
14 factors shall be considered:

15 1. The severity of the violation, including the
16 probability that death or serious harm to the health or safety
17 of any person will result or has resulted; the severity of the
18 actual or potential harm; and the extent to which the
19 provisions of ss. 383.30-383.335 ~~this act~~ were violated.

20 2. Actions taken by the licensee to correct the
21 violations or to remedy complaints.

22 3. Any previous violations by the licensee.

23 (c) All amounts collected pursuant to this section
24 shall be deposited into a trust fund administered by the
25 agency ~~department~~ to be used for the sole purpose of carrying
26 out the provisions of ss. 383.30-383.335.

27 (2) The agency ~~department~~ may issue an emergency order
28 immediately suspending or revoking a license when it
29 determines that any condition in the licensed facility
30 presents a clear and present danger to the public health and
31 safety.

1 (3) The agency ~~department~~ may impose an immediate
2 moratorium on elective admissions to any licensed facility,
3 building or portion thereof, or service when the agency
4 ~~department~~ determines that any condition in the facility
5 presents a threat to the public health or safety.

6 Section 20. Section 383.331, Florida Statutes, is
7 amended to read:

8 383.331 Injunctive relief.--Notwithstanding the
9 existence or pursuit of any other remedy, the agency
10 ~~department~~ may maintain an action in the name of the state for
11 injunction or other process to enforce the provisions of ss.
12 383.30-383.335 and the rules adopted ~~promulgated~~ under such
13 sections.

14 Section 21. Subsection (3) is added to section
15 390.015, Florida Statutes, to read:

16 390.015 Application for license.--

17 (3) Each applicant for licensure must comply with the
18 following requirements:

19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the managing employee, or other similarly
23 titled individual who is responsible for the daily operation
24 of the clinic, and financial officer, or other similarly
25 titled individual who is responsible for the financial
26 operation of the clinic, including billings for patient care
27 and services. The applicant must comply with the procedures
28 for level 2 background screening as set forth in chapter 435.

29 (b) The agency may require background screening of any
30 other individual who is an applicant if the agency has a
31 reasonable basis for believing that he or she has been

1 convicted of a crime or has committed any other offense
2 prohibited under the level 2 standards for screening set forth
3 in chapter 435.

4 (c) Proof of compliance with the level 2 background
5 screening requirements of chapter 435 which has been submitted
6 within the previous 5 years in compliance with any other
7 health care licensure requirements of this state is acceptable
8 in fulfillment of the requirements of paragraph (a).

9 (d) A provisional license may be granted to an
10 applicant when each individual required by this section to
11 undergo background screening has met the standards for the
12 abuse registry background check and the Department of Law
13 Enforcement background check, but the agency has not yet
14 received background screening results from the Federal Bureau
15 of Investigation, or a request for a disqualification
16 exemption has been submitted to the agency as set forth in
17 chapter 435 but a response has not yet been issued. A standard
18 license may be granted to the applicant upon the agency's
19 receipt of a report of the results of the Federal Bureau of
20 Investigation background screening for each individual
21 required by this section to undergo background screening which
22 confirms that all standards have been met, or upon the
23 granting of a disqualification exemption by the agency as set
24 forth in chapter 435. Any other person who is required to
25 undergo level 2 background screening may serve in his or her
26 capacity pending the agency's receipt of the report from the
27 Federal Bureau of Investigation. However, the person may not
28 continue to serve if the report indicates any violation of
29 background screening standards and a disqualification
30 exemption has not been requested of and granted by the agency
31 as set forth in chapter 435.

1 (e) Each applicant must submit to the agency, with its
2 application, a description and explanation of any exclusions,
3 permanent suspensions, or terminations of the applicant from
4 the Medicare or Medicaid programs. Proof of compliance with
5 the requirements for disclosure of ownership and control
6 interests under the Medicaid or Medicare programs shall be
7 accepted in lieu of this submission.

8 (f) Each applicant must submit to the agency a
9 description and explanation of any conviction of an offense
10 prohibited under the level 2 standards of chapter 435 by a
11 member of the board of directors of the applicant, its
12 officers, or any individual owning 5 percent or more of the
13 applicant. This requirement does not apply to a director of a
14 not-for-profit corporation or organization if the director
15 serves solely in a voluntary capacity for the corporation or
16 organization, does not regularly take part in the day-to-day
17 operational decisions of the corporation or organization,
18 receives no remuneration for his or her services on the
19 corporation or organization's board of directors, and has no
20 financial interest and has no family members with a financial
21 interest in the corporation or organization, provided that the
22 director and the not-for-profit corporation or organization
23 include in the application a statement affirming that the
24 director's relationship to the corporation satisfies the
25 requirements of this paragraph.

26 (g) A license may not be granted to an applicant if
27 the applicant or managing employee has been found guilty of,
28 regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

3 (h) The agency may deny or revoke licensure if the
4 applicant:

5 1. Has falsely represented a material fact in the
6 application required by paragraph (e) or paragraph (f), or has
7 omitted any material fact from the application required by
8 paragraph (e) or paragraph (f); or

9 2. Has had prior action taken against the applicant
10 under the Medicaid or Medicare program as set forth in
11 paragraph (e).

12 (i) An application for license renewal must contain
13 the information required under paragraphs (e) and (f).

14 Section 22. Subsection (5) is added to section
15 391.206, Florida Statutes, to read:

16 391.206 Initial application for license.--

17 (5) Each applicant for licensure must comply with the
18 following requirements:

19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the operator, and of the financial officer,
23 or other similarly titled individual who is responsible for
24 the financial operation of the center, including billings for
25 patient care and services. The applicant must comply with the
26 procedures for level 2 background screening as set forth in
27 chapter 435.

28 (b) The agency may require background screening of any
29 other individual who is an applicant if the agency has a
30 reasonable basis for believing that he or she has been
31 convicted of a crime or has committed any other offense

1 prohibited under the level 2 standards for screening set forth
2 in chapter 435.

3 (c) Proof of compliance with the level 2 background
4 screening requirements of chapter 435 which has been submitted
5 within the previous 5 years in compliance with any other
6 health care licensure requirements of this state is acceptable
7 in fulfillment of the requirements of paragraph (a).

8 (d) A provisional license may be granted to an
9 applicant when each individual required by this section to
10 undergo background screening has met the standards for the
11 abuse registry background check and the Department of Law
12 Enforcement background check, but the agency has not yet
13 received background screening results from the Federal Bureau
14 of Investigation, or a request for a disqualification
15 exemption has been submitted to the agency as set forth in
16 chapter 435 but a response has not yet been issued. A standard
17 license may be granted to the applicant upon the agency's
18 receipt of a report of the results of the Federal Bureau of
19 Investigation background screening for each individual
20 required by this section to undergo background screening which
21 confirms that all standards have been met, or upon the
22 granting of a disqualification exemption by the agency as set
23 forth in chapter 435. Any other person who is required to
24 undergo level 2 background screening may serve in his or her
25 capacity pending the agency's receipt of the report from the
26 Federal Bureau of Investigation. However, the person may not
27 continue to serve if the report indicates any violation of
28 background screening standards and a disqualification
29 exemption has not been requested of and granted by the agency
30 as set forth in chapter 435.

31

1 (e) Each applicant must submit to the agency, with its
2 application, a description and explanation of any exclusions,
3 permanent suspensions, or terminations of the applicant from
4 the Medicare or Medicaid programs. Proof of compliance with
5 the requirements for disclosure of ownership and control
6 interests under the Medicaid or Medicare programs shall be
7 accepted in lieu of this submission.

8 (f) Each applicant must submit to the agency a
9 description and explanation of any conviction of an offense
10 prohibited under the level 2 standards of chapter 435 by a
11 member of the board of directors of the applicant, its
12 officers, or any individual owning 5 percent or more of the
13 applicant. This requirement does not apply to a director of a
14 not-for-profit corporation or organization if the director
15 serves solely in a voluntary capacity for the corporation or
16 organization, does not regularly take part in the day-to-day
17 operational decisions of the corporation or organization,
18 receives no remuneration for his or her services on the
19 corporation or organization's board of directors, and has no
20 financial interest and has no family members with a financial
21 interest in the corporation or organization, provided that the
22 director and the not-for-profit corporation or organization
23 include in the application a statement affirming that the
24 director's relationship to the corporation satisfies the
25 requirements of this paragraph.

26 (g) A license may not be granted to an applicant if
27 the applicant or managing employee has been found guilty of,
28 regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
31

1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

3 (h) The agency may deny or revoke licensure if the
4 applicant:

5 1. Has falsely represented a material fact in the
6 application required by paragraph (e) or paragraph (f), or has
7 omitted any material fact from the application required by
8 paragraph (e) or paragraph (f); or

9 2. Has had prior action taken against the applicant
10 under the Medicaid or Medicare program as set forth in
11 paragraph (e).

12 (i) An application for license renewal must contain
13 the information required under paragraphs (e) and (f).

14 Section 23. Present subsections (2) through (53) of
15 section 393.063, Florida Statutes, are renumbered as
16 subsections (3) through (54), respectively, and a new
17 subsection (2) is added to that section, to read:

18 393.063 Definitions.--For the purposes of this
19 chapter:

20 (2) "Agency" means the Agency for Health Care
21 Administration.

22 Section 24. Present subsections (6) through (18) of
23 section 393.067, Florida Statutes, are renumbered as
24 subsections (7) through (19), respectively, and a new
25 subsection (6) is added to that section, to read:

26 393.067 Licensure of residential facilities and
27 comprehensive transitional education programs.--

28 (6) Each applicant for licensure as an intermediate
29 care facility for the developmentally disabled must comply
30 with the following requirements:

31

1 (a) Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening, in
3 accordance with the level 2 standards for screening set forth
4 in chapter 435, of the managing employee, or other similarly
5 titled individual who is responsible for the daily operation
6 of the facility, and of the financial officer, or other
7 similarly titled individual who is responsible for the
8 financial operation of the center, including billings for
9 resident care and services. The applicant must comply with
10 the procedures for level 2 background screening as set forth
11 in chapter 435.

12 (b) The agency may require background screening of any
13 other individual who is an applicant if the agency has a
14 reasonable basis for believing that he or she has been
15 convicted of a crime or has committed any other offense
16 prohibited under the level 2 standards for screening set forth
17 in chapter 435.

18 (c) Proof of compliance with the level 2 background
19 screening requirements of chapter 435 which has been submitted
20 within the previous 5 years in compliance with any other
21 health care licensure requirements of this state is acceptable
22 in fulfillment of the requirements of paragraph (a).

23 (d) A provisional license may be granted to an
24 applicant when each individual required by this section to
25 undergo background screening has met the standards for the
26 abuse registry background check and the Department of Law
27 Enforcement background check, but the agency has not yet
28 received background screening results from the Federal Bureau
29 of Investigation, or a request for a disqualification
30 exemption has been submitted to the agency as set forth in
31 chapter 435 but a response has not yet been issued. A standard

1 license may be granted to the applicant upon the agency's
2 receipt of a report of the results of the Federal Bureau of
3 Investigation background screening for each individual
4 required by this section to undergo background screening which
5 confirms that all standards have been met, or upon the
6 granting of a disqualification exemption by the agency as set
7 forth in chapter 435. Any other person who is required to
8 undergo level 2 background screening may serve in his or her
9 capacity pending the agency's receipt of the report from the
10 Federal Bureau of Investigation. However, the person may not
11 continue to serve if the report indicates any violation of
12 background screening standards and a disqualification
13 exemption has not been requested of and granted by the agency
14 as set forth in chapter 435.

15 (e) Each applicant must submit to the agency, with its
16 application, a description and explanation of any exclusions,
17 permanent suspensions, or terminations of the applicant from
18 the Medicare or Medicaid programs. Proof of compliance with
19 the requirements for disclosure of ownership and control
20 interests under the Medicaid or Medicare programs shall be
21 accepted in lieu of this submission.

22 (f) Each applicant must submit to the agency a
23 description and explanation of any conviction of an offense
24 prohibited under the level 2 standards of chapter 435 by a
25 member of the board of directors of the applicant, its
26 officers, or any individual owning 5 percent or more of the
27 applicant. This requirement does not apply to a director of a
28 not-for-profit corporation or organization if the director
29 serves solely in a voluntary capacity for the corporation or
30 organization, does not regularly take part in the day-to-day
31 operational decisions of the corporation or organization,

1 receives no remuneration for his or her services on the
2 corporation or organization's board of directors, and has no
3 financial interest and has no family members with a financial
4 interest in the corporation or organization, provided that the
5 director and the not-for-profit corporation or organization
6 include in the application a statement affirming that the
7 director's relationship to the corporation satisfies the
8 requirements of this paragraph.

9 (g) A license may not be granted to an applicant if
10 the applicant or managing employee has been found guilty of,
11 regardless of adjudication, or has entered a plea of nolo
12 contendere or guilty to, any offense prohibited under the
13 level 2 standards for screening set forth in chapter 435,
14 unless an exemption from disqualification has been granted by
15 the agency as set forth in chapter 435.

16 (h) The agency may deny or revoke licensure if the
17 applicant:

18 1. Has falsely represented a material fact in the
19 application required by paragraph (e) or paragraph (f), or has
20 omitted any material fact from the application required by
21 paragraph (e) or paragraph (f); or

22 2. Has had prior action taken against the applicant
23 under the Medicaid or Medicare program as set forth in
24 paragraph (e).

25 (i) An application for license renewal must contain
26 the information required under paragraphs (e) and (f).

27 Section 25. Subsection (7) of section 394.4787,
28 Florida Statutes, is amended to read:

29 394.4787 Definitions.--As used in this section and ss.
30 394.4786, 394.4788, and 394.4789:

31

1 (7) "Specialty psychiatric hospital" means a hospital
2 licensed by the agency pursuant to s. 395.002(28)~~s.~~
3 ~~395.002(27)~~ as a specialty psychiatric hospital.

4 Section 26. Subsections (2) and (3) of section
5 394.4788, Florida Statutes, are amended to read:

6 394.4788 Use of certain PMATF funds for the purchase
7 of acute care mental health services.--

8 (2) ~~By October 1, 1989, and annually thereafter,~~The
9 agency shall annually calculate a per diem reimbursement rate
10 for each specialty psychiatric hospital to be paid to the
11 specialty psychiatric hospitals for the provision of acute
12 mental health services provided to indigent mentally ill
13 patients who meet the criteria in subsection (1). After the
14 first rate period, providers shall be notified of new
15 reimbursement rates for each new state fiscal year by June 1.
16 The new reimbursement rates shall commence July 1.

17 (3) Reimbursement rates shall be calculated using the
18 most recent audited actual costs received by the agency. Cost
19 data received ~~as of August 15, 1989, and~~ each April 15
20 ~~thereafter~~ shall be used in the calculation of the rates.
21 Historic costs shall be inflated from the midpoint of a
22 hospital's fiscal year to the midpoint of the state fiscal
23 year. The inflation adjustment shall be made utilizing the
24 latest available projections as of March 31 for the Data
25 Resources Incorporated National and Regional Hospital Input
26 Price Indices as calculated by the Medicaid program office.

27 Section 27. Section 394.67, Florida Statutes, is
28 amended to read:

29 394.67 Definitions.--As ~~When~~ used in this part, ~~unless~~
30 ~~the context clearly requires otherwise,~~the term:

31

1 (1) "Advisory council" means a district advisory
2 council.

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

5 ~~(2) "Alcohol, drug abuse, and mental health planning~~
6 ~~council" or "council" means the council within a Department of~~
7 ~~Health and Rehabilitative Services district or subdistrict~~
8 ~~established in accordance with the provisions of this part for~~
9 ~~the purpose of assessing the alcohol, drug abuse, and mental~~
10 ~~health needs of the community and developing a plan to address~~
11 ~~those needs.~~

12 (3) "Applicant" means an individual applicant, or any
13 officer, director, agent, managing employee, or affiliated
14 person, or any partner or shareholder having an ownership
15 interest equal to a 5-percent or greater interest in the
16 corporation, partnership, or other business entity.

17 (4) "Client" means any individual receiving services
18 in any alcohol, drug abuse, or mental health facility,
19 program, or service, which facility, program, or service is
20 operated, funded, or regulated by the agency and the
21 department or regulated by the agency.

22 (5) "Crisis stabilization unit" means a program that
23 provides an alternative to inpatient hospitalization and that
24 provides brief, intensive services 24 hours a day, 7 days a
25 week, for mentally ill individuals who are in an acutely
26 disturbed state.

27 ~~(6)~~(3) "Department" means the Department of Children
28 and Family Health and Rehabilitative Services.

29 (7) "Director" means any member of the official board
30 of directors reported in the organization's annual corporate
31 report to the Florida Department of State, or, if no such

1 report is made, any member of the operating board of
2 directors. The term excludes members of separate, restricted
3 boards that serve only in an advisory capacity to the
4 operating board.

5 (8)(4) "District administrator" means the person
6 appointed by the Secretary of Children and Family Health and
7 ~~Rehabilitative~~ Services for the purpose of administering a
8 department service district as set forth in s. 20.19.

9 (9)(5) "District plan" or "plan" means the combined
10 district alcohol, drug abuse, and mental health plan ~~prepared~~
11 ~~by the alcohol, drug abuse, and mental health planning council~~
12 ~~and~~ approved by the district administrator and governing
13 bodies in accordance with this part.

14 (10)(6) "Federal funds" means funds from federal
15 sources for alcohol, drug abuse, or mental health facilities
16 and programs, exclusive of federal funds that are deemed
17 eligible by the Federal Government, and are eligible through
18 state regulation, for matching purposes.

19 (11)(7) "Governing body" means the chief legislative
20 body of a county, a board of county commissioners, or boards
21 of county commissioners in counties acting jointly, or their
22 counterparts in a charter government.

23 (12) "Licensed facility" means a facility licensed in
24 accordance with this chapter.

25 (13)(8) "Local matching funds" means funds received
26 from governing bodies of local government, including city
27 commissions, county commissions, district school boards,
28 special tax districts, private hospital funds, private gifts,
29 both individual and corporate, and bequests and funds received
30 from community drives or any other sources.

31

1 (14) "Managing employee" means the administrator or
2 other similarly titled individual who is responsible for the
3 daily operation of the facility.

4 (15)(9) "Patient fees" means compensation received by
5 a community alcohol, drug abuse, or mental health facility for
6 services rendered to clients from any source of funds,
7 including city, county, state, federal, and private sources.

8 (16) "Premises" means those buildings, beds, and
9 facilities located at the main address of the licensee and all
10 other buildings, beds, and facilities for the provision of
11 acute or residential care which are located in such reasonable
12 proximity to the main address of the licensee as to appear to
13 the public to be under the dominion and control of the
14 licensee.

15 (17)(10) "Program office" means the Alcohol, Drug
16 Abuse, and Mental Health Program Office of the Department of
17 Children and Family Health and Rehabilitative Services.

18 (18) "Residential treatment facility" means a facility
19 providing residential care and treatment to individuals
20 exhibiting symptoms of mental illness who are in need of a
21 24-hour-per-day, 7-day-a-week structured living environment,
22 respite care, or long-term community placement. The term also
23 includes short-term residential treatment facilities for
24 treatment of mental illness.

25 (19)(11) "Service district" means a community service
26 district as established by the department under s. 20.19 for
27 the purpose of providing community alcohol, drug abuse, and
28 mental health services.

29 (20)(12) "Service provider" means any agency in which
30 all or any portion of the programs or services set forth in s.
31 394.675 are carried out.

1 ~~(13) "Crisis stabilization unit" means a program~~
2 ~~providing an alternative to inpatient hospitalization and~~
3 ~~which provides brief, intensive services 24 hours a day, 7~~
4 ~~days a week, for mentally ill individuals who are in an~~
5 ~~acutely disturbed state.~~

6 ~~(14) "Residential treatment facility" means a facility~~
7 ~~providing residential care and treatment to individuals~~
8 ~~exhibiting symptoms of mental illness who are in need of a~~
9 ~~24-hour, 7-day-a-week structured living environment, respite~~
10 ~~care, or long-term community placement. Residential treatment~~
11 ~~facility shall also include short-term residential treatment~~
12 ~~facilities for treatment of mental illness.~~

13 ~~(15) "Licensed facility" means a facility licensed in~~
14 ~~accordance with this chapter.~~

15 ~~(16) "Premises" means those buildings, beds, and~~
16 ~~facilities located at the main address of the licensee and all~~
17 ~~other buildings, beds, and facilities for the provision of~~
18 ~~acute or residential care located in such reasonable proximity~~
19 ~~to the main address of the licensee as to appear to the public~~
20 ~~to be under the dominion and control of the licensee.~~

21 ~~(17) "Client" means any individual receiving services~~
22 ~~in any alcohol, drug abuse, or mental health facility,~~
23 ~~program, or service, which facility, program, or service is~~
24 ~~operated, funded, or regulated by the Department of Health and~~
25 ~~Rehabilitative Services.~~

26 Section 28. Section 394.875, Florida Statutes, is
27 amended to read:

28 394.875 Crisis stabilization units and residential
29 treatment facilities; authorized services; license required;
30 penalties.--

31

1 (1)(a) The purpose of a crisis stabilization unit is
2 to stabilize and redirect a client to the most appropriate and
3 least restrictive community setting available, consistent with
4 the client's needs. Crisis stabilization units may screen,
5 assess, and admit for stabilization persons who present
6 themselves to the unit and persons who are brought to the unit
7 under s. 394.463. Clients may be provided 24-hour
8 observation, medication prescribed by a physician or
9 psychiatrist, and other appropriate services. Crisis
10 stabilization units shall provide services regardless of the
11 client's ability to pay and shall be limited in size to a
12 maximum of 30 beds.

13 (b) The purpose of a residential treatment facility is
14 to be a part of a comprehensive treatment program for mentally
15 ill individuals in a community-based residential setting.

16 (2) ~~After July 1, 1986,~~It is unlawful for any entity
17 to hold itself out as a crisis stabilization unit or a
18 residential treatment facility, or to act as a crisis
19 stabilization unit or a residential treatment facility, unless
20 it is licensed by the agency department pursuant to this
21 chapter.

22 (3) Any person who violates subsection (2) is guilty
23 of a misdemeanor of the first degree, punishable as provided
24 in s. 775.082 or s. 775.083.

25 (4) The agency department may maintain an action in
26 circuit court to enjoin the unlawful operation of a crisis
27 stabilization unit or a residential treatment facility if the
28 agency department first gives the violator 14 days' notice of
29 its intention to maintain such action and if the violator
30 fails to apply for licensure within such 14-day period.

31 (5) Subsection (2) does not apply to:

1 (a) Homes for special services licensed under chapter
2 400;

3 (b) Nursing homes licensed under chapter 400; or

4 (c) Residential child caring facilities licensed under
5 s. 409.175.

6 (6) The agency ~~department~~ may establish multiple
7 license classifications for residential treatment facilities.

8 (7) The agency ~~may department~~ shall not issue a
9 license to a crisis stabilization unit unless the unit
10 receives state mental health funds and is affiliated with a
11 designated public receiving facility.

12 (8) The agency ~~department~~ may issue a license for a
13 crisis stabilization unit or short-term residential treatment
14 facility, certifying the number of authorized beds for such
15 facility as indicated by existing need and available
16 appropriations. The agency ~~department~~ may disapprove an
17 application for such a license if it determines that a
18 facility should not be licensed pursuant to the provisions of
19 this chapter. Any facility operating beds in excess of those
20 authorized by the agency ~~department~~ shall, upon demand of the
21 agency ~~department~~, reduce the number of beds to the authorized
22 number, forfeit its license, or provide evidence of a license
23 issued pursuant to chapter 395 for the excess beds.

24 (9) A children's crisis stabilization unit which does
25 not exceed 20 licensed beds and which provides separate
26 facilities or a distinct part of a facility, separate
27 staffing, and treatment exclusively for minors may be located
28 on the same premises as a crisis stabilization unit serving
29 adults. The agency ~~department~~ shall adopt ~~promulgate~~ rules
30 governing facility construction, staffing and licensure
31 requirements, and the operation of such units for minors.

1 (10) Notwithstanding the provisions of subsection (8),
2 crisis stabilization units may not exceed their licensed
3 capacity by more than 10 percent, nor may they exceed their
4 licensed capacity for more than 3 consecutive working days or
5 for more than 7 days in 1 month.

6 (11) Notwithstanding the other provisions of this
7 section, any facility licensed under chapters 396 and 397 for
8 detoxification, residential level I care, and outpatient
9 treatment may elect to license concurrently all of the beds at
10 such facility both for that purpose and as a long-term
11 residential treatment facility pursuant to this section, if
12 all of the following conditions are met:

13 (a) The licensure application is received by the
14 department prior to January 1, 1993.

15 (b) On January 1, 1993, the facility was licensed
16 under chapters 396 and 397 as a facility for detoxification,
17 residential level I care, and outpatient treatment of
18 substance abuse.

19 (c) The facility restricted its practice to the
20 treatment of law enforcement personnel for a period of at
21 least 12 months beginning after January 1, 1992.

22 (d) The number of beds to be licensed under chapter
23 394 is equal to or less than the number of beds licensed under
24 chapters 396 and 397 as of January 1, 1993.

25 (e) The licensee agrees in writing to a condition
26 placed upon the license that the facility will limit its
27 treatment exclusively to law enforcement personnel and their
28 immediate families who are seeking admission on a voluntary
29 basis and who are exhibiting symptoms of posttraumatic stress
30 disorder or other mental health problems, including drug or
31 alcohol abuse, which are directly related to law enforcement

1 work and which are amenable to verbal treatment therapies; the
2 licensee agrees to coordinate the provision of appropriate
3 postresidential care for discharged individuals; and the
4 licensee further agrees in writing that a failure to meet any
5 condition specified in this paragraph shall constitute grounds
6 for a revocation of the facility's license as a residential
7 treatment facility.

8 (f) The licensee agrees that the facility will meet
9 all licensure requirements for a residential treatment
10 facility, including minimum standards for compliance with
11 lifesafety requirements, except those licensure requirements
12 which are in express conflict with the conditions and other
13 provisions specified in this subsection.

14 (g) The licensee agrees that the conditions stated in
15 this subsection must be agreed to in writing by any person
16 acquiring the facility by any means.

17
18 Any facility licensed under this subsection is not required to
19 provide any services to any persons except those included in
20 the specified conditions of licensure, and is exempt from any
21 requirements related to the 60-day or greater average length
22 of stay imposed on community-based residential treatment
23 facilities otherwise licensed under this chapter.

24 (12) Each applicant for licensure must comply with the
25 following requirements:

26 (a) Upon receipt of a completed, signed, and dated
27 application, the agency shall require background screening, in
28 accordance with the level 2 standards for screening set forth
29 in chapter 435, of the managing employee and financial
30 officer, or other similarly titled individual who is
31 responsible for the financial operation of the facility,

1 including billings for client care and services. The applicant
2 must comply with the procedures for level 2 background
3 screening as set forth in chapter 435.

4 (b) The agency may require background screening of any
5 other individual who is an applicant if the agency has a
6 reasonable basis for believing that he or she has been
7 convicted of a crime or has committed any other offense
8 prohibited under the level 2 standards for screening set forth
9 in chapter 435.

10 (c) Proof of compliance with the level 2 background
11 screening requirements of chapter 435 which has been submitted
12 within the previous 5 years in compliance with any other
13 healthcare licensure requirements of this state is acceptable
14 in fulfillment of the requirements of paragraph (a).

15 (d) A provisional license may be granted to an
16 applicant when each individual required by this section to
17 undergo background screening has met the standards for the
18 abuse registry background check and the Department of Law
19 Enforcement background check, but the agency has not yet
20 received background screening results from the Federal Bureau
21 of Investigation, or a request for a disqualification
22 exemption has been submitted to the agency as set forth in
23 chapter 435 but a response has not yet been issued. A standard
24 license may be granted to the applicant upon the agency's
25 receipt of a report of the results of the Federal Bureau of
26 Investigation background screening for each individual
27 required by this section to undergo background screening which
28 confirms that all standards have been met, or upon the
29 granting of a disqualification exemption by the agency as set
30 forth in chapter 435. Any other person who is required to
31 undergo level 2 background screening may serve in his or her

1 capacity pending the agency's receipt of the report from the
2 Federal Bureau of Investigation. However, the person may not
3 continue to serve if the report indicates any violation of
4 background screening standards and a disqualification
5 exemption has not been requested of and granted by the agency
6 as set forth in chapter 435.

7 (e) Each applicant must submit to the agency, with its
8 application, a description and explanation of any exclusions,
9 permanent suspensions, or terminations of the applicant from
10 the Medicare or Medicaid programs. Proof of compliance with
11 the requirements for disclosure of ownership and control
12 interests under the Medicaid or Medicare programs shall be
13 accepted in lieu of this submission.

14 (f) Each applicant must submit to the agency a
15 description and explanation of any conviction of an offense
16 prohibited under the level 2 standards of chapter 435 by a
17 member of the board of directors of the applicant, its
18 officers, or any individual owning 5 percent or more of the
19 applicant. This requirement does not apply to a director of a
20 not-for-profit corporation or organization if the director
21 serves solely in a voluntary capacity for the corporation or
22 organization, does not regularly take part in the day-to-day
23 operational decisions of the corporation or organization,
24 receives no remuneration for his or her services on the
25 corporation or organization's board of directors, and has no
26 financial interest and has no family members with a financial
27 interest in the corporation or organization, provided that the
28 director and the not-for-profit corporation or organization
29 include in the application a statement affirming that the
30 director's relationship to the corporation satisfies the
31 requirements of this paragraph.

1 (g) A license may not be granted to an applicant if
2 the applicant or managing employee has been found guilty of,
3 regardless of adjudication, or has entered a plea of nolo
4 contendere or guilty to, any offense prohibited under the
5 level 2 standards for screening set forth in chapter 435,
6 unless an exemption from disqualification has been granted by
7 the agency as set forth in chapter 435.

8 (h) The agency may deny or revoke licensure if the
9 applicant:

10 1. Has falsely represented a material fact in the
11 application required by paragraph (e) or paragraph (f), or has
12 omitted any material fact from the application required by
13 paragraph (e) or paragraph (f); or

14 2. Has had prior action taken against the applicant
15 under the Medicaid or Medicare program as set forth in
16 paragraph (e).

17 (i) An application for license renewal must contain
18 the information required under paragraphs (e) and (f).

19 Section 29. Section 394.876, Florida Statutes, is
20 amended to read:

21 394.876 Applications.--

22 (1) Any person desiring to be licensed under this
23 chapter shall apply to the agency ~~department~~ on forms provided
24 by the agency ~~department~~. The application shall contain the
25 following:

26 (a) The name and address of the applicant, the name of
27 the unit or facility, and the address of the unit or facility.

28 (b)1. If the applicant is a partnership, association,
29 or other form of entity other than an individual or a
30 corporation, the name and address of each member or owner of
31 the entity.

1 2. If the applicant is a corporation, the name and
2 address of each director or officer and the name and address
3 of each person holding at least 5 ~~10~~ percent ownership
4 interest in the corporation.

5 ~~(c) Such information as the department determines to~~
6 ~~be necessary to establish the character and competency of the~~
7 ~~applicant and of the person who is or will be administrator of~~
8 ~~the unit or facility.~~

9 (d) Such information as the agency department
10 determines necessary to determine the ability of the applicant
11 to carry out its responsibilities under this chapter.

12 (2) The applicant shall furnish proof satisfactory to
13 the agency department of its financial ability to operate the
14 unit or facility in accordance with this chapter. An
15 applicant for an original license shall submit a balance sheet
16 and a statement projecting revenues, expenses, taxes,
17 extraordinary items, and other credits and charges for the
18 first 6 months of operation.

19 (3) The applicant shall provide proof of liability
20 insurance coverage in amounts set by the agency department by
21 rule.

22 (4) The agency department shall accept proof of
23 accreditation by the Joint Commission on Accreditation of
24 Hospitals in lieu of the information required by subsection
25 (1).

26 Section 30. Subsection (1) of section 394.877, Florida
27 Statutes, is amended to read:

28 394.877 Fees.--

29 (1) Each application for licensure or renewal shall be
30 accompanied by a fee set by the agency department by rule.

31

1 Such fees shall be reasonably calculated to cover only the
2 cost of regulation under this chapter.

3 Section 31. Subsections (1), (2), (5), and (6) of
4 section 394.878, Florida Statutes, are amended to read:

5 394.878 Issuance and renewal of licenses.--

6 (1) Upon review of the application for licensure and
7 receipt of appropriate fees, the agency ~~department~~ shall issue
8 an original or renewal license to any applicant that meets the
9 requirements of this chapter.

10 (2) A license is valid for a period of 1 year. An
11 applicant for renewal of a license shall apply to the agency
12 ~~department~~ no later than 90 days before expiration of the
13 current license.

14 (5) The agency ~~department~~ may issue a probationary
15 license to an applicant that has completed the application
16 requirements of this chapter but has not, at the time of the
17 application, developed an operational crisis stabilization
18 unit or residential treatment facility. The probationary
19 license shall expire 90 days after issuance and may once be
20 renewed for an additional 90-day period. The agency ~~department~~
21 may cancel a probationary license at any time.

22 (6) The agency ~~department~~ may issue an interim license
23 to an applicant that has substantially completed all
24 application requirements and has initiated action to fully
25 meet such requirements. The interim license shall expire 90
26 days after issuance and, in cases of extreme hardship, may
27 once be renewed for an additional 90-day period.

28 Section 32. Section 394.879, Florida Statutes, is
29 amended to read:

30 394.879 Rules; enforcement.--

31

1 (1) The agency ~~department~~ shall adopt reasonable rules
2 to implement this chapter, including, at a minimum, rules
3 providing standards to ensure that:

4 (a) Sufficient numbers and types of qualified
5 personnel are on duty and available at all times to provide
6 necessary and adequate client safety and care.

7 (b) Adequate space is provided each client of a
8 licensed facility.

9 (c) Licensed facilities are limited to an appropriate
10 number of beds.

11 (d) Each licensee establishes and implements adequate
12 infection control, housekeeping, sanitation, disaster
13 planning, and medical recordkeeping.

14 (e) Licensed facilities are established, organized,
15 and operated in accordance with programmatic standards of the
16 agency ~~department~~.

17 (2) Minimum firesafety standards shall be established
18 and enforced by the State Fire Marshal in cooperation with the
19 agency ~~department~~. Such standards shall be included in the
20 rule adopted by the agency ~~department~~ after consultation with
21 the State Fire Marshal.

22 (3) The agency ~~department~~ shall allow any licensed
23 facility in operation at the time of adoption of any rule a
24 reasonable period, not to exceed 1 year, to bring itself into
25 compliance with such rule.

26 (4) The agency ~~department~~ may impose an administrative
27 penalty of no more than \$500 per day against any licensee that
28 violates any rule adopted pursuant to this section and may
29 suspend or revoke the license or deny the renewal application
30 of such licensee. In imposing such penalty, the agency
31 ~~department~~ shall consider the severity of the violation,

1 actions taken by the licensee to correct the violation, and
2 previous violations by the licensee. Fines collected under
3 this subsection shall be deposited in the Mental Health
4 Facility Licensing Trust Fund.

5 Section 33. Section 394.90, Florida Statutes, is
6 amended to read:

7 394.90 Inspection; right of entry; records.--

8 (1)(a) The agency department may enter and inspect at
9 any time a licensed facility to determine whether the facility
10 is in compliance with this chapter and the rules of the agency
11 department.

12 (b) The agency department may enter and inspect any
13 premises that it has probable cause to suspect may be
14 operating as an unlicensed crisis stabilization unit or
15 residential treatment facility; however, such entry and
16 inspection shall be made only with the permission of the
17 person in charge of such premises or pursuant to warrant.

18 (c) Any application for licensure under this chapter
19 constitutes full permission for the agency department to enter
20 and inspect the premises of the applicant or licensee at any
21 time.

22 (2) For purposes of monitoring and investigation, the
23 department and the Agency for Health Care Administration shall
24 have access to the clinical records of any client of a
25 licensee or designated facility, the provisions of s. 394.4615
26 to the contrary notwithstanding.

27 (3) The agency department shall schedule periodic
28 inspections of licensees so as to minimize the cost to the
29 licensees and the disruption of the licensees' programs. This
30 subsection shall not be construed to limit the authority of
31

1 the agency ~~department~~ to inspect the facilities of a licensee
2 at any time.

3 (4) Each licensee shall maintain as public
4 information, available to any person upon request, copies of
5 all reports of inspections of the licensee filed with or
6 issued by any governmental agency during the preceding 5-year
7 period. The licensee shall furnish a copy of the most recent
8 inspection report of the agency ~~department~~ to any person upon
9 payment of a reasonable charge for copying.

10 (5)(a) The agency ~~department~~ may accept, in lieu of
11 its own inspections for licensure, the survey or inspection of
12 an accrediting organization, if the provider is accredited and
13 the agency ~~department~~ receives the report of the accrediting
14 organization. The agency ~~department~~ shall develop, and adopt
15 by rule, specific criteria for assuring that the accrediting
16 organization has specific standards and experience related to
17 the program area being licensed, specific criteria for
18 accepting the standards and survey methodologies of an
19 accrediting organization, delineations of the obligations of
20 accrediting organizations to assure adherence to those
21 standards, criteria for receiving, accepting and maintaining
22 the confidentiality of the survey and corrective action
23 reports, and allowance for the agency's ~~department's~~
24 participation in surveys.

25 (b) The agency ~~department~~ shall conduct compliance
26 investigations and sample validation inspections to evaluate
27 the inspection process of accrediting organizations to ensure
28 minimum standards are maintained as provided in Florida
29 statute and rule. The agency ~~department~~ may conduct a
30 lifesafety inspection in calendar years in which an
31 accrediting organization survey is not conducted and shall

1 conduct a full state inspection, including a lifesafety
2 inspection, if an accrediting organization survey has not been
3 conducted within the previous 36 months. The agency
4 ~~department~~, by accepting the survey or inspection of an
5 accrediting organization, does not forfeit its right to
6 perform inspections.

7 Section 34. Section 394.902, Florida Statutes, is
8 amended to read:

9 394.902 Denial, suspension, and revocation; other
10 remedies.--

11 (1) The agency ~~department~~ may issue an emergency order
12 suspending or revoking a license if the agency ~~department~~
13 determines that the continued operation of the licensed
14 facility presents a clear and present danger to the public
15 health or safety.

16 (2) The agency ~~department~~ may impose a moratorium on
17 elective admissions to a licensee or any program or portion of
18 a licensed facility if the agency ~~department~~ determines that
19 any condition in the facility presents a threat to the public
20 health or safety.

21 (3) If the agency ~~department~~ determines that an
22 applicant or licensee is not in compliance with this chapter
23 or the rules adopted under this chapter, the agency ~~department~~
24 may deny, suspend, or revoke the license or application or may
25 suspend, revoke, or impose reasonable restrictions on any
26 portion of the license. If a license is revoked, the licensee
27 is barred from submitting any application for licensure to the
28 agency ~~department~~ for a period of 6 months following
29 revocation.

30 (4) The agency ~~department~~ may maintain an action in
31 circuit court to enjoin the operation of any licensed or

1 unlicensed facility in violation of this chapter or the rules
2 adopted under this chapter.

3 (5) License denial, suspension, or revocation
4 procedures shall be in accordance with chapter 120.

5 Section 35. Subsections (1) and (2) of section
6 394.903, Florida Statutes, are amended to read:

7 394.903 Receivership proceedings.--

8 (1) The agency ~~department~~ may petition a court of
9 competent jurisdiction for the appointment of a receiver for a
10 crisis stabilization unit or a residential treatment facility
11 when any of the following conditions exist:

12 (a) Any person is operating a unit or facility without
13 a license and refuses to make application for a license as
14 required by this part.

15 (b) The licensee is closing the unit or facility or
16 has informed the agency ~~department~~ that it intends to close
17 and adequate arrangements have not been made for relocation of
18 the residents within 7 days, exclusive of weekends and
19 holidays, of the closing of the unit or facility.

20 (c) The agency ~~department~~ determines that conditions
21 exist in the unit or facility which present an imminent danger
22 to the health, safety, or welfare of the residents of the unit
23 or facility or a substantial probability that death or serious
24 physical harm would result therefrom. The agency ~~department~~
25 shall, whenever possible, facilitate the continued operation
26 of the program.

27 (d) The licensee cannot meet its financial obligations
28 for providing food, shelter, care, and utilities. Issuance of
29 bad checks or accumulation of delinquent bills for such items
30 as personnel salaries, food, drugs, or utilities constitutes
31 ~~shall constitute~~ prima facie evidence that the ownership of

1 the unit or facility lacks the financial ability to operate
2 the unit or facility in accordance with the requirements of
3 this chapter and all rules adopted under this chapter
4 ~~hereunder~~.

5 (2) Petitions for receivership shall take precedence
6 over other court business unless the court determines that
7 some other pending proceeding, having similar statutory
8 precedence, shall have priority. A hearing shall be conducted
9 within 5 days after ~~of~~ the filing of the petition, at which
10 time all interested parties shall have the opportunity to
11 present evidence pertaining to the petition. The agency
12 ~~department~~ shall notify the owner or operator of the unit or
13 facility named in the petition of its filing and the dates for
14 the hearing. The court shall grant the petition only upon
15 finding that the health, safety, and welfare of residents of
16 the unit or facility would be threatened if a condition
17 existing at the time the petition was filed is permitted to
18 continue. A receiver shall not be appointed ex parte unless
19 the court determines that one or more of the conditions of
20 subsection (1) exist and that the owner or operator cannot be
21 found, that all reasonable means of locating the owner or
22 operator and notifying him or her of the petition and hearing
23 have been exhausted, or that the owner or operator after
24 notification of the hearing chooses not to attend. After such
25 findings, the court may appoint any person qualified by
26 education, training, or experience to carry out the
27 responsibilities of receiver pursuant to this section, except
28 that it shall not appoint any owner or affiliate of the unit
29 or facility which is in receivership. Prior to the
30 appointment as receiver of a person who is the operator,
31 manager, or supervisor of another unit or facility, the court

1 shall determine that the person can reasonably operate,
2 manage, or supervise more than one unit or facility. The
3 receiver may be appointed for up to 90 days, with the option
4 of petitioning the court for 30-day extensions. The receiver
5 may be selected from a list of persons qualified to act as
6 receivers developed by the agency ~~department~~ and presented to
7 the court with each petition for receivership. ~~Under no~~
8 ~~circumstances shall~~ The agency, ~~department~~ or a designated
9 ~~departmental~~ employee of the agency, may not be appointed as a
10 receiver for more than 60 days; however, such ~~the departmental~~
11 receiver may petition the court for 30-day extensions. The
12 agency ~~department~~ may petition the court to appoint a
13 substitute receiver. The court shall grant the extension upon
14 a showing of good cause. During the first 60 days of the
15 receivership, the agency ~~may department shall~~ not take action
16 to decertify or revoke the license of a unit or facility
17 unless conditions causing imminent danger to the health and
18 welfare of the residents exist and a receiver has been unable
19 to remove those conditions. After the first 60 days of
20 receivership, and every 60 days thereafter until the
21 receivership is terminated, the agency ~~department~~ shall submit
22 to the court the results of an assessment of the unit's or
23 facility's ability to assure the safety and care of the
24 residents. If the conditions at the unit or facility or the
25 intentions of the owner indicate that the purpose of the
26 receivership is to close the unit or facility rather than to
27 facilitate its continued operations, the agency ~~department~~
28 shall place the residents in appropriate alternative
29 residential settings as quickly as possible. If, in the
30 opinion of the court, the agency ~~department~~ has not been
31 diligent in its efforts to make adequate placement

1 arrangements, the court may find the agency ~~department~~ to be
2 in contempt and shall order the agency ~~department~~ to submit
3 its plans for moving the residents.

4 Section 36. Section 394.904, Florida Statutes, is
5 amended to read:

6 394.904 Mental Health Facility Licensing Trust
7 Fund.--There is created in the State Treasury the Mental
8 Health Facility Licensing Trust Fund. All moneys collected by
9 the agency ~~department~~ pursuant to this chapter shall be
10 deposited in the trust fund. Moneys in the trust fund shall
11 be appropriated to the agency ~~department~~ for the purpose of
12 covering the cost of regulation of facilities licensed under
13 this chapter and any other purpose related to enforcement of
14 this chapter.

15 Section 37. Subsections (1), (2), (3), (7), (8), and
16 (9) of section 394.907, Florida Statutes, are amended to read:

17 394.907 Community mental health centers; quality
18 assurance programs.--

19 (1) As used in this section, the term "community
20 mental health center" means a publicly funded, not-for-profit
21 center that ~~which~~ contracts with the agency ~~department~~ for the
22 provision of inpatient, outpatient, day treatment, or
23 emergency services.

24 (2) ~~Effective April 1, 1989,~~Any community mental
25 health center and any facility licensed pursuant to s. 394.875
26 shall have an ongoing quality assurance program. The purpose
27 of the quality assurance program shall be to objectively and
28 systematically monitor and evaluate the appropriateness and
29 quality of client care, to ensure that services are rendered
30 consistent with reasonable, prevailing professional standards
31 and to resolve identified problems.

1 (3) Each facility shall develop a written plan that
2 ~~which~~ addresses the minimum guidelines for the quality
3 assurance program. Such guidelines shall include, but are not
4 limited to:

5 (a) Standards for the provision of client care and
6 treatment practices;

7 (b) Procedures for the maintenance of client records;

8 (c) Policies and procedures for staff development;

9 (d) Standards for facility safety and maintenance;

10 (e) Procedures for peer review and resource
11 utilization;

12 (f) Policies and procedures for adverse incident
13 reporting to include verification of corrective action to
14 remediate or minimize incidents and for reporting such
15 incidents to the agency department by a timeframe as
16 prescribed by rule.

17
18 Such plan shall be submitted to the governing board for
19 approval and a copy provided to the agency department.

20 (7) The agency department shall have access to all
21 records necessary to determine agency compliance with the
22 provisions of this section. The records of quality assurance
23 programs which relate solely to actions taken in carrying out
24 the provisions of this section, and records obtained by the
25 agency department to determine ~~agency~~ compliance with ~~the~~
26 ~~provisions of~~ this section, are confidential and exempt from
27 ~~the provisions of~~ s. 119.07(1). Such records are not
28 admissible in any civil or administrative action, except in
29 disciplinary proceedings by the Department of Business and
30 Professional Regulation and the appropriate regulatory board,
31 nor shall such records be available to the public as part of

1 the record of investigation for, and prosecution in
2 disciplinary proceedings made available to the public by the
3 Department of Business and Professional Regulation or the
4 appropriate regulatory board. Meetings or portions of meetings
5 of quality assurance program committees that relate solely to
6 actions taken pursuant to this section are exempt from ~~the~~
7 ~~provisions of s. 286.011.~~

8 (8) The agency department shall adopt promulgate rules
9 to carry out ~~the provisions of~~ this section.

10 (9) ~~The provisions of~~ This section does shall not
11 apply to hospitals licensed pursuant to chapter 395 or
12 programs operated within such hospitals.

13 Section 38. Section 395.002, Florida Statutes, is
14 amended to read:

15 395.002 Definitions.--As used in this chapter:

16 (1) "Accrediting organizations" means the Joint
17 Commission on Accreditation of Healthcare Organizations, the
18 American Osteopathic Association, the Commission on
19 Accreditation of Rehabilitation Facilities, and the
20 Accreditation Association for Ambulatory Health Care, Inc.

21 ~~(2) "Adverse or untoward incident," for purposes of~~
22 ~~reporting to the agency, means an event over which health care~~
23 ~~personnel could exercise control, which is probably associated~~
24 ~~in whole or in part with medical intervention rather than the~~
25 ~~condition for which such intervention occurred, and which~~
26 ~~causes injury to a patient, and which:~~

27 ~~(a) Is not consistent with or expected to be a~~
28 ~~consequence of such medical intervention;~~

29 ~~(b) Occurs as a result of medical intervention to~~
30 ~~which the patient has not given his or her informed consent;~~

31

1 ~~(c) Occurs as the result of any other action or lack~~
2 ~~of any other action on the part of the hospital or personnel~~
3 ~~of the hospital;~~

4 ~~(d) Results in a surgical procedure being performed on~~
5 ~~the wrong patient; or~~

6 ~~(e) Results in a surgical procedure being performed~~
7 ~~that is unrelated to the patient's diagnosis or medical needs.~~

8 (2)~~(3)~~ "Agency" means the Agency for Health Care
9 Administration.

10 (3)~~(4)~~ "Ambulatory surgical center" means a facility
11 the primary purpose of which is to provide elective surgical
12 care, in which the patient is admitted to and discharged from
13 such facility within the same working day and is not permitted
14 to stay overnight, and which is not part of a hospital.
15 However, a facility existing for the primary purpose of
16 performing terminations of pregnancy, an office maintained by
17 a physician for the practice of medicine, or an office
18 maintained for the practice of dentistry shall not be
19 construed to be an ambulatory surgical center, provided that
20 any facility or office which is certified or seeks
21 certification as a Medicare ambulatory surgical center shall
22 be licensed as an ambulatory surgical center pursuant to s.
23 395.003.

24 (4) "Applicant" means an individual applicant, or any
25 officer, director, or agent, or any partner or shareholder
26 having an ownership interest equal to a 5-percent or greater
27 interest in the corporation, partnership, or other business
28 entity.

29 (5) "Biomedical waste" means any solid or liquid waste
30 as defined in s. 381.0098(2)(a).

31

1 (6) "Clinical privileges" means the privileges granted
2 to a physician or other licensed health care practitioner to
3 render patient care services in a hospital, but does not
4 include the privilege of admitting patients.

5 (7) "Department" means the Department of Health ~~and~~
6 ~~Rehabilitative Services.~~

7 (8) "Director" means any member of the official board
8 of directors as reported in the organization's annual
9 corporate report to the Florida Department of State, or, if no
10 such report is made, any member of the operating board of
11 directors. The term excludes members of separate, restricted
12 boards that serve only in an advisory capacity to the
13 operating board.

14 ~~(9)~~(8) "Emergency medical condition" means:

15 (a) A medical condition manifesting itself by acute
16 symptoms of sufficient severity, which may include severe
17 pain, such that the absence of immediate medical attention
18 could reasonably be expected to result in any of the
19 following:

- 20 1. Serious jeopardy to patient health, including a
21 pregnant woman or fetus.
- 22 2. Serious impairment to bodily functions.
- 23 3. Serious dysfunction of any bodily organ or part.

24 (b) With respect to a pregnant woman:

- 25 1. That there is inadequate time to effect safe
26 transfer to another hospital prior to delivery;
- 27 2. That a transfer may pose a threat to the health and
28 safety of the patient or fetus; or
- 29 3. That there is evidence of the onset and persistence
30 of uterine contractions or rupture of the membranes.

31

1 (10)~~(9)~~ "Emergency services and care" means medical
2 screening, examination, and evaluation by a physician, or, to
3 the extent permitted by applicable law, by other appropriate
4 personnel under the supervision of a physician, to determine
5 if an emergency medical condition exists and, if it does, the
6 care, treatment, or surgery by a physician necessary to
7 relieve or eliminate the emergency medical condition, within
8 the service capability of the facility.

9 (11)~~(10)~~ "General hospital" means any facility which
10 meets the provisions of subsection(13)~~(12)~~and which
11 regularly makes its facilities and services available to the
12 general population.

13 (12)~~(11)~~ "Governmental unit" means the state or any
14 county, municipality, or other political subdivision, or any
15 department, division, board, or other agency of any of the
16 foregoing.

17 (13)~~(12)~~ "Hospital" means any establishment that:

18 (a) Offers services more intensive than those required
19 for room, board, personal services, and general nursing care,
20 and offers facilities and beds for use beyond 24 hours by
21 individuals requiring diagnosis, treatment, or care for
22 illness, injury, deformity, infirmity, abnormality, disease,
23 or pregnancy; and

24 (b) Regularly makes available at least clinical
25 laboratory services, diagnostic X-ray services, and treatment
26 facilities for surgery or obstetrical care, or other
27 definitive medical treatment of similar extent.

28
29 However, the provisions of this chapter do not apply to any
30 institution conducted by or for the adherents of any
31 well-recognized church or religious denomination that depends

1 exclusively upon prayer or spiritual means to heal, care for,
2 or treat any person. For purposes of local zoning matters,
3 the term "hospital" includes a medical office building located
4 on the same premises as a hospital facility, provided the land
5 on which the medical office building is constructed is zoned
6 for use as a hospital; provided the premises were zoned for
7 hospital purposes on January 1, 1992.

8 (14)~~(13)~~ "Hospital bed" means a hospital accommodation
9 which is ready for immediate occupancy, or is capable of being
10 made ready for occupancy within 48 hours, excluding provision
11 of staffing, and which conforms to minimum space, equipment,
12 and furnishings standards as specified by rule of the
13 department for the provision of services specified in this
14 section to a single patient.

15 (15)~~(14)~~ "Initial denial determination" means a
16 determination by a private review agent that the health care
17 services furnished or proposed to be furnished to a patient
18 are inappropriate, not medically necessary, or not reasonable.

19 ~~(15) "Injury," for purposes of reporting to the~~
20 ~~agency, means any of the following outcomes if caused by an~~
21 ~~adverse or untoward incident:~~

22 ~~(a) Death;~~

23 ~~(b) Brain damage;~~

24 ~~(c) Spinal damage;~~

25 ~~(d) Permanent disfigurement;~~

26 ~~(e) Fracture or dislocation of bones or joints;~~

27 ~~(f) Any condition requiring definitive or specialized~~
28 ~~medical attention which is not consistent with the routine~~
29 ~~management of the patient's case or patient's preexisting~~
30 ~~physical condition;~~

31

1 ~~(g) Any condition requiring surgical intervention to~~
2 ~~correct or control;~~

3 ~~(h) Any condition resulting in transfer of the~~
4 ~~patient, within or outside the facility, to a unit providing a~~
5 ~~more acute level of care;~~

6 ~~(i) Any condition that extends the patient's length of~~
7 ~~stay; or~~

8 ~~(j) Any condition that results in a limitation of~~
9 ~~neurological, physical, or sensory function which continues~~
10 ~~after discharge from the facility.~~

11 (16) "Intensive residential treatment programs for
12 children and adolescents" means a specialty hospital
13 accredited by the Joint Commission on Accreditation of
14 Healthcare Organizations which provides 24-hour care and which
15 has the primary functions of diagnosis and treatment of
16 patients under the age of 18 having psychiatric disorders in
17 order to restore such patients to an optimal level of
18 functioning.

19 (17) "Licensed facility" means a hospital or
20 ambulatory surgical center licensed in accordance with this
21 chapter.

22 (18) "Lifesafety" means the control and prevention of
23 fire and other life-threatening conditions on a premises for
24 the purpose of preserving human life.

25 (19) "Managing employee" means the administrator or
26 other similarly titled individual who is responsible for the
27 daily operation of the facility.

28 (20)~~(19)~~ "Medical staff" means physicians licensed
29 under chapter 458 or chapter 459 with privileges in a licensed
30 facility, as well as other licensed health care practitioners
31

1 with clinical privileges as approved by a licensed facility's
2 governing board.

3 (21)~~(20)~~ "Medically necessary transfer" means a
4 transfer made necessary because the patient is in immediate
5 need of treatment for an emergency medical condition for which
6 the facility lacks service capability or is at service
7 capacity.

8 (22)~~(21)~~ "Person" means any individual, partnership,
9 corporation, association, or governmental unit.

10 (23)~~(22)~~ "Premises" means those buildings, beds, and
11 equipment located at the address of the licensed facility and
12 all other buildings, beds, and equipment for the provision of
13 hospital or ambulatory surgical care located in such
14 reasonable proximity to the address of the licensed facility
15 as to appear to the public to be under the dominion and
16 control of the licensee.

17 (24)~~(23)~~ "Private review agent" means any person or
18 entity which performs utilization review services for
19 third-party payors on a contractual basis for outpatient or
20 inpatient services. However, the term shall not include
21 full-time employees, personnel, or staff of health insurers,
22 health maintenance organizations, or hospitals, or wholly
23 owned subsidiaries thereof or affiliates under common
24 ownership, when performing utilization review for their
25 respective hospitals, health maintenance organizations, or
26 insureds of the same insurance group. For this purpose,
27 health insurers, health maintenance organizations, and
28 hospitals, or wholly owned subsidiaries thereof or affiliates
29 under common ownership, include such entities engaged as
30 administrators of self-insurance as defined in s. 624.031.

31

1 ~~(24)~~ (25) "Service capability" means all services
2 offered by the facility where identification of services
3 offered is evidenced by the appearance of the service in a
4 patient's medical record or itemized bill.

5 ~~(25)~~ (26) "At service capacity" means the temporary
6 inability of a hospital to provide a service which is within
7 the service capability of the hospital, due to maximum use of
8 the service at the time of the request for the service.

9 ~~(26)~~ (27) "Specialty bed" means a bed, other than a
10 general bed, designated on the face of the hospital license
11 for a dedicated use.

12 ~~(27)~~ (28) "Specialty hospital" means any facility which
13 meets the provisions of subsection ~~(12)~~ (13), and which
14 regularly makes available either:

15 (a) The range of medical services offered by general
16 hospitals, but restricted to a defined age or gender group of
17 the population;

18 (b) A restricted range of services appropriate to the
19 diagnosis, care, and treatment of patients with specific
20 categories of medical or psychiatric illnesses or disorders;
21 or

22 (c) Intensive residential treatment programs for
23 children and adolescents as defined in subsection (16).

24 ~~(28)~~ (29) "Stabilized" means, with respect to an
25 emergency medical condition, that no material deterioration of
26 the condition is likely, within reasonable medical
27 probability, to result from the transfer of the patient from a
28 hospital.

29 ~~(29)~~ (30) "Utilization review" means a system for
30 reviewing the medical necessity or appropriateness in the
31

1 allocation of health care resources of hospital services given
2 or proposed to be given to a patient or group of patients.

3 ~~(31)(30)~~ "Utilization review plan" means a description
4 of the policies and procedures governing utilization review
5 activities performed by a private review agent.

6 ~~(32)(31)~~ "Validation inspection" means an inspection
7 of the premises of a licensed facility by the agency to assess
8 whether a review by an accrediting organization has adequately
9 evaluated the licensed facility according to minimum state
10 standards.

11 Section 39. Section 395.0055, Florida Statutes, is
12 created to read:

13 395.0055 Background screening.--Each applicant for
14 licensure must comply with the following requirements:

15 (1) Upon receipt of a completed, signed, and dated
16 application, the agency shall require background screening of
17 the managing employee in accordance with the level 2 standards
18 for screening set forth in chapter 435.

19 (2) The agency may require background screening for a
20 member of the board of directors of the licensee, or an
21 officer or an individual owning 5 percent or more of the
22 licensee, if the agency reasonably suspects that such
23 individual has been convicted of an offense prohibited under
24 the level 2 standards for screening set forth in chapter 435.

25 (3) Proof of compliance with the level 2 background
26 screening requirements of chapter 435 which has been submitted
27 within the previous 5 years in compliance with any other
28 health care licensure requirements of this state is acceptable
29 in fulfillment of subsection (1).

30 (4) A provisional license may be granted to an
31 applicant when each individual required by this section to

1 undergo background screening has met the standards for the
2 abuse registry background check and the Department of Law
3 Enforcement background check, but the agency has not yet
4 received background screening results from the Federal Bureau
5 of Investigation, or a request for a disqualification
6 exemption has been submitted to the agency as set forth in
7 chapter 435 but a response has not yet been issued. A
8 standard license may be granted to the applicant upon the
9 agency's receipt of a report of the results of the Federal
10 Bureau of Investigation background screening for each
11 individual required by this section to undergo background
12 screening which confirms that all standards have been met, or
13 upon the granting of a disqualification exemption by the
14 agency as set forth in chapter 435. Any other person who is
15 required to undergo level 2 background screening may serve in
16 his or her capacity pending the agency's receipt of the report
17 from the Federal Bureau of Investigation; however, the person
18 may not continue to serve if the report indicates any
19 violation of background screening standards and a
20 disqualification exemption has not been requested of and
21 granted by the agency as set forth in chapter 435.

22 (5) Each applicant must submit to the agency, with its
23 application, a description and explanation of any exclusions,
24 permanent suspensions, or terminations of the applicant from
25 the Medicare or Medicaid programs. Proof of compliance with
26 disclosure of ownership and control interest requirements of
27 the Medicaid or Medicare programs shall be accepted in lieu of
28 this submission.

29 (6) Each applicant must submit to the agency a
30 description and explanation of any conviction of an offense
31 prohibited under the level 2 standards of chapter 435 by a

1 member of the board of directors of the applicant, its
2 officers, or any individual owning 5 percent or more of the
3 applicant. This requirement shall not apply to a director of a
4 not-for-profit corporation or organization if the director
5 serves solely in a voluntary capacity for the corporation or
6 organization, does not regularly take part in the day-to-day
7 operational decisions of the corporation or organization,
8 receives no remuneration for his or her services on the
9 corporation or organization's board of directors, and has no
10 financial interest and has no family members with a financial
11 interest in the corporation or organization, provided that the
12 director and the not-for-profit corporation or organization
13 include in the application a statement affirming that the
14 director's relationship to the corporation satisfies the
15 requirements of this subsection.

16 (7) A license may not be granted to an applicant if
17 the applicant or managing employee has been found guilty of,
18 regardless of adjudication, or has entered a plea of nolo
19 contendere or guilty to, any offense prohibited under the
20 level 2 standards for screening set forth in chapter 435,
21 unless an exemption from disqualification has been granted by
22 the agency as set forth in chapter 435.

23 (8) The agency may deny or revoke licensure if the
24 applicant:

25 (a) Has falsely represented a material fact in the
26 application required by subsection (5) or subsection (6), or
27 has omitted any material fact from the application required by
28 subsection (5) or subsection (6); or

29 (b) Has had prior Medicaid or Medicare action taken
30 against the applicant as set forth in subsection (5).

31

1 (9) An application for license renewal must contain
2 the information required under subsections (5) and (6).

3 Section 40. Subsection (1) of section 395.0163,
4 Florida Statutes, is amended to read:

5 395.0163 Construction inspections; plan submission and
6 approval; fees.--

7 (1)(a) The agency shall make, or cause to be made,
8 such construction inspections and investigations as it deems
9 necessary. The agency may prescribe by rule that any licensee
10 or applicant desiring to make specified types of alterations
11 or additions to its facilities or to construct new facilities
12 shall, before commencing such alteration, addition, or new
13 construction, submit plans and specifications therefor to the
14 agency for preliminary inspection and approval or
15 recommendation with respect to compliance with agency rules
16 and standards. The agency shall approve or disapprove the
17 plans and specifications within 60 days after receipt of the
18 fee for review of plans as required in subsection (2). The
19 agency may be granted one 15-day extension for the review
20 period if the director of the agency approves the extension.
21 If the agency fails to act within the specified time, it shall
22 be deemed to have approved the plans and specifications. When
23 the agency disapproves plans and specifications, it shall set
24 forth in writing the reasons for its disapproval. Conferences
25 and consultations may be provided as necessary.

26 (b) All outpatient facilities that provide surgical
27 treatments requiring general anesthesia or IV conscious
28 sedation, that provide cardiac catheterization services, or
29 that are to be licensed as ambulatory surgical centers shall
30 submit plans and specifications to the agency for review under
31 this section. All other outpatient facilities must be

1 reviewed under this section, except that those that are
2 physically detached from, and have no utility connections
3 with, the hospital and that do not block emergency egress from
4 or create a fire hazard to the hospital are exempt from review
5 under this section. This section applies to applications for
6 which review is pending on or after July 1, 1998.

7 Section 41. Section 395.0193, Florida Statutes, is
8 amended to read:

9 395.0193 Licensed facilities; peer review;
10 disciplinary powers; agency or partnership with physicians.--

11 (1) It is the intent of the Legislature that good
12 faith participants in the process of investigating and
13 disciplining physicians pursuant to the state-mandated peer
14 review process shall, in addition to receiving immunity from
15 retaliatory tort suits pursuant to s. 455.225(12), be
16 protected from federal antitrust suits filed under the Sherman
17 Anti-Trust Act, 15 U.S.C.A. ss. 1 et seq. Such intent is
18 within the public policy of the state to secure the provision
19 of quality medical services to the public.

20 (2) Each licensed facility, as a condition of
21 licensure, shall provide for peer review of physicians who
22 deliver health care services at the facility. Each licensed
23 facility shall develop written, binding procedures by which
24 such peer review shall be conducted. Such procedures must
25 ~~shall~~ include:

26 (a) A mechanism for choosing the membership of the
27 body or bodies that conduct peer review.

28 (b) Adoption of rules of order for the peer review
29 process.

30 (c) Fair review of the case with the physician
31 involved.

1 (d) A mechanism to identify and avoid any conflict of
2 interest on the part of the peer review panel members.

3 (e) Recording of agendas and minutes that ~~which~~ do not
4 contain confidential material, for review by the Division of
5 Health Quality Assurance of the agency.

6 (f) Review, at least annually, of the peer review
7 procedures by the governing board of the licensed facility.

8 (g) Focus of the peer review process on review of
9 professional practices at the facility to reduce morbidity and
10 mortality and to improve patient care.

11 (3) If reasonable belief exists that conduct by a
12 staff member or physician who delivers health care services at
13 the licensed facility may constitute one or more grounds for
14 discipline as provided in this subsection, a peer review panel
15 shall investigate and determine whether grounds for discipline
16 exist with respect to such staff member or physician. The
17 governing board of any licensed facility, after considering
18 the recommendations of its peer review panel, shall suspend,
19 deny, revoke, or curtail the privileges, or reprimand,
20 counsel, or require education, of any such staff member or
21 physician after a final determination has been made that one
22 or more of the following grounds exist:

23 (a) Incompetence.

24 (b) Being found to be a habitual user of intoxicants
25 or drugs to the extent that he or she is ~~deemed~~ dangerous to
26 himself, herself, or others.

27 (c) Mental or physical impairment that could ~~which may~~
28 adversely affect patient care.

29 (d) Being found liable by a court of competent
30 jurisdiction for medical negligence or malpractice involving
31 negligent conduct.

1 (e) One or more settlements exceeding \$10,000 for
2 medical negligence or malpractice involving negligent conduct
3 by the staff member.

4 (f) Medical negligence other than as specified in
5 paragraph (d) or paragraph (e).

6 (g) Failure to comply with the policies, procedures,
7 or directives of the risk management program or any quality
8 assurance committees of any licensed facility.

9
10 However, the grounds specified in paragraphs (a)-(g) are not
11 the only grounds for discipline of a practitioner.~~procedures~~
12 ~~for such actions shall comply with the standards outlined by~~
13 ~~the Joint Commission on Accreditation of Healthcare~~
14 ~~Organizations, the American Osteopathic Association, the~~
15 ~~Commission on Accreditation of Rehabilitation Facilities, the~~
16 ~~Accreditation Association for Ambulatory Health Care, Inc.,~~
17 ~~and the "Medicare/Medicaid Conditions of Participation," and~~
18 ~~rules of the agency and the department. The procedures shall~~
19 ~~be adopted pursuant to hospital bylaws.~~

20 (4) Pursuant to ss. 458.337 and 459.016, any
21 disciplinary action taken under subsection (3) shall be
22 reported in writing to the Division of Health Quality
23 Assurance of the agency within 30 working days after its
24 initial occurrence, regardless of the pendency of appeals to
25 the governing board of the hospital. The notification shall
26 identify the disciplined practitioner, the action taken, and
27 the reason for such action.All final disciplinary actions
28 taken under subsection (3), if different from those that were
29 reported to the agency within 30 days after the initial
30 occurrence, must ~~shall~~ be reported within 10 working days to
31 the Division of Health Quality Assurance of the agency in

1 writing and must ~~shall~~ specify the disciplinary action taken
2 and the specific grounds therefor. The division shall review
3 each report and determine whether it potentially involved
4 conduct by the licensee that is subject to disciplinary
5 action, in which case s. 455.225 shall apply. These reports
6 are ~~The report shall not be~~ subject to inspection under s.
7 119.07(1) even if the division's investigation results in a
8 finding of probable cause.

9 (5) There is ~~shall be~~ no monetary liability on the
10 part of, and no cause of action for damages against, any
11 licensed facility, its governing board or governing board
12 members, peer review panel, medical staff, or disciplinary
13 body, or its agents, investigators, witnesses, or employees; a
14 committee of a hospital, a physician-hospital organization, or
15 an integrated delivery system; ~~or~~ any other person, for any
16 action taken without intentional fraud in carrying out the
17 provisions of this section.

18 (6) For a single incident or series of isolated
19 incidents that are nonwillful violations of the reporting
20 requirements of this section, the agency shall first seek to
21 obtain corrective action by the facility. If correction is not
22 demonstrated within the timeframe established by the agency or
23 if there is a pattern of nonwillful violations of this
24 section, the agency may impose an administrative fine, not to
25 exceed \$5,000, for any violation of the reporting requirements
26 of this section. The administrative fine for repeated
27 nonwillful violations may not exceed \$10,000 for any
28 violation. The administrative fine for each intentional and
29 willful violation may not exceed \$25,000 per violation, per
30 day. A fine for an intentional and willful violation of this
31 section may not exceed \$250,000. In determining the amount of

1 fine to be levied, the agency shall be guided by s.
2 395.1065(2)(b).

3 (7)(6) The proceedings and records of peer review
4 panels, committees, and governing boards or agent thereof
5 which relate solely to actions taken in carrying out this
6 section are not subject to inspection under s. 119.07(1); and
7 meetings held pursuant to achieving the objectives of such
8 panels, committees, and governing boards are not open to the
9 public under the provisions of chapter 286.

10 (8)(7) The investigations, proceedings, and records of
11 the peer review panel, a committee of a hospital, a
12 physician-hospital organization, an integrated delivery
13 system, a disciplinary board, or a governing board, or agent
14 thereof with whom there is a specific written contract for
15 that purpose, as described in this section are ~~shall not be~~
16 subject to discovery or introduction into evidence in any
17 civil or administrative action against a provider of
18 professional health services arising out of the matters that
19 ~~which~~ are the subject of evaluation and review by such a group
20 or its agent, and a person who was in attendance at a meeting
21 of such group or its agent may not be permitted or required to
22 testify in any such civil or administrative action as to any
23 evidence or other matters produced or presented during the
24 proceedings of such a group or its agent or as to any
25 findings, recommendations, evaluations, opinions, or other
26 actions of such a group or its agent or any members thereof.
27 However, information, documents, or records otherwise
28 available from original sources are not ~~to be construed as~~
29 immune from discovery or use in any such civil or
30 administrative action merely because they were presented
31 during proceedings of such group, and any person who testifies

1 before such group or who is a member of such group may not be
2 prevented from testifying as to matters within his or her
3 knowledge, but such a witness may not be asked about his or
4 her testimony before such a group or about opinions that he or
5 she formed ~~by him or her~~ as a result of those ~~such~~ group
6 hearings.

7 (9)~~(8)~~(a) If the defendant prevails in an action
8 brought by a staff member or physician who delivers health
9 care services at the licensed facility against any person or
10 entity that initiated, participated in, was a witness in, or
11 conducted any review as authorized by this section, the court
12 must ~~shall~~ award reasonable attorney's fees and costs to the
13 defendant.

14 (b) As a condition of any staff member or physician
15 bringing any action against any person or entity that
16 initiated, participated in, was a witness in, or conducted any
17 review as authorized by this section and before any responsive
18 pleading is due, the staff member or physician must ~~shall~~ post
19 a bond or other security, as set by the court having
20 jurisdiction of the action, in an amount sufficient to pay the
21 costs and attorney's fees.

22 (10)~~(9)~~(a) A hospital's compliance with the
23 requirements of this chapter or s. 766.110(1) may not be the
24 sole basis to establish an agency or partnership relationship
25 between the hospital and physicians who provide services
26 within the hospital.

27 (b) A hospital may create an agency relationship with
28 a physician by written contract signed by the hospital and:

- 29 1. The physician;
- 30 2. A health care professional association; or
- 31 3. A corporate medical group and its employees.

1
2 A written contract is not the exclusive means to establish an
3 agency or partnership relationship between a hospital and any
4 other person described in this paragraph.

5 Section 42. Section 395.0197, Florida Statutes, is
6 amended to read:

7 395.0197 Internal risk management program.--

8 (1) Every licensed facility shall, as a part of its
9 administrative functions, establish an internal risk
10 management program that includes all of the following
11 components:

12 (a) The investigation and analysis of the frequency
13 and causes of general categories and specific types of adverse
14 incidents ~~causing injury~~ to patients.

15 (b) The development of appropriate measures to
16 minimize the risk of ~~injuries and~~ adverse incidents to
17 patients, including, but not limited to:

18 1. Risk management and risk prevention education and
19 training of all nonphysician personnel as follows:

20 a. Such education and training of all nonphysician
21 personnel as part of their initial orientation; and

22 b. At least 1 hour of such education and training
23 annually for all nonphysician personnel of the licensed
24 facility working in clinical areas and providing patient care.

25 2. A prohibition, except when emergency circumstances
26 require otherwise, against a staff member of the licensed
27 facility attending a patient in the recovery room, unless the
28 staff member is authorized to attend the patient in the
29 recovery room and is in the company of at least one other
30 person. However, a licensed facility ~~hospital~~ is exempt from
31 the two-person requirement if it has:

1 a. Live visual observation;
2 b. Electronic observation; or
3 c. Any other reasonable measure taken to ensure
4 patient protection and privacy.

5 (c) The analysis of patient grievances that relate to
6 patient care and the quality of medical services.

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

13 (2) The internal risk management program is the
14 responsibility of the governing board of the health care
15 facility. Each licensed facility shall hire a risk manager,
16 licensed under part IX of chapter 626, who is responsible for
17 implementation and oversight of such facility's internal risk
18 management program as required by this section. A risk
19 manager must not be made responsible for more than four
20 internal risk management programs in separate licensed
21 facilities, unless the facilities are under one corporate
22 ownership or the risk management programs are in rural
23 hospitals.

24 (3) In addition to the programs mandated by this
25 section, other innovative approaches intended to reduce the
26 frequency and severity of medical malpractice and patient
27 injury claims must ~~shall~~ be encouraged and their
28 implementation and operation facilitated. Such additional
29 approaches may include extending internal risk management
30 programs to health care providers' offices and the assuming of
31

1 provider liability by a licensed health care facility for acts
2 or omissions occurring within the licensed facility.

3 (4) The agency shall, after consulting with the
4 Department of Insurance, adopt rules governing the
5 establishment of internal risk management programs to meet the
6 needs of individual licensed facilities. Each internal risk
7 management program must ~~shall~~ include the use of incident
8 reports to be filed with an individual of responsibility who
9 is competent in risk management techniques in the employ of
10 each licensed facility, such as an insurance coordinator, or
11 who is retained by the licensed facility as a consultant. The
12 individual responsible for the risk management program shall
13 have free access to all medical records of the licensed
14 facility. The incident reports are part of the workpapers of
15 the attorney defending the licensed facility in litigation
16 relating to the licensed facility and are subject to
17 discovery, but are not admissible as evidence in court. A
18 person filing an incident report is not subject to civil suit
19 by virtue of such incident report. As a part of each internal
20 risk management program, the incident reports must ~~shall~~ be
21 used to develop categories of incidents which identify problem
22 areas. Once problem areas are identified, procedures must
23 ~~shall~~ be adjusted to correct the problem areas.

24 (5) For purposes of reporting to the agency pursuant
25 to subsections (6), (7), and (8), the term "adverse incident"
26 means an event over which health care personnel could exercise
27 control and which is associated in whole or in part with
28 medical intervention, rather than the condition for which such
29 intervention occurred, and which:

30 (a) Results in one of the following injuries:

- 31 1. Death;

- 1 2. Brain or spinal damage;
2 3. Permanent disfigurement;
3 4. Fracture or dislocation of bones or joints;
4 5. A resulting limitation of neurological, physical,
5 or sensory function which exists upon discharge from the
6 facility;
7 6. Any condition that required specialized medical
8 attention or surgical intervention resulting from nonemergency
9 medical intervention, other than an emergency medical
10 condition, to which the patient had not given his or her
11 informed consent; or
12 7. Any condition that required the transfer of the
13 patient, within or outside the facility, to a unit providing a
14 more acute level of care due to the adverse incident rather
15 than to the patient's condition prior to the adverse incident;
16 (b) Was the performance of a surgical procedure on the
17 wrong patient; a wrong surgical procedure; a wrong-site
18 surgical procedure; or a surgical procedure otherwise
19 unrelated to the patient's diagnosis or medical condition;
20 (c) Required the surgical repair of damage resulting
21 to a patient from a planned surgical procedure, where the
22 damage was not a recognized specific risk as disclosed to the
23 patient on the informed consent form; or
24 (d) Was a procedure to remove foreign objects
25 unintentionally left inside the patient during a surgical
26 procedure.
27 ~~(6)~~⁽⁵⁾(a) Each licensed facility subject to this
28 section shall submit an annual report to the agency
29 summarizing the incident reports that have been filed in the
30 facility for that year. The report shall include:
31

1 1. The total number of adverse incidents ~~causing~~
2 ~~injury to patients.~~

3 2. A listing, by category, of the types of operations,
4 diagnostic or treatment procedures, or other actions causing
5 the injuries, and the number of incidents occurring within
6 each category.

7 3. A listing, by category, of the types of injuries
8 caused and the number of incidents occurring within each
9 category.

10 4. A code number using the health care professional's
11 licensure number and a separate code number identifying all
12 other individuals directly involved in adverse incidents
13 ~~causing injury~~ to patients, the relationship of the individual
14 to the licensed facility, and the number of incidents in which
15 each individual has been directly involved. Each licensed
16 facility shall maintain names of the health care professionals
17 and individuals identified by code numbers for purposes of
18 this section.

19 5. A description of all malpractice claims filed
20 against the licensed facility, including the total number of
21 pending and closed claims and the nature of the incident that
22 ~~which~~ led to, the persons involved in, and the status and
23 disposition of each claim. Each report must ~~shall~~ update
24 status and disposition for all prior reports.

25 ~~6. A report of all disciplinary actions pertaining to~~
26 ~~patient care taken against any medical staff member, including~~
27 ~~the nature and cause of the action.~~

28 (b) The information reported to the agency pursuant to
29 paragraph (a) which relates to persons licensed under chapter
30 458, chapter 459, chapter 461, or chapter 466 must ~~shall~~ be
31 reviewed by the agency. The agency shall determine whether

1 any of the incidents potentially involved conduct by a health
2 care professional who is subject to disciplinary action, in
3 which case ~~the provisions of s. 455.225 applies shall apply.~~

4 (c) The report submitted to the agency must ~~shall~~ also
5 contain the name and license number of the risk manager of the
6 licensed facility, a copy of its policy and procedures which
7 govern the measures taken by the facility and its risk manager
8 to reduce the risk of injuries and adverse ~~or untoward~~
9 incidents, and the results of such measures. The annual
10 report is confidential and is not available to the public
11 pursuant to s. 119.07(1) or any other law providing access to
12 public records. The annual report is not discoverable or
13 admissible in any civil or administrative action, except in
14 disciplinary proceedings by the agency or the appropriate
15 regulatory board. The annual report is not available to the
16 public as part of the record of investigation for and
17 prosecution in disciplinary proceedings made available to the
18 public by the agency or the appropriate regulatory board.
19 However, the agency or the appropriate regulatory board shall
20 make available, upon written request by a health care
21 professional against whom probable cause has been found, any
22 such records which form the basis of the determination of
23 probable cause.

24 (7) The licensed facility shall notify the agency no
25 later than 1 business day after the risk manager or his or her
26 designee has received a report pursuant to paragraph (1)(d)
27 and is able to determine within 1 business day that any of the
28 following adverse incidents has occurred, whether occurring in
29 the licensed facility or arising from health care prior to
30 admission in the licensed facility. Notification is not

31

1 required if the risk manager is unable to determine within 1
2 business day that any of the following incidents occurred:

3 (a) The death of a patient;

4 (b) Brain or spinal damage to a patient;

5 (c) The performance of a surgical procedure on the
6 wrong patient;

7 (d) The performance of a wrong-site surgical
8 procedure; or

9 (e) The performance of a wrong surgical procedure.

10
11 The notification must be made in writing and be provided by
12 facsimile device or overnight mail delivery. The notification
13 must include information regarding the identity of the
14 affected patient, the type of adverse incident, the initiation
15 of an investigation by the facility, and whether the events
16 causing or resulting in the adverse incident represent a
17 potential risk to other patients.

18 (8)(6) Any of the following adverse incidents, whether
19 occurring in the licensed facility or arising from health care
20 prior to admission in the licensed facility, shall be reported
21 by the facility to the agency within 15 calendar days after
22 its occurrence ~~if an adverse or untoward incident, whether~~
23 ~~occurring in the licensed facility or arising from health care~~
24 ~~prior to admission in the licensed facility, results in:~~

25 (a) The death of a patient;

26 (b) Brain or spinal damage to a patient;

27 (c) The performance of a surgical procedure on the
28 wrong patient; ~~or~~

29 (d) The performance of a wrong-site surgical
30 procedure;

31 (e) The performance of a wrong surgical procedure;

1 (f) The performance of a surgical procedure that is
2 medically unnecessary or otherwise unrelated to the patient's
3 diagnosis or medical condition;

4 (g) The surgical repair of damage resulting to a
5 patient from a planned surgical procedure, where the damage is
6 not a recognized specific risk as disclosed to the patient on
7 the informed consent form; or

8 (h) The performance of procedures to remove foreign
9 objects remaining from a surgical procedure.

10 ~~(d) A surgical procedure unrelated to the patient's~~
11 ~~diagnosis or medical needs being performed on any patient,~~
12 ~~including the surgical repair of injuries or damage resulting~~
13 ~~from the planned surgical procedure, wrong site or wrong~~
14 ~~procedure surgeries, and procedures to remove foreign objects~~
15 ~~remaining from surgical procedures,~~

16
17 The agency may grant extensions to this reporting requirement
18 for more than 15 days upon justification submitted in writing
19 by the facility administrator to the agency.~~the licensed~~
20 ~~facility shall report this incident to the agency within 15~~
21 ~~calendar days after its occurrence.~~The agency may require an
22 additional, final report. These reports shall not be
23 available to the public pursuant to s. 119.07(1) or any other
24 law providing access to public records, nor be discoverable or
25 admissible in any civil or administrative action, except in
26 disciplinary proceedings by the agency or the appropriate
27 regulatory board, nor shall they be available to the public as
28 part of the record of investigation for and prosecution in
29 disciplinary proceedings made available to the public by the
30 agency or the appropriate regulatory board. However, the
31 agency or the appropriate regulatory board shall make

1 available, upon written request by a health care professional
2 against whom probable cause has been found, any such records
3 which form the basis of the determination of probable cause.
4 The agency may investigate, as it deems appropriate, any such
5 incident and prescribe measures that must or may be taken in
6 response to the incident. The agency shall review each
7 incident and determine whether it potentially involved conduct
8 by the health care professional who is subject to disciplinary
9 action, in which case the provisions of s. 455.225 shall
10 apply.

11 (9)~~(7)~~ The internal risk manager of each licensed
12 facility shall:

13 ~~(a) Notify the family or guardian of the victim, if a~~
14 ~~minor, that an allegation of sexual misconduct has been made~~
15 ~~and that an investigation is being conducted;~~

16 (a)~~(b)~~ Investigate every allegation of sexual
17 misconduct which is made against a member of the facility's
18 personnel who has direct patient contact, when the allegation
19 is that the sexual misconduct occurred at the facility or on
20 the grounds of the facility; ~~and~~

21 (b)~~(c)~~ Report every allegation of sexual misconduct to
22 the administrator of the licensed facility; ~~and~~.

23 (c) Notify the family or guardian of the victim, if a
24 minor, that an allegation of sexual misconduct has been made
25 and that an investigation is being conducted.

26 (10)~~(8)~~ Any witness who witnessed or who possesses
27 actual knowledge of the act that is the basis of an allegation
28 of sexual abuse shall:

29 (a) Notify the local police; and

30 (b) Notify the hospital risk manager and the
31 administrator.

1
2 For purposes of this subsection, the term "sexual abuse" means
3 acts of a sexual nature committed for the sexual gratification
4 of anyone upon, or in the presence of, a vulnerable adult,
5 without the vulnerable adult's informed consent, or a minor.
6 "Sexual abuse" includes, but is not limited to, the acts
7 defined in s. 794.011(1)(h), fondling, exposure of a
8 vulnerable adult's or minor's sexual organs, or the use of the
9 vulnerable adult or minor to solicit for or engage in
10 prostitution or sexual performance. "Sexual abuse" does not
11 include any act intended for a valid medical purpose or any
12 act which may reasonably be construed to be a normal
13 caregiving action.

14 (11)(9) A person who, with malice or with intent to
15 discredit or harm a licensed facility or any person, makes a
16 false allegation of sexual misconduct against a member of a
17 licensed facility's personnel is guilty of a misdemeanor of
18 the second degree, punishable as provided in s. 775.082 or s.
19 775.083.

20 (12)(10) In addition to any penalty imposed pursuant
21 to this section, the agency shall require a written plan of
22 correction from the facility ~~may impose an administrative~~
23 ~~fine, not to exceed \$5,000, for any violation of the reporting~~
24 ~~requirements of this section. For a single incident or series~~
25 ~~of isolated incidents that are nonwillful violations of the~~
26 reporting requirements of this section, the agency shall first
27 seek to obtain corrective action by the facility. If the
28 correction is not demonstrated within the timeframe
29 established by the agency or if there is a pattern of
30 nonwillful violations of this section, the agency may impose
31 an administrative fine, not to exceed \$5,000, for any

1 violation of the reporting requirements of this section. The
2 administrative fine for repeated nonwillful violations may not
3 exceed \$10,000 for any violation. The administrative fine for
4 each intentional and willful violation may not exceed \$25,000
5 per violation, per day. A fine for an intentional and willful
6 violation of this section may not exceed \$250,000. In
7 determining the amount of fine to be levied, the agency shall
8 be guided by s. 395.1065(2)(b).

9 (13)~~(11)~~ The agency shall have access to all licensed
10 facility records necessary to carry out the provisions of this
11 section. The records obtained are not available to the public
12 under s. 119.07(1), nor shall they be discoverable or
13 admissible in any civil or administrative action, except in
14 disciplinary proceedings by the agency or the appropriate
15 regulatory board, nor shall records obtained pursuant to s.
16 455.223 be available to the public as part of the record of
17 investigation for and prosecution in disciplinary proceedings
18 made available to the public by the agency or the appropriate
19 regulatory board. However, the agency or the appropriate
20 regulatory board shall make available, upon written request by
21 a health care professional against whom probable cause has
22 been found, any such records which form the basis of the
23 determination of probable cause, except that, with respect to
24 medical review committee records, s. 766.101 controls.

25 (14)~~(12)~~ The meetings of the committees and governing
26 board of a licensed facility held solely for the purpose of
27 achieving the objectives of risk management as provided by
28 this section shall not be open to the public under the
29 provisions of chapter 286. The records of such meetings are
30 confidential and exempt from s. 119.07(1), except as provided
31 in subsection(13)~~(11)~~.

1 (15)~~(13)~~ The agency shall review, as part of its
2 licensure inspection process, the internal risk management
3 program at each licensed facility regulated by this section to
4 determine whether the program meets standards established in
5 statutes and rules, whether the program is being conducted in
6 a manner designed to reduce adverse incidents, and whether the
7 program is appropriately reporting incidents under subsections
8 (5),~~and~~ (6), (7), and (8).

9 (16)~~(14)~~ There shall be no monetary liability on the
10 part of, and no cause of action for damages shall arise
11 against, any risk manager, licensed under part IX of chapter
12 626, for the implementation and oversight of the internal risk
13 management program in a facility licensed under this chapter
14 or chapter 390 as required by this section, for any act or
15 proceeding undertaken or performed within the scope of the
16 functions of such internal risk management program if the risk
17 manager acts without intentional fraud.

18 (17)~~(15)~~ If the agency, through its receipt of the
19 annual reports prescribed in subsection(6)~~(5)~~ or through any
20 investigation, has a reasonable belief that conduct by a staff
21 member or employee of a licensed facility is grounds for
22 disciplinary action by the appropriate regulatory board, the
23 agency shall report this fact to such regulatory board.

24 (18)~~(16)~~ The agency shall annually publish a report
25 summarizing the information contained in the annual incident
26 reports submitted by licensed facilities under subsection (6),
27 ~~and~~ any serious incident reports submitted by licensed
28 facilities under subsection (7), and disciplinary actions
29 reported to the agency under s. 395.0193. The report must, at
30 a minimum, summarize:
31

1 (a) Adverse and serious incidents, ~~by service district~~
2 ~~of the department as defined in s. 20.19,~~ by category of
3 reported incident, and by type of professional involved.

4 (b) Types of malpractice claims filed, ~~by service~~
5 ~~district of the department as defined in s. 20.19,~~ and by type
6 of professional involved.

7 (c) Disciplinary actions taken against professionals,
8 ~~by service district of the department as defined in s. 20.19,~~
9 and by type of professional involved.

10 Section 43. Present subsections (4), (5), (6), (7),
11 (8), and (9) of section 395.0199, Florida Statutes, are
12 renumbered as subsections (5), (6), (7), (8), (9), and (10),
13 respectively, and a new subsection (4) is added to that
14 section, to read:

15 395.0199 Private utilization review.--

16 (4) Each applicant for registration must comply with
17 the following requirements:

18 (a) Upon receipt of a completed, signed, and dated
19 application, the agency shall require background screening, in
20 accordance with the level 2 standards for screening set forth
21 in chapter 435, of the managing employee or other similarly
22 titled individual who is responsible for the operation of the
23 entity. The applicant must comply with the procedures for
24 level 2 background screening as set forth in chapter 435.

25 (b) The agency may require background screening of any
26 other individual who is an applicant, if the agency has a
27 reasonable basis for believing that he or she has been
28 convicted of a crime or has committed any other offense
29 prohibited under the level 2 standards for screening set forth
30 in chapter 435.

31

1 (c) Proof of compliance with the level 2 background
2 screening requirements of chapter 435 which has been submitted
3 within the previous 5 years in compliance with any other
4 health care licensure requirements of this state is acceptable
5 in fulfillment of the requirements of paragraph (a).

6 (d) A provisional registration may be granted to an
7 applicant when each individual required by this section to
8 undergo background screening has met the standards for the
9 abuse registry background check and the Department of Law
10 Enforcement background check, but the agency has not yet
11 received background screening results from the Federal Bureau
12 of Investigation, or a request for a disqualification
13 exemption has been submitted to the agency as set forth in
14 chapter 435 but a response has not yet been issued. A standard
15 registration may be granted to the applicant upon the agency's
16 receipt of a report of the results of the Federal Bureau of
17 Investigation background screening for each individual
18 required by this section to undergo background screening which
19 confirms that all standards have been met, or upon the
20 granting of a disqualification exemption by the agency as set
21 forth in chapter 435. Any other person who is required to
22 undergo level 2 background screening may serve in his or her
23 capacity pending the agency's receipt of the report from the
24 Federal Bureau of Investigation. However, the person may not
25 continue to serve if the report indicates any violation of
26 background screening standards and a disqualification
27 exemption has not been requested of and granted by the agency
28 as set forth in chapter 435.

29 (e) Each applicant must submit to the agency, with its
30 application, a description and explanation of any exclusions,
31 permanent suspensions, or terminations of the applicant from

1 the Medicare or Medicaid programs. Proof of compliance with
2 the requirements for disclosure of ownership and control
3 interests under the Medicaid or Medicare programs shall be
4 accepted in lieu of this submission.

5 (f) Each applicant must submit to the agency a
6 description and explanation of any conviction of an offense
7 prohibited under the level 2 standards of chapter 435 by a
8 member of the board of directors of the applicant, its
9 officers, or any individual owning 5 percent or more of the
10 applicant. This requirement does not apply to a director of a
11 not-for-profit corporation or organization if the director
12 serves solely in a voluntary capacity for the corporation or
13 organization, does not regularly take part in the day-to-day
14 operational decisions of the corporation or organization,
15 receives no remuneration for his or her services on the
16 corporation or organization's board of directors, and has no
17 financial interest and has no family members with a financial
18 interest in the corporation or organization, provided that the
19 director and the not-for-profit corporation or organization
20 include in the application a statement affirming that the
21 director's relationship to the corporation satisfies the
22 requirements of this paragraph.

23 (g) A registration may not be granted to an applicant
24 if the applicant or managing employee has been found guilty
25 of, regardless of adjudication, or has entered a plea of nolo
26 contendere or guilty to, any offense prohibited under the
27 level 2 standards for screening set forth in chapter 435,
28 unless an exemption from disqualification has been granted by
29 the agency as set forth in chapter 435.

30 (h) The agency may deny or revoke the registration if
31 any applicant:

1 1. Has falsely represented a material fact in the
2 application required by paragraph (e) or paragraph (f), or has
3 omitted any material fact from the application required by
4 paragraph (e) or paragraph (f); or

5 2. Has had prior action taken against the applicant
6 under the Medicaid or Medicare program as set forth in
7 paragraph (e).

8 (i) An application for registration renewal must
9 contain the information required under paragraphs (e) and (f).

10 Section 44. Paragraph (d) of subsection (1) of section
11 395.1055, Florida Statutes, is amended to read:

12 395.1055 Rules and enforcement.--

13 (1) The agency shall adopt, amend, promulgate, and
14 enforce rules to implement the provisions of this part, which
15 shall include reasonable and fair minimum standards for
16 ensuring that:

17 (d) New facilities and a new wing or floor added to an
18 existing facility after July 1, 1999, are structurally capable
19 of serving as shelters only for patients, staff, and families
20 of staff, and equipped to be self-supporting during and
21 immediately following disasters.

22 Section 45. The Agency for Health Care Administration
23 shall work with persons affected by section 44 of this act and
24 report to the Governor and Legislature by March 1, 1999, its
25 recommendations for cost-effective renovation standards to be
26 applied to existing facilities.

27 Section 46. Effective January 1, 1999, section
28 626.941, Florida Statutes, is transferred, renumbered as
29 section 395.10971, Florida Statutes, and amended to read:

30 395.10971 ~~626.941~~ Purpose.--The Legislature finds that
31 control and prevention of medical accidents and injuries are

1 ~~is~~ a significant public health and safety concern. An
2 essential method of controlling medical injuries is a
3 comprehensive program of risk management, as required by s.
4 395.0197. The key to such a program is a competent and
5 qualified health care risk manager. It is the intent of the
6 Legislature to establish certain minimum standards for health
7 care risk managers to ensure the public welfare.

8 Section 47. Effective January 1, 1999, section
9 626.942, Florida Statutes, is transferred, renumbered as
10 section 395.10972, Florida Statutes, and amended to read:

11 395.10972 ~~626.942~~ Health Care Risk Manager Advisory
12 Council.--The Director of Health Care Administration ~~Insurance~~
13 ~~Commissioner~~ may appoint a five-member advisory council to
14 advise the agency ~~department~~ on matters pertaining to health
15 care risk managers. The members of the council shall serve at
16 the pleasure of the director ~~Insurance Commissioner~~. The
17 council shall designate a chair. The council shall meet at
18 the call of the director ~~Insurance Commissioner~~ or at those
19 times that are ~~as may be~~ required by rule of the agency
20 ~~department~~. The members of the advisory council shall receive
21 no compensation for their services, but shall be reimbursed
22 for travel expenses as provided in s. 112.061. The council
23 must ~~shall~~ consist of individuals who represent ~~representing~~
24 the following areas:

25 (1) Two members must ~~shall~~ be active health care risk
26 managers.

27 (2) One member must ~~shall~~ be an active hospital
28 administrator.

29 (3) One member must ~~shall~~ be an employee of an insurer
30 or self-insurer of medical malpractice coverage.

31

1 (4) One member must ~~shall~~ be a representative of the
2 health-care-consuming public.

3 Section 48. Effective January 1, 1999, section
4 626.943, Florida Statutes, is transferred, renumbered as
5 section 395.10973, Florida Statutes, and amended to read:

6 395.10973 ~~626.943~~ Powers and duties of the agency
7 ~~department~~.--It is the function of the agency ~~department~~ to:

8 (1) Adopt ~~Promulgate~~ rules necessary to carry out the
9 duties conferred upon it under this part to protect the public
10 health, safety, and welfare.

11 (2) Develop, impose, and enforce specific standards
12 within the scope of the general qualifications established by
13 this part which must be met by individuals in order to receive
14 licenses as health care risk managers. These standards shall
15 be designed to ensure that health care risk managers are
16 individuals of good character and otherwise suitable and, by
17 training or experience in the field of health care risk
18 management, qualified in accordance with the provisions of
19 this part to serve as health care risk managers, within
20 statutory requirements.

21 (3) Develop a method for determining whether an
22 individual meets the standards set forth in s. 395.10974 ~~s.~~
23 ~~626.944~~.

24 (4) Issue licenses, ~~beginning on June 1, 1986,~~ to
25 qualified individuals who meet ~~meeting~~ the standards set forth
26 in s. 395.10974 ~~s. 626.944~~.

27 (5) Receive, investigate, and take appropriate action
28 with respect to any charge or complaint filed with the agency
29 ~~department~~ to the effect that a certified health care risk
30 manager has failed to comply with the requirements or
31

1 standards adopted by rule by the agency department or to
2 comply with ~~the provisions of~~ this part.

3 (6) Establish procedures for providing ~~the Department~~
4 ~~of Health and Rehabilitative Services with~~ periodic reports on
5 persons certified or disciplined by the agency department
6 under this part.

7 (7) Develop a model risk management program for health
8 care facilities which will satisfy the requirements of s.
9 395.0197.

10 Section 49. Effective January 1, 1999, section
11 626.944, Florida Statutes, is transferred, renumbered as
12 section 395.10974, Florida Statutes, and amended to read:

13 395.10974 ~~626.944~~ Qualifications for health care risk
14 managers.--

15 (1) Any person desiring to be licensed as a health
16 care risk manager shall submit an application on a form
17 provided by the agency department. In order to qualify, the
18 applicant must ~~shall~~ submit evidence satisfactory to the
19 agency department which demonstrates the applicant's
20 competence, by education or experience, in the following
21 areas:

22 (a) Applicable standards of health care risk
23 management.

24 (b) Applicable federal, state, and local health and
25 safety laws and rules.

26 (c) General risk management administration.

27 (d) Patient care.

28 (e) Medical care.

29 (f) Personal and social care.

30 (g) Accident prevention.

31 (h) Departmental organization and management.

1 (i) Community interrelationships.

2 (j) Medical terminology.

3

4 The agency ~~department~~ may require such additional information,
5 from the applicant or any other person, as is ~~may be~~
6 reasonably required to verify the information contained in the
7 application.

8 (2) The agency ~~may department~~ shall not grant or issue
9 a license as a health care risk manager to any individual
10 unless from the application it affirmatively appears that the
11 applicant:

12 (a) Is 18 years of age or over;

13 (b) Is a high school graduate or equivalent; and

14 (c)1. Has fulfilled the requirements of a 1-year
15 program or its equivalent in health care risk management
16 training which may be developed or approved by the agency
17 ~~department~~;

18 2. Has completed 2 years of college-level studies
19 which would prepare the applicant for health care risk
20 management, to be further defined by rule; or

21 3. Has obtained 1 year of practical experience in
22 health care risk management.

23 (3) The agency ~~department~~ shall issue a license ~~7~~
24 ~~beginning on June 1, 1986,~~ to practice health care risk
25 management to any applicant who qualifies under this section
26 and submits an application fee of not more than \$75, a
27 fingerprinting fee of not more than \$75, and a license fee of
28 not more than \$100. The agency shall by rule establish fees
29 and procedures for the issuance and cancellation of licenses
30 ~~the license fee as set forth in s. 624.501. Licenses shall be~~
31

1 ~~issued and canceled in the same manner as provided in part I~~
2 ~~of this chapter.~~

3 (4) The agency ~~department~~ shall renew a health care
4 risk manager license upon receipt of a biennial renewal
5 application and fees in accordance with procedures prescribed
6 in s. 626.381 for agents in general. The agency shall, by
7 rule, establish a procedure for the biennial renewal of
8 licenses.

9 Section 50. Effective January 1, 1999, section
10 626.945, Florida Statutes, is transferred, renumbered as
11 section 395.10975, Florida Statutes, and amended to read:

12 395.10975 ~~626.945~~ Grounds for denial, suspension, or
13 revocation of a health care risk manager's license;
14 administrative fine.--

15 (1) The agency ~~department~~ may, in its discretion,
16 deny, suspend, revoke, or refuse to renew or continue the
17 license of any health care risk manager or applicant, if it
18 finds that as to such applicant or licensee any one or more of
19 the following grounds exist:

20 (a) Any cause for which issuance of the license could
21 have been refused had it then existed and been known to the
22 agency ~~department~~.

23 (b) Giving false or forged evidence to the agency
24 ~~department~~ for the purpose of obtaining a license.

25 (c) Having been found guilty of, or having pleaded
26 guilty or nolo contendere to, a crime in this state or any
27 other state relating to the practice of risk management or the
28 ability to practice risk management, whether or not a judgment
29 or conviction has been entered.

30 (d) Having been found guilty of, or having pleaded
31 guilty or nolo contendere to, a felony, or a crime involving

1 moral turpitude punishable by imprisonment of 1 year or more
2 under the law of the United States, under the law of any
3 state, or under the law of any other country, without regard
4 to whether a judgment of conviction has been entered by the
5 court having jurisdiction of such cases.

6 (e) Making or filing a report or record which the
7 licensee knows to be false; or intentionally failing to file a
8 report or record required by state or federal law; or
9 willfully impeding or obstructing, or inducing another person
10 to impede or obstruct, the filing of a report or record
11 required by state or federal law. Such reports or records
12 shall include only those which are signed in the capacity of a
13 licensed health care risk manager.

14 (f) Fraud or deceit, negligence, incompetence, or
15 misconduct in the practice of health care risk management.

16 (g) Violation of any provision of this part or any
17 other law applicable to the business of health care risk
18 management.

19 (h) Violation of any lawful order or rule of the
20 agency ~~department~~ or failure to comply with a lawful subpoena
21 issued by the agency ~~department~~.

22 (i) Practicing with a revoked or suspended health care
23 risk manager license.

24 (j) Repeatedly acting in a manner inconsistent with
25 the health and safety of the patients of the licensed facility
26 in which the licensee is the health care risk manager.

27 (k) Being unable to practice health care risk
28 management with reasonable skill and safety to patients by
29 reason of illness; drunkenness; or use of drugs, narcotics,
30 chemicals, or any other material or substance or as a result
31 of any mental or physical condition. Any person affected

1 under this paragraph shall have the opportunity, at reasonable
2 intervals, to demonstrate that he or she can resume the
3 competent practices of health care risk manager with
4 reasonable skill and safety to patients.

5 (l) Willfully permitting unauthorized disclosure of
6 information relating to a patient or a patient's records.

7 (m) Discriminating in respect to patients, employees,
8 or staff on account of race, religion, color, sex, or national
9 origin.

10 (2) If the agency ~~department~~ finds that one or more of
11 the grounds set forth in subsection (1) exist, it may, in lieu
12 of or in addition to suspension or revocation, enter an order
13 imposing one or more of the following penalties:

14 (a) Imposition of an administrative fine not to exceed
15 \$2,500 for each count or separate offense.

16 (b) Issuance of a reprimand.

17 (c) Placement of the licensee on probation for a
18 period of time and subject to such conditions as the agency
19 specifies ~~department may specify~~, including requiring the
20 licensee to attend continuing education courses or to work
21 under the supervision of another licensee.

22 (3) The agency ~~department~~ may reissue the license of a
23 disciplined licensee in accordance with ~~the provisions of this~~
24 part.

25 Section 51. Paragraphs (a) and (b) of subsection (1)
26 of section 395.401, Florida Statutes, are amended to read:

27 395.401 Trauma services system plans; verification of
28 trauma centers and pediatric trauma referral centers;
29 procedures; renewal.--

30 (1) As used in this part, the term:
31

1 (a) "Agency" means the Agency for Health Care
2 Administration~~"Board" means the Health Care Board.~~

3 (b) "Charity care" or "uncompensated charity care"
4 means that portion of hospital charges reported to the agency
5 ~~board~~ for which there is no compensation for care provided to
6 a patient whose family income for the 12 months preceding the
7 determination is less than or equal to 150 percent of the
8 federal poverty level, unless the amount of hospital charges
9 due from the patient exceeds 25 percent of the annual family
10 income. However, in no case shall the hospital charges for a
11 patient whose family income exceeds 4 times the federal
12 poverty level for a family of four be considered charity.

13 Section 52. Paragraph (c) of subsection (2) of section
14 395.602, Florida Statutes, is amended to read:

15 395.602 Rural hospitals.--

16 (2) DEFINITIONS.--As used in this part:

17 (c) "Inactive rural hospital bed" means a licensed
18 acute care hospital bed, as defined in s. 395.002(14)~~s.~~
19 ~~395.002(13)~~, that is inactive in that it cannot be occupied by
20 acute care inpatients.

21 Section 53. Subsections (1), (2), (3), and (4) of
22 section 395.701, Florida Statutes, are amended to read:

23 395.701 Annual assessments on net operating revenues
24 to fund public medical assistance; administrative fines for
25 failure to pay assessments when due.--

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

27 (a) "Agency" means the Agency for Health Care
28 Administration.

29 **(b)**~~(a)~~ "Gross operating revenue" or "gross revenue"
30 means the sum of daily hospital service charges, ambulatory
31

1 service charges, ancillary service charges, and other
2 operating revenue.

3 ~~(b) "Health Care Board" or "board" means the Health~~
4 ~~Care Board created by s. 20.42.~~

5 (c) "Hospital" means a health care institution as
6 defined in s. 395.002(13)~~s. 395.002(12)~~, but does not include
7 any hospital operated by the agency or the Department of
8 Corrections.

9 (d) "Net operating revenue" or "net revenue" means
10 gross revenue less deductions from revenue.

11 (e) "Total deductions from gross revenue" or
12 "deductions from revenue" means reductions from gross revenue
13 resulting from inability to collect payment of charges. Such
14 reductions include bad debts; contractual adjustments;
15 uncompensated care; administrative, courtesy, and policy
16 discounts and adjustments; and other such revenue deductions,
17 but also includes the offset of restricted donations and
18 grants for indigent care.

19 (2) There is ~~hereby~~ imposed upon each hospital an
20 assessment in an amount equal to 1.5 percent of the annual net
21 operating revenue for each hospital, such revenue to be
22 determined by the agency department, based on the actual
23 experience of the hospital as reported to the agency
24 ~~department~~. Within 6 months after the end of each hospital
25 fiscal year, the agency department shall certify the amount of
26 the assessment for each hospital. The assessment shall be
27 payable to and collected by the agency department in equal
28 quarterly amounts, on or before the first day of each calendar
29 quarter, beginning with the first full calendar quarter that
30 occurs after the agency department certifies the amount of the
31 assessment for each hospital. All moneys collected pursuant to

1 this subsection shall be deposited into the Public Medical
2 Assistance Trust Fund.

3 (3) The agency ~~department~~ shall impose an
4 administrative fine, not to exceed \$500 per day, for failure
5 of any hospital to pay its assessment by the first day of the
6 calendar quarter on which it is due. The failure of a
7 hospital to pay its assessment within 30 days after the
8 assessment is due is ground for the agency ~~department~~ to
9 impose an administrative fine not to exceed \$5,000 per day.

10 (4) The purchaser, successor, or assignee of a
11 facility subject to the agency's ~~board's~~ jurisdiction shall
12 assume full liability for any assessments, fines, or penalties
13 of the facility or its employees, regardless of when
14 identified. Such assessments, fines, or penalties shall be
15 paid by the employee, owner, or licensee who incurred them,
16 within 15 days of the sale, transfer, or assignment. However,
17 the purchaser, successor, or assignee of the facility may
18 withhold such assessments, fines, or penalties from purchase
19 moneys or payment due to the seller, transferor, or employee,
20 and shall make such payment on behalf of the seller,
21 transferor, or employee. Any employer, purchaser, successor,
22 or assignee who fails to withhold sufficient funds to pay
23 assessments, fines, or penalties arising under the provisions
24 of chapter 408 shall make such payments within 15 days of the
25 date of the transfer, purchase, or assignment. Failure by the
26 transferee to make payments as provided in this subsection
27 shall subject such transferee to the penalties and assessments
28 provided in chapter 408. Further, in the event of sale,
29 transfer, or assignment of any facility under the agency's
30 ~~board's~~ jurisdiction, future assessments shall be based upon
31 the most recently available prior year report or audited

1 actual experience for the facility. It shall be the
2 responsibility of the new owner or licensee to require the
3 production of the audited financial data for the period of
4 operation of the prior owner. If the transferee fails to
5 obtain current audited financial data from the previous owner
6 or licensee, the new owner shall be assessed based upon the
7 most recent year of operation for which 12 months of audited
8 actual experience are available or upon a reasonable estimate
9 of 12 months of full operation as calculated by the agency
10 ~~board~~.

11 Section 54. Paragraph (b) of subsection (1) of section
12 400.051, Florida Statutes, is amended to read:

13 400.051 Homes or institutions exempt from the
14 provisions of this part.--

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

17 (b) Any hospital, as defined in s. 395.002(11)~~s.~~
18 ~~395.002(10)~~, that is licensed under chapter 395.

19 Section 55. Paragraph (a) of subsection (2) of section
20 400.071, Florida Statutes, is amended, present subsections
21 (4), (5), (6), (7), and (8) of that section are redesignated
22 as subsections (5), (6), (7), (8), and (9), respectively, and
23 a new subsection (4) is added to that section, to read:

24 400.071 Application for license.--

25 (2) The application shall be under oath and shall
26 contain the following:

27 (a) The name, address, and social security number of
28 the applicant if an individual; if the applicant is a firm,
29 partnership, or association, its name, address, and employer
30 identification number (EIN), and the name and address of every
31 member; if the applicant is a corporation, its name, address,

1 and employer identification number (EIN), and the name and
2 address of its director and officers and of each person having
3 at least a 5-percent ~~10-percent~~ interest in the corporation;
4 and the name by which the facility is to be known.

5 (4) Each applicant for licensure must comply with the
6 following requirements:

7 (a) Upon receipt of a completed, signed, and dated
8 application, the agency shall require background screening of
9 the applicant, in accordance with the level 2 standards for
10 screening set forth in chapter 435. As used in this
11 subsection, the term "applicant" means the facility
12 administrator, or similarly titled individual who is
13 responsible for the day-to-day operation of the licensed
14 facility, and the facility financial officer, or similarly
15 titled individual who is responsible for the financial
16 operation of the licensed facility.

17 (b) The agency may require background screening for a
18 member of the board of directors of the licensee or an officer
19 or an individual owning 5 percent or more of the licensee if
20 the agency reasonably suspects that such individual has been
21 convicted of an offense prohibited under the level 2 standards
22 for screening set forth in chapter 435.

23 (c) Proof of compliance with the level 2 background
24 screening requirements of chapter 435 which has been submitted
25 within the previous 5 years in compliance with any other
26 health care or assisted living licensure requirements of this
27 state is acceptable in fulfillment of paragraph (a). Proof of
28 compliance with background screening which has been submitted
29 within the previous 5 years to fulfill the requirements of the
30 Department of Insurance pursuant to chapter 651 as part of an
31 application for a certificate of authority to operate a

1 continuing care retirement community is acceptable in
2 fulfillment of the Department of Law Enforcement and Federal
3 Bureau of Investigation background check.

4 (d) A provisional license may be granted to an
5 applicant when each individual required by this section to
6 undergo background screening has met the standards for the
7 abuse registry background check and the Department of Law
8 Enforcement background check, but the agency has not yet
9 received background screening results from the Federal Bureau
10 of Investigation, or a request for a disqualification
11 exemption has been submitted to the agency as set forth in
12 chapter 435 but a response has not yet been issued. A license
13 may be granted to the applicant upon the agency's receipt of a
14 report of the results of the Federal Bureau of Investigation
15 background screening for each individual required by this
16 section to undergo background screening which confirms that
17 all standards have been met, or upon the granting of a
18 disqualification exemption by the agency as set forth in
19 chapter 435. Any other person who is required to undergo
20 level 2 background screening may serve in his or her capacity
21 pending the agency's receipt of the report from the Federal
22 Bureau of Investigation; however, the person may not continue
23 to serve if the report indicates any violation of background
24 screening standards and a disqualification exemption has not
25 been requested of and granted by the agency as set forth in
26 chapter 435.

27 (e) Each applicant must submit to the agency, with its
28 application, a description and explanation of any exclusions,
29 permanent suspensions, or terminations of the applicant from
30 the Medicare or Medicaid programs. Proof of compliance with
31 disclosure of ownership and control interest requirements of

1 the Medicaid or Medicare programs shall be accepted in lieu of
2 this submission.

3 (f) Each applicant must submit to the agency a
4 description and explanation of any conviction of an offense
5 prohibited under the level 2 standards of chapter 435 by a
6 member of the board of directors of the applicant, its
7 officers, or any individual owning 5 percent or more of the
8 applicant. This requirement shall not apply to a director of a
9 not-for-profit corporation or organization if the director
10 serves solely in a voluntary capacity for the corporation or
11 organization, does not regularly take part in the day-to-day
12 operational decisions of the corporation or organization,
13 receives no remuneration for his or her services on the
14 corporation or organization's board of directors, and has no
15 financial interest and has no family members with a financial
16 interest in the corporation or organization, provided that the
17 director and the not-for-profit corporation or organization
18 include in the application a statement affirming that the
19 director's relationship to the corporation satisfies the
20 requirements of this paragraph.

21 (g) An application for license renewal must contain
22 the information required under paragraphs (e) and (f).

23 Section 56. Present subsections (3), (4), (5), (6),
24 (7), (8), (9), and (10) of section 400.411, Florida Statutes,
25 are redesignated as subsections (4), (5), (6), (7), (8), (9),
26 (10), and (11), respectively, and a new subsection (3) is
27 added to that section, to read:

28 400.411 Initial application for license; provisional
29 license.--

30 (3) Each applicant for licensure must comply with the
31 following requirements:

1 (a) Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening of
3 the applicant, in accordance with the level 2 standards for
4 screening set forth in chapter 435. As used in this
5 subsection, the term "applicant" means the facility
6 administrator, or similarly titled individual who is
7 responsible for the day-to-day operation of the licensed
8 facility, and the facility financial officer, or similarly
9 titled individual who is responsible for the financial
10 operation of the licensed facility.

11 (b) The agency may require background screening for a
12 member of the board of directors of the licensee or an officer
13 or an individual owning 5 percent or more of the licensee if
14 the agency reasonably suspects that such individual has been
15 convicted of an offense prohibited under the level 2 standards
16 for screening set forth in chapter 435.

17 (c) Proof of compliance with the level 2 background
18 screening requirements of chapter 435 which has been submitted
19 within the previous 5 years in compliance with any other
20 health care or assisted living licensure requirements of this
21 state is acceptable in fulfillment of paragraph (a). Proof of
22 compliance with background screening which has been submitted
23 within the previous 5 years to fulfill the requirements of the
24 Department of Insurance pursuant to chapter 651 as part of an
25 application for a certificate of authority to operate a
26 continuing care retirement community is acceptable in
27 fulfillment of the Department of Law Enforcement and Federal
28 Bureau of Investigation background check.

29 (d) A provisional license may be granted to an
30 applicant when each individual required by this section to
31 undergo background screening has met the standards for the

1 abuse registry background check and the Department of Law
2 Enforcement background check, but the agency has not yet
3 received background screening results from the Federal Bureau
4 of Investigation, or a request for a disqualification
5 exemption has been submitted to the agency as set forth in
6 chapter 435 but a response has not yet been issued. A standard
7 license may be granted to the applicant upon the agency's
8 receipt of a report of the results of the Federal Bureau of
9 Investigation background screening for each individual
10 required by this section to undergo background screening which
11 confirms that all standards have been met, or upon the
12 granting of a disqualification exemption by the agency as set
13 forth in chapter 435. Any other person who is required to
14 undergo level 2 background screening may serve in his or her
15 capacity pending the agency's receipt of the report from the
16 Federal Bureau of Investigation; however, the person may not
17 continue to serve if the report indicates any violation of
18 background screening standards and a disqualification
19 exemption has not been requested of and granted by the agency
20 as set forth in chapter 435.

21 (e) Each applicant must submit to the agency, with its
22 application, a description and explanation of any exclusions,
23 permanent suspensions, or terminations of the applicant from
24 the Medicare or Medicaid programs. Proof of compliance with
25 disclosure of ownership and control interest requirements of
26 the Medicaid or Medicare programs shall be accepted in lieu of
27 this submission.

28 (f) Each applicant must submit to the agency a
29 description and explanation of any conviction of an offense
30 prohibited under the level 2 standards of chapter 435 by a
31 member of the board of directors of the applicant, its

1 officers, or any individual owning 5 percent or more of the
2 applicant. This requirement shall not apply to a director of a
3 not-for-profit corporation or organization if the director
4 serves solely in a voluntary capacity for the corporation or
5 organization, does not regularly take part in the day-to-day
6 operational decisions of the corporation or organization,
7 receives no remuneration for his or her services on the
8 corporation or organization's board of directors, and has no
9 financial interest and has no family members with a financial
10 interest in the corporation or organization, provided that the
11 director and the not-for-profit corporation or organization
12 include in the application a statement affirming that the
13 director's relationship to the corporation satisfies the
14 requirements of this paragraph.

15 (g) A license may not be granted to an applicant if
16 the applicant, administrator, or financial officer has been
17 found guilty of, regardless of adjudication, or has entered a
18 plea of nolo contendere or guilty to, any offense prohibited
19 under the level 2 standards for screening set forth in chapter
20 435, unless an exemption from disqualification has been
21 granted by the agency as set forth in chapter 435.

22 (h) The agency may deny or revoke licensure if the
23 applicant:

24 1. Has falsely represented a material fact in the
25 application required by paragraph (e) or paragraph (f), or has
26 omitted any material fact from the application required by
27 paragraph (e) or paragraph (f); or

28 2. Has had prior Medicaid or Medicare action taken
29 against the applicant as set forth in paragraph (e).

30 (i) An application for license renewal must contain
31 the information required under paragraphs (e) and (f).

1 Section 57. Paragraph (b) of subsection (2) of section
2 400.414, Florida Statutes, is amended, and paragraph (j) is
3 added to that subsection, to read:

4 400.414 Denial, revocation, or suspension of license;
5 imposition of administrative fine; grounds.--

6 (2) Any of the following actions by a facility or its
7 employee shall be grounds for action by the agency against a
8 licensee:

9 (b) The determination by the agency that any person
10 specified in s. 400.411(3)~~the facility owner or administrator~~
11 is not of suitable character or competency in accordance with
12 level 2 standards for screening set forth in chapter 435, or
13 that the owner lacks the financial ability, to provide
14 continuing adequate care to residents, ~~pursuant to the~~
15 ~~information obtained through s. 400.411, s. 400.417, or s.~~
16 ~~400.434.~~

17 (j) A facility owner's or administrator's retention of
18 an employee who performs personal care or nursing care and who
19 is not of suitable character or competency in accordance with
20 level 1 standards for screening set forth in chapter 435, as
21 indicated by the results of the employee's criminal-history
22 background screening.

23 Section 58. Present subsections (2) and (3) of section
24 400.417, Florida Statutes, are renumbered as subsections (3)
25 and (4), respectively, and a new subsection (2) is added to
26 that section, to read:

27 400.417 Expiration of license; renewal; conditional
28 license.--

29 (2) An applicant for renewal who has not completed the
30 initial background screening requirements specified in s.
31 400.411 must complete the required screening. After the

1 initial background screening is completed, each applicant for
2 renewal must submit to the agency, under penalty of perjury, a
3 notarized affidavit of compliance with the background
4 screening provisions.

5 Section 59. Section 400.4174, Florida Statutes, is
6 amended to read:

7 400.4174 Background screening;reports of abuse in
8 facilities.--

9 (1) The facility owner or administrator shall conduct
10 level 1 background screening, as set forth in chapter 435, on
11 all employees hired on or after October 1, 1998, who perform
12 personal services as defined in s. 400.402(16). The agency
13 may exempt an individual from employment disqualification as
14 set forth in chapter 435.

15 (2) Proof of compliance with the level 1 background
16 screening requirements of chapter 435 may be satisfied as
17 follows:

18 (a) The employee or applicant for employment has had a
19 level 1 background screening to qualify for a professional
20 license in this state. Proof of compliance with the level 1
21 screening requirement must be accompanied, under penalty of
22 perjury, by a copy of the applicant's current professional
23 license and an affidavit of compliance with the level 1
24 screening requirement.

25 (b) The employee or applicant for employment has been
26 continuously employed in the same type of occupation for which
27 the person is seeking employment without a breach in service
28 that exceeds 180 days and proof of compliance with the level 1
29 screening requirement is no more than 2 years old. Proof of
30 compliance shall be provided directly from one employer or
31 contractor to another, and no potential employer or contractor

1 shall accept any proof of compliance directly from the person
2 who was screened. Upon request, proof of completion of the
3 level 1 screening requirement of this section shall be
4 provided by the employer retaining documentation of the
5 screening to the person who was screened.

6 (c) The employee or applicant seeking employment is
7 employed by a corporation or business entity or related
8 corporation or business entity that owns, operates, or manages
9 more than one facility or agency licensed under chapter 400
10 for whom a level 1 screening was conducted by the corporation
11 or business entity as a condition of initial employment or
12 continued employment.

13 (3) When an employee, volunteer, administrator, or
14 owner of a facility has a confirmed report of adult abuse,
15 neglect, or exploitation, as defined in s. 415.102, ~~or child~~
16 ~~abuse or neglect, as defined in s. 415.503,~~and the protective
17 investigator knows that the individual is an employee,
18 volunteer, administrator, or owner of a facility, the agency
19 shall be notified of the confirmed report.

20 Section 60. Section 400.4176, Florida Statutes, is
21 amended to read:

22 400.4176 Notice of change of administrator.--If,
23 during the period for which a license is issued, the owner
24 changes administrators, the owner must notify the agency of
25 the change within 45 days thereof and must provide
26 documentation that the new administrator has completed the
27 applicable core educational requirements under s. 400.452.
28 Background screening shall be completed on any new
29 administrator to establish that the individual is of suitable
30 character as specified in s. 400.411(2)(c) and (3)~~ss.~~
31 ~~400.411(2)(c) and 400.456.~~

1 Section 61. Section 400.461, Florida Statutes, is
2 amended to read:

3 400.461 Short title; purpose.--

4 (1) This part, consisting of ss. 400.461-400.518 ~~ss.~~
5 ~~400.461-400.515~~, may be cited as the "Home Health Services
6 Act."

7 (2) The purpose of this part is to provide for the
8 licensure of every home health agency and to provide for the
9 development, establishment, and enforcement of basic standards
10 that will ensure the safe and adequate care of persons
11 receiving health services in their own homes.

12 Section 62. Section 400.462, Florida Statutes, is
13 amended to read:

14 400.462 Definitions.--As used in this part, the term:

15 (1) "Administrator" means a direct employee to whom
16 the governing body has delegated the responsibility for the
17 day-to-day administration of a home health agency or nurse
18 registry. The administrator must be a licensed physician,
19 physician assistant, or registered nurse licensed to practice
20 in this state, or an individual who has at least 1 year of
21 supervisory or administrative experience in home health care
22 or in a facility licensed under part II, part III, or part IV
23 of chapter 400 or chapter 395. An employee of the governing
24 body may administer a maximum of five licensed home health
25 agencies or nurse registries operated by a related business
26 entity and located within one agency service district or
27 within an immediately contiguous county. An administrator
28 shall designate, in writing for each licensed entity, a
29 qualified alternate administrator to serve during the
30 administrator's absence. If the home health agency is licensed
31 under this chapter and is part of a retirement community that

1 provides multiple levels of care, an employee of the
2 retirement community may administer the home health agency and
3 up to a maximum of four entities licensed under this chapter
4 which are located on the same campus and owned, operated, or
5 managed by the same corporate entity.

6 (2) "Agency" means the Agency for Health Care
7 Administration.

8 (3)~~(1)~~ "Certified nursing assistant" means any person
9 who has been issued a certificate under ~~after fulfilling the~~
10 ~~requirements of s. 400.211. A licensed home health agency or~~
11 ~~licensed nurse registry shall ensure that any certified~~
12 ~~nursing assistant employed by or under contract with the home~~
13 ~~health agency or licensed nurse registry is adequately trained~~
14 ~~to perform the tasks of a home health aide in the home~~
15 ~~setting.~~

16 (4) "Client" means an elderly, handicapped, or
17 convalescent individual who receives personal care services,
18 companion services, or homemaker services in the individual's
19 home or place of residence.

20 (5)~~(2)~~ "Companion" ~~or "sitter"~~ means a person who
21 cares for an elderly, handicapped, or convalescent individual
22 and accompanies such individual on trips and outings and may
23 prepare and serve meals to such individual. A companion may
24 not provide hands-on personal care to the client.

25 (6)~~(3)~~ "Department" means the Department of Children
26 and Family ~~Health and Rehabilitative~~ Services.

27 (7) "Director of nursing" means a registered nurse,
28 and direct employee of the agency, who is a graduate of an
29 approved school of nursing and is licensed in this state; who
30 has at least 1 year of supervisory experience as a registered
31 nurse and experience in a licensed home health agency, a

1 facility licensed under chapter 395, or a facility licensed
2 under part II, part III, or part VI of chapter 400; and who is
3 responsible for overseeing the professional nursing and home
4 health aid delivery of services of the agency. An employee may
5 be the director of nursing of a maximum of five licensed home
6 health agencies operated by a related business entity. If a
7 home health agency is licensed under this chapter and is part
8 of a retirement community that provides multiple levels of
9 care, an employee of the retirement community may serve as the
10 director of nursing for the home health agency and up to four
11 additional entities licensed under chapter 400 if the entities
12 are located on the same campus and are owned, operated, or
13 managed by the same corporate entity. A director of nursing
14 shall designate, in writing for each agency, a qualified
15 alternate registered nurse to serve during the absence of the
16 director of nursing.

17 (8)~~(4)~~ "Home health agency" means an organization that
18 provides home health services and staffing services ~~for health~~
19 ~~care facilities.~~

20 (9)~~(5)~~ "Home health agency personnel" means persons
21 who are employed by or under contract with a home health
22 agency and enter the home or place of residence of patients at
23 any time in the course of their employment or contract.

24 (10)~~(6)~~ "Home health services" means health and
25 medical services and medical supplies furnished by an
26 organization to an individual ~~by home health agency personnel~~
27 ~~or by others under arrangements with the agency, on a visiting~~
28 ~~basis,~~ in the individual's home or place of residence. The
29 term includes organizations that provide one or more of, but
30 ~~is not limited to,~~ the following:

31 (a) Nursing care.

1 (b) Physical, occupational, respiratory, or speech
2 therapy.

3 (c) Home health aide services.

4 (d) Dietetics and nutrition practice and nutrition
5 counseling ~~Nutritional guidance~~.

6 (e) Medical supplies, restricted to drugs and
7 biologicals prescribed by a physician.

8 (11) "Home health aide" means a person who provides
9 hands-on personal care, performs simple procedures as an
10 extension of therapy or nursing services, assists in
11 ambulation or exercises, or supervises the self-administration
12 of medications, and for which the person has received training
13 established by the agency pursuant to s. 400.497(1).

14 (12)~~(7)~~ "Homemaker" means a person who performs
15 household chores that include housekeeping, meal planning and
16 preparation, shopping assistance, and routine household
17 activities for an elderly, handicapped, or convalescent
18 individual. A homemaker may not provide hands-on personal care
19 to a client.

20 (13) "Home infusion therapy provider" means an
21 organization that employs, contracts with, or refers a
22 licensed professional who has received advanced training and
23 experience in intravenous infusion therapy and who administers
24 infusion therapy to a patient in the patient's home or place
25 of residence.

26 (14) "Home infusion therapy" means the administration
27 of intravenous pharmacological or nutritional products to a
28 patient in the patient's home.

29 (15)~~(8)~~ "Nurse registry" means any person that
30 procures, offers, promises, or attempts to secure
31 health-care-related contracts for registered nurses, licensed

1 practical nurses, certified nursing assistants, home health
2 aides sitters, companions, or homemakers, who are compensated
3 by fees as independent contractors, including, but not limited
4 to, contracts for the provision of services to patients and
5 contracts to provide private duty or staffing services to
6 health care facilities licensed under chapter 395 or this
7 chapter or to other business entities.

8 (16) "Organization" means a corporation, government or
9 governmental subdivision or agency, partnership or
10 association, two or more persons having a joint or common
11 interest, or any other legal or commercial entity. The term
12 does not include an entity that provides services using only
13 volunteers.

14 (17)(9) "Patient" means any person who receives home
15 health services in his or her home or place of residence.

16 (18) "Personal care" includes, but is not limited to,
17 assisting a patient in the activities of daily living, such as
18 dressing, grooming, bathing, eating, or personal hygiene;
19 assisting in physical transfer and ambulation; and supervising
20 the self-administration of medications.

21 (19) "Physician" means a person licensed under chapter
22 458, chapter 459, chapter 460, or chapter 461.

23 (20)(10) "Screening" means the assessment of the
24 background of home health agency personnel, nurse registry
25 personnel, and persons registered under s. 400.509 and
26 includes employment history checks, records checks of the
27 department's central abuse hotline under chapter 415 relating
28 to vulnerable adults, and statewide criminal records
29 correspondence checks through the Department of Law
30 Enforcement.

31

1 (21) "Skilled care" means nursing services or
2 therapeutic services delivered by a health care professional
3 who is licensed under chapter 464; parts I, III, or V of
4 chapter 468; or chapter 486, and who is employed by or under
5 contract with a licensed home health agency or is referred by
6 a licensed nurse registry.

7 (22)(11) "Staffing services" means services provided
8 to a ~~health care~~ facility or other business entity on a
9 temporary basis by licensed health care personnel, including
10 certified nursing assistants and home health aides who are
11 employed by or work under the auspices of a licensed home
12 health agency or who are registered with a licensed nurse
13 registry.

14 Section 63. Section 400.464, Florida Statutes, is
15 amended to read:

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

18 (1) Any home health agency must be licensed by the
19 ~~agency for Health Care Administration~~ to operate in this
20 state. A license issued to a home health agency, unless
21 sooner suspended or revoked, expires 1 year after its date of
22 issuance. ~~However, any home health agency that is operated by~~
23 ~~the Federal Government is exempt from this part.~~

24 (2) If the licensed home health agency operates
25 related offices, each related office outside the county where
26 the main office is located must be separately licensed. The
27 counties where the related offices are operating must be
28 specified on the license in the main office.

29 (3) An entity that receives a certificate-of-need
30 exemption under s. 408.0366 may request one home health agency
31 license to provide Medicare and non-Medicare home health

1 services to residents of the facility and non-Medicare home
2 health services to persons in one or more counties within the
3 agency service district where the main office of the home
4 health agency is located.

5 ~~(3) The furnishing of only home dialysis services,~~
6 ~~supplies, or equipment, or personal care services as provided~~
7 ~~by a community-care-for-the-elderly lead agency under s.~~
8 ~~430.205, or personal care services provided through a~~
9 ~~community-care-for-disabled-adults program under s. 410.604,~~
10 ~~is exempt from this part. The personal care services~~
11 ~~exemptions apply only to community-care-for-the-elderly lead~~
12 ~~agencies and community-care-for-disabled-adults programs that~~
13 ~~directly provide only personal care services to their clients~~
14 ~~and do not provide other home health services.~~

15 ~~(4) Any program offered through a county health~~
16 ~~department that makes home visits for the purpose of providing~~
17 ~~only environmental assessments, case management, health~~
18 ~~education, or personal care services is exempt from this part.~~

19 ~~(5)(a) It is unlawful for any person to offer or~~
20 ~~advertise home health services to the public unless he or she~~
21 ~~has a valid license under this part. It is unlawful for any~~
22 ~~holder of a license issued under this part to advertise or~~
23 ~~indicate to the public that it holds a home health agency~~
24 ~~license other than the one it has been issued.~~

25 ~~(b) A person who violates paragraph (a) is subject to~~
26 ~~an injunctive proceeding under s. 400.515. A violation of~~
27 ~~paragraph (a) is a deceptive and unfair trade practice and~~
28 ~~constitutes a violation of the Florida Deceptive and Unfair~~
29 ~~Trade Practices Act.~~

30 ~~(c) A person who violates paragraph (a) commits a~~
31 ~~misdemeanor of the second degree, punishable as provided in s.~~

1 ~~775.082 or s. 775.083. Any person who commits a second or~~
2 ~~subsequent violation commits a misdemeanor of the first~~
3 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

4
5 ~~Each day of continuing violation constitutes a separate~~
6 ~~offense.~~

7 (4)(6) Any home infusion therapy provider shall be
8 licensed as a home health agency or nurse registry. Any home
9 infusion therapy provider currently authorized to receive
10 Medicare reimbursement under a DME - Part B Provider number
11 for the provision of infusion therapy shall be licensed as a
12 noncertified home health agency. Such a provider shall
13 continue to receive that specified Medicare reimbursement
14 without being certified so long as the reimbursement is
15 limited to those items authorized pursuant to the DME - Part B
16 Provider Agreement and the agency is licensed in compliance
17 with the other provisions of this part.

18 (5)(a) An organization may not provide, offer, or
19 advertise home health services to the public unless the
20 organization has a valid license or is specifically exempt
21 under this part. An organization that offers or advertises to
22 the public any service for which licensure or registration is
23 required under this part must include in the advertisement the
24 license number or registration number issued to the
25 organization by the agency. The agency shall assess a fine of
26 not less than \$100 to any licensee or registrant who fails to
27 include the license or registration number when submitting an
28 advertisement for publication, broadcast, or printing. The
29 holder of a license issued under this part may not advertise
30 or indicate to the public that it holds a home health agency

31

1 license or a nurse registry license other than the one it has
2 been issued.

3 (b) A person who violates the provisions of paragraph
4 (a) is subject to an injunctive proceeding under s. 400.515. A
5 violation of paragraph (a) is a deceptive and unfair trade
6 practice and constitutes a violation of the Florida Unfair and
7 Deceptive Trade Practices Act.

8 (c) A person who violates the provisions of paragraph
9 (a) commits a misdemeanor of the second degree, punishable as
10 provided in s. 775.082 or s. 775.083. Any person who commits a
11 second or subsequent violation commits a misdemeanor of the
12 first degree, punishable as provided in s. 775.082 or s.
13 775.083. Each day of continuing violation constitutes a
14 separate offense.

15 (6) The following are exempt from the licensure
16 requirements of this part:

17 (a) A home health agency operated by the Federal
18 Government.

19 (b) The following home health services provided by a
20 state agency, either directly or through a contract:

21 1. Personal care services provided through a program
22 or contract of the Department of Elderly Affairs and personal
23 care services provided through a program of community care for
24 disabled adults under s. 410.604. The exemptions provided in
25 this subparagraph apply only to programs or contracts that do
26 not provide home health services other than directly provided
27 personal care services.

28 2. Any program offered through the Department of
29 Health, a community health center, or a rural health network
30 which furnishes home visits for the purpose of providing
31 environmental assessments, case management, health education,

1 personal care services, family planning, or follow-up
2 treatment or for the purpose of monitoring and tracking
3 disease.

4 3. Services provided to persons who have developmental
5 disabilities, as defined in s. 393.063(11).

6 (c) A health care professional, whether or not
7 incorporated, who is licensed under chapter 458, chapter 459,
8 chapter 464, parts I, III, V, or X of chapter 468, chapter
9 486, chapter 490, or chapter 491, and who is acting alone
10 within the scope of his or her professional license to provide
11 care to patients in their homes.

12 (d) A home health aide, or certified nursing
13 assistant, who acts in his or her individual capacity within
14 the definitions and standards of his or her respective
15 occupation, and who provides hands-on care to patients in
16 their homes.

17 (e) An individual who acts alone, in his or her
18 individual capacity, and who is not employed by, or affiliated
19 with, a licensed home health agency or registered with a
20 licensed nurse registry. This exemption does not entitle an
21 individual to perform home health services without the
22 required professional license.

23 (f) The delivery of instructional services in home
24 dialysis and home dialysis supplies or equipment.

25 (g) The delivery of nursing home services, for which
26 the nursing home is licensed under part II of this chapter, to
27 serve its residents in its facility.

28 (h) The delivery of assisted living facility services,
29 for which the assisted living facility is licensed under part
30 III of this chapter, to serve its residents in its facility.

31

1 (i) The delivery of hospice services, for which the
2 hospice is licensed under part VI of this chapter, to serve
3 hospice patients admitted to its service.

4 (j) A hospital that provides services for which it is
5 licensed under chapter 395.

6 (k) The delivery of community residential services,
7 for which the community residential home is licensed under
8 chapter 419, to serve the residents in its facility.

9 (l) A not-for-profit, community-based agency that
10 provides early intervention services to infants and toddlers.

11 (m) Certified rehabilitation agencies and
12 comprehensive outpatient rehabilitation facilities that are
13 certified under Title 18 of the Social Security Act.

14 (n) The delivery of adult family-care home services,
15 for which the adult family-care home is licensed under part
16 VII of this chapter, to serve the residents in its facility.

17 Section 64. Section 400.471, Florida Statutes, is
18 amended to read:

19 400.471 Application for license; fee; provisional
20 license; temporary permit.--

21 (1) Application for an initial license or for renewal
22 of an existing license must be made under oath to the agency
23 ~~for Health Care Administration~~ on forms furnished by it and
24 must be accompanied by the appropriate license fee as provided
25 in ~~subsection (8)~~~~subsection (7)~~. The agency must take final
26 action on an initial licensure application within 90 ~~60~~ days
27 after receipt of all required documentation.

28 (2) The applicant must file with the application
29 satisfactory proof that the home health agency is in
30 compliance with this part and applicable rules, including:

31

1 (a) A listing of services to be provided, either
2 directly by the applicant or through contractual arrangements
3 with existing providers;

4 (b) The number and discipline of professional staff to
5 be employed; and

6 (c) Proof of financial ability to operate.
7

8 If the applicant has applied for a certificate of need under
9 ss. 408.0331-408.045 within the preceding 12 months, the
10 applicant may submit the proof submitted during the
11 certificate-of-need process along with an attestation that
12 there has been no substantial change in the facts and
13 circumstances underlying the original submission.

14 (3) An applicant for initial licensure must
15 demonstrate financial ability to operate by submitting a
16 balance sheet and income and expense statement for the first 2
17 years of operation which provide evidence of having sufficient
18 assets, credit, and projected revenues to cover liabilities
19 and expenses. The applicant shall have demonstrated financial
20 ability to operate if the applicant's assets, credit, and
21 projected revenues meet or exceed projected liabilities and
22 expenses. All documents required under this subsection must
23 be prepared in accordance with generally accepted accounting
24 principles and the financial statement must be signed by a
25 certified public accountant.

26 (4) Each applicant for licensure must comply with the
27 following requirements:

28 (a) Upon receipt of a completed, signed, and dated
29 application, the agency shall require background screening of
30 the applicant, in accordance with the level 2 standards for
31 screening set forth in chapter 435. As used in this

1 subsection, the term "applicant" means the administrator, or a
2 similarly titled person who is responsible for the day-to-day
3 operation of the licensed home health agency, and the
4 financial officer, or similarly titled individual who is
5 responsible for the financial operation of the licensed home
6 health agency.

7 (b) The agency may require background screening for a
8 member of the board of directors of the licensee or an officer
9 or an individual owning 5 percent or more of the licensee if
10 the agency reasonably suspects that such individual has been
11 convicted of an offense prohibited under the level 2 standards
12 for screening set forth in chapter 435.

13 (c) Proof of compliance with the level 2 background
14 screening requirements of chapter 435 which has been submitted
15 within the previous 5 years in compliance with any other
16 health care or assisted living licensure requirements of this
17 state is acceptable in fulfillment of paragraph (a). Proof of
18 compliance with background screening which has been submitted
19 within the previous 5 years to fulfill the requirements of the
20 Department of Insurance pursuant to chapter 651 as part of an
21 application for a certificate of authority to operate a
22 continuing care retirement community is acceptable in
23 fulfillment of the Department of Law Enforcement and Federal
24 Bureau of Investigation background check.

25 (d) A provisional license may be granted to an
26 applicant when each individual required by this section to
27 undergo background screening has met the standards for the
28 abuse registry background check and the Department of Law
29 Enforcement background check, but the agency has not yet
30 received background screening results from the Federal Bureau
31 of Investigation. A standard license may be granted to the

1 licensee upon the agency's receipt of a report of the results
2 of the Federal Bureau of Investigation background screening
3 for each individual required by this section to undergo
4 background screening which confirms that all standards have
5 been met, or upon the granting of a disqualification exemption
6 by the agency as set forth in chapter 435. Any other person
7 who is required to undergo level 2 background screening may
8 serve in his or her capacity pending the agency's receipt of
9 the report from the Federal Bureau of Investigation. However,
10 the person may not continue to serve if the report indicates
11 any violation of background screening standards and a
12 disqualification exemption has not been requested of and
13 granted by the agency as set forth in chapter 435.

14 (e) Each applicant must submit to the agency, with its
15 application, a description and explanation of any exclusions,
16 permanent suspensions, or terminations of the licensee or
17 potential licensee from the Medicare or Medicaid programs.
18 Proof of compliance with the requirements for disclosure of
19 ownership and control interest under the Medicaid or Medicare
20 programs may be accepted in lieu of this submission.

21 (f) Each applicant must submit to the agency a
22 description and explanation of any conviction of an offense
23 prohibited under the level 2 standards of chapter 435 by a
24 member of the board of directors of the applicant, its
25 officers, or any individual owning 5 percent or more of the
26 applicant. This requirement does not apply to a director of a
27 not-for-profit corporation or organization if the director
28 serves solely in a voluntary capacity for the corporation or
29 organization, does not regularly take part in the day-to-day
30 operational decisions of the corporation or organization,
31 receives no remuneration for his or her services on the

1 corporation or organization's board of directors, and has no
2 financial interest and has no family members with a financial
3 interest in the corporation or organization, provided that the
4 director and the not-for-profit corporation or organization
5 include in the application a statement affirming that the
6 director's relationship to the corporation satisfies the
7 requirements of this paragraph.

8 (g) A license may not be granted to an applicant if
9 the applicant, administrator, or financial officer has been
10 found guilty of, regardless of adjudication, or has entered a
11 plea of nolo contendere or guilty to, any offense prohibited
12 under the level 2 standards for screening set forth in chapter
13 435, unless an exemption from disqualification has been
14 granted by the agency as set forth in chapter 435.

15 (h) The agency may deny or revoke licensure if the
16 applicant:

17 1. Has falsely represented a material fact in the
18 application required by paragraph (e) or paragraph (f), or has
19 omitted any material fact from the application required by
20 paragraph (e) or paragraph (f); or

21 2. Has been or is currently excluded, suspended,
22 terminated from, or has involuntarily withdrawn from
23 participation in this state's Medicaid program, or the
24 Medicaid program of any other state, or from participation in
25 the Medicare program or any other governmental or private
26 health care or health insurance program.

27 (i) An application for license renewal must contain
28 the information required under paragraphs (e) and (f).

29 (5)(4) The home health agency must also obtain and
30 maintain the following liability insurance coverages, in an-
31 Proof of liability insurance, as defined in s. 624.605, must

1 ~~be submitted with the application. The Agency for Health Care~~
2 ~~Administration shall set the required amounts of liability~~
3 ~~insurance by rule, but the required amount of must not be less~~
4 ~~than \$250,000 per claim, and the home health agency must~~
5 ~~submit proof of coverage with an initial application for~~
6 ~~licensure and with each annual application for license~~
7 ~~renewal:-~~

8 (a) Malpractice insurance, as defined in s.
9 624.605(1)(k); and

10 (b) Liability insurance, as defined in s.
11 624.605(1)(b).

12 ~~(6)(5)~~ Ninety Sixty days before the expiration date,
13 an application for renewal must be submitted to the agency ~~for~~
14 ~~Health Care Administration~~ under oath on forms furnished by
15 it, and a license must be renewed if the applicant has met the
16 requirements established under this part and applicable rules.
17 The home health agency must file with the application
18 satisfactory proof that it is in compliance with this part and
19 applicable rules. If there is evidence of financial
20 instability, the home health agency must submit satisfactory
21 proof of its financial ability to comply with the requirements
22 of this part.

23 ~~(7)(6)~~ When transferring the ownership of a home
24 health agency, the transferee must submit an application for a
25 license at least 60 days before the effective date of the
26 transfer. If the home health agency is being leased, a copy
27 of the lease agreement must be filed with the application.

28 ~~(8)(7)~~ The license fee and annual renewal fee required
29 of a home health agency are ~~is~~ nonrefundable. The agency ~~for~~
30 ~~Health Care Administration~~ shall set the fees in an amount
31 that is sufficient to cover its costs in carrying out its

1 responsibilities under this part, but not to exceed \$1,000.
2 However, state, county, or municipal governments applying for
3 licenses under this part are exempt from the payment of
4 license fees. All fees collected under this part must be
5 deposited in the Health Care Trust Fund for the administration
6 of this part.

7 (9)~~(8)~~ The license must be displayed in a conspicuous
8 place in the administrative office of the home health agency
9 and is valid only while in the possession of the person to
10 which it is issued. The license may not be sold, assigned, or
11 otherwise transferred, voluntarily or involuntarily, and is
12 valid only for the home health agency and location for which
13 originally issued.

14 (10)~~(9)~~ A home health agency against whom a revocation
15 or suspension proceeding is pending at the time of license
16 renewal may be issued a provisional license effective until
17 final disposition by the agency ~~for Health Care Administration~~
18 of such proceedings. If judicial relief is sought from the
19 final disposition, the court that has jurisdiction may issue a
20 temporary permit for the duration of the judicial proceeding.

21 (11)~~(10)~~ The agency may ~~department shall~~ not issue a
22 license designated as certified to a home health agency that
23 ~~which~~ fails to receive a certificate of need under ~~the~~
24 provisions of ss. 408.031-408.045 and that fails to satisfy
25 the requirements of a Medicare-certification survey from the
26 agency.

27 (12) The agency may not issue a license to an agency
28 that has any unpaid fines assessed under this part.

29 Section 65. Section 400.474, Florida Statutes, is
30 amended to read:

31

1 400.474 Denial, suspension, revocation of license;
2 injunction; grounds.--

3 (1) ~~The agency for Health Care Administration~~ may
4 deny, revoke, or suspend a license, or impose an
5 administrative fine in the manner provided in chapter 120, or
6 initiate injunctive proceedings under s. 400.515.

7 (2) Any of the following actions by a home health
8 agency ~~or its employee~~ is grounds for disciplinary action by
9 the agency ~~for Health Care Administration~~:

10 (a) Violation of this part or of applicable rules.

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

13 (3) The agency may impose the following penalties for
14 operating without a license upon an owner who has in the past
15 operated, or who currently operates, a licensed home health
16 agency:

17 (a) If a home health agency that is found to be
18 operating without a license wishes to apply for a license, the
19 home health agency may submit an application only after the
20 agency has verified that the home health agency no longer
21 operates an unlicensed agency.

22 (b) Any person, partnership, or corporation that
23 violates paragraph (a) and that previously operated a licensed
24 home health agency or concurrently operates both a licensed
25 home health agency and an unlicensed home health agency
26 commits a felony of the third degree, punishable as provided
27 in s. 775.082, s. 775.083, or s. 775.084. If an owner has an
28 interest in more than one home health agency and fails to
29 license any one of those agencies, the agency shall issue a
30 cease and desist order for the activities of the unlicensed
31 home health agency and impose a moratorium on any or all of

1 the licensed agencies until the unlicensed home health agency
2 is licensed.

3 (c) If any home health agency meets the criteria in
4 paragraph (a) or paragraph (b) and that home health agency has
5 received any government reimbursement for services provided by
6 an unlicensed home health agency, the agency shall make a
7 fraud referral to the appropriate government reimbursement
8 program.

9 (4) The agency may deny, revoke, or suspend the
10 license of a home health agency, or may impose on a home
11 health agency administrative fines not to exceed the aggregate
12 sum of \$5,000, if:

13 (a) A home health agency fails to provide at least one
14 of the services listed in s. 400.462(10) directly to patients
15 for a period of 6 consecutive months.

16 (b) The agency is unable to obtain entry to the home
17 health agency to conduct a licensure survey, complaint
18 investigation, surveillance visit, or monitoring visit.

19 (c) An applicant or a licensed home health agency has
20 falsely represented a material fact in the application, or has
21 omitted from the application any material fact, including, but
22 not limited to, the fact that the controlling or ownership
23 interest is held by any officer, director, agent, manager,
24 employee, affiliated person, partner, or shareholder who may
25 not be eligible to participate.

26 (d) An applicant, owner, or person who has a 5 percent
27 or greater interest in a licensed entity:

28 1. Has been previously found by any licensing,
29 certifying, or professional standards board or agency to have
30 violated standards or conditions that relate to home
31

1 health-related licensure or certification, or to the quality
2 of home health-related services provided.

3 2. Has been or is currently excluded, suspended, or
4 terminated from, or has involuntarily withdrawn from,
5 participation in the Medicaid program of this state or any
6 other state, the Medicare program, or any other governmental
7 health care or health insurance program.

8 Section 66. Section 400.484, Florida Statutes, is
9 amended to read:

10 400.484 Right of inspection.--

11 (1) Any duly authorized officer or employee of the
12 agency ~~for Health Care Administration~~ may make such
13 inspections and investigations as are necessary in order to
14 determine the state of compliance with this part and with
15 applicable rules. The right of inspection extends to any
16 business that the agency ~~for Health Care Administration~~ has
17 reason to believe is being operated as a home health agency
18 without a license, but such inspection of any such business
19 may not be made without the permission of the owner or person
20 in charge unless a warrant is first obtained from a circuit
21 court. Any application for a license issued under this part or
22 for license renewal constitutes permission for an appropriate
23 inspection to verify the information submitted on or in
24 connection with the application.

25 (2) The agency shall impose fines for various classes
26 of deficiencies in accordance with the following schedule:

27 (a) A class I deficiency is any act, omission, or
28 practice that results in a patient's death, disablement, or
29 permanent injury, or places a patient at imminent risk of
30 death, disablement, or permanent injury. Upon finding a class
31 I deficiency, the agency must impose an administrative fine in

1 the amount of \$5,000 for each occurrence and each day that the
2 deficiency exists. In addition, the agency may immediately
3 revoke the license, or impose a moratorium on the admission of
4 new patients, until the factors causing the deficiency have
5 been corrected.

6 (b) A class II deficiency is any act, omission, or
7 practice that has a direct adverse effect on the health,
8 safety, or security of a patient. Upon finding a class II
9 deficiency, the agency must impose an administrative fine in
10 the amount of \$1,000 for each occurrence and each day that the
11 deficiency exists. In addition, the agency may suspend the
12 license, or impose a moratorium on the admission of new
13 patients, until the factors causing the deficiency have been
14 corrected.

15 (c) A class III deficiency is any act, omission, or
16 practice that has an indirect adverse effect on the health,
17 safety, or security of a patient. Upon finding an uncorrected
18 or repeated class III deficiency, the agency may impose an
19 administrative fine not to exceed \$500 for each occurrence and
20 each day that the uncorrected or repeated deficiency exists.

21 (d) A class IV deficiency is any act, omission, or
22 practice related to a required report, form, or document which
23 does not have the potential to negatively affect a patient. A
24 class IV deficiency is a deficiency that the agency determines
25 does not threaten the health, safety, or security of a
26 patient. Upon finding an uncorrected or repeated class IV
27 deficiency, the agency may impose an administrative fine not
28 to exceed \$200 for each occurrence and each day that the
29 uncorrected or repeated deficiency exists.

30 Section 67. Section 400.487, Florida Statutes, is
31 amended to read:

1 400.487 Patient assessment; establishment and review
2 of plan of care; provision of services.--

3 (1) The home health agency providing skilled care ~~and~~
4 ~~treatment~~ must make an assessment of the patient's needs
5 within 48 hours after the start of services.

6 (2) The attending physician for a patient who is to
7 receive skilled ~~receiving~~ care ~~or treatment provided by a~~
8 ~~licensed nurse or by a physical, occupational, or speech~~
9 ~~therapist~~ must establish treatment orders ~~a plan of care for~~
10 ~~the patient on behalf of the home health agency that provides~~
11 ~~services to the patient.~~ The ~~original plan of~~ treatment
12 orders must be signed by the physician within 21 days after
13 the start of care and reviewed, at least every 62 days or more
14 frequently if the patient's illness requires, by the physician
15 in consultation with home health agency personnel that provide
16 services to the patient. Based on the assessment and the
17 treatment orders, the home health agency shall prepare a plan
18 of care that describes the services to be provided, the
19 frequency of service provision, and any other information
20 required by rule. The treatment orders and plan of care may be
21 incorporated into one document.

22 (3) If a client is accepted for home health aide
23 services, homemaker services, or companion services and such
24 services do not require a physician's order, the home health
25 agency shall establish a service-provision plan and maintain a
26 record of the services provided.

27 (4)~~(3)~~ Each patient or client has the right to be
28 informed of and to participate in the planning of his or her
29 care. Each patient must be provided, upon request, a copy of
30 the plan of care or service-provision plan established and
31

1 maintained for that patient or client by the home health
2 agency.

3 ~~(4) Home health services that are provided to a~~
4 ~~patient must be evaluated in the patient's home by a physician~~
5 ~~licensed under chapter 458, chapter 459, chapter 460, or~~
6 ~~chapter 461 or by a registered nurse licensed under chapter~~
7 ~~464 as frequently as necessary to assure safe and adequate~~
8 ~~care, but not less frequently than once every 62 days.~~

9 (5) In the case of nursing services delivered by a
10 home health agency to a patient, the home health agency to
11 which a patient has been admitted for care must provide the
12 initial admission visit, all service evaluation visits, and
13 the discharge visit by qualified personnel who are on the
14 payroll of, and to whom an IRS payroll form W-2 will be issued
15 by, the home health agency at least one home health service to
16 patients for whom it has agreed to provide care. Services
17 provided by others under contractual arrangements to a home
18 health agency agency's patients must be monitored and managed
19 controlled by the admitting home health agency. The home
20 health agency is fully responsible for ensuring that all care
21 provided through its employees or contract staff is delivered
22 in accordance with this part and applicable rules.

23 (6) The skilled care ~~services~~ provided by a home
24 health agency, directly or under contract, must be supervised
25 and coordinated in accordance with the plan of care.

26 Section 68. Section 400.491, Florida Statutes, is
27 amended to read:

28 400.491 Clinical records.--

29 (1) The home health agency must maintain for each
30 patient who receives skilled care a clinical record that
31 ~~includes the services the home health agency provides directly~~

1 ~~and those provided through arrangement with another health~~
2 ~~care provider, except for those services provided by persons~~
3 ~~referred under s. 400.509. Such records must contain~~
4 pertinent past and current medical, nursing, social and other
5 therapeutic information, the plan of treatment, and other such
6 information as is necessary for the safe and adequate care of
7 the patient. When home health services are terminated, the
8 record must show the date and reason for termination. Such
9 records are considered patient records under s. 455.241 ~~s.~~
10 ~~400.241~~, and must be maintained by the home health agency for
11 5 years following termination of services. If a patient
12 transfers to another home health agency, a copy of his or her
13 record must be provided to the other home health agency upon
14 request.

15 (2) The home health agency must maintain for each
16 client who receives nonskilled care a service-provision plan.
17 Such records must be maintained by the home health agency for
18 1 year following termination of services.

19 Section 69. Section 400.497, Florida Statutes, is
20 amended to read:

21 400.497 Rules establishing minimum standards.--The
22 ~~agency for Health Care Administration~~ shall adopt, publish,
23 and enforce rules to implement this part, including, as
24 applicable, ss. 400.506 and 400.509, which ~~must~~ provide
25 reasonable and fair minimum standards relating to:

26 ~~(1) Scope of home health services to be provided.~~

27 (1)(2) The qualifications, and minimum training
28 requirements, and supervision requirements of all home health
29 agency personnel, including aides. The agency shall allow
30 shared staffing if the home health agency is part of a
31 retirement community that provides multiple levels of care, is

1 located on one campus, is licensed under this chapter, and
2 otherwise meets the requirements of law and rule.

3 (2)(3) Requirements for prospective employees

4 ~~Procedures for maintaining a record of the employment history~~
5 ~~of all home health agency personnel. A home health agency~~
6 ~~must require its personnel to submit an employment history to~~
7 ~~the home health agency, and verification of it must verify the~~
8 ~~employment history unless through diligent efforts such~~
9 ~~verification is not possible. The agency for ~~Health Care~~~~
10 ~~Administration shall prescribe by rule the minimum~~
11 ~~requirements for establishing that diligent efforts have been~~
12 ~~made. The administrator of a home health agency must review~~
13 ~~the employment history and references of home health agency~~
14 ~~personnel and applicants for employment. The Agency for~~
15 ~~Health Care Administration must review the employment history~~
16 ~~and references of each administrator of a home health agency.~~
17 There is no monetary liability on the part of, and no cause of
18 action for damages arises against, a former employer of a
19 prospective employee of or prospective independent contractor
20 with a licensed home health agency who reasonably and in good
21 faith communicates his or her honest opinions about the former
22 employee's job performance. This subsection does not affect
23 the official immunity of an officer or employee of a public
24 corporation.

25 (3)(4) Licensure application and renewal.

26 (4)(5) The administration of the home health agency,
27 including requirements for onsite and electronic accessibility
28 of supervisory personnel.

29 (5)(6) Procedures for administering drugs and
30 biologicals.

31

1 ~~(6)(7)~~ Procedures for maintaining patients'~~patient~~
2 records.

3 ~~(7)(8)~~ Provision of ~~Ensuring that the~~ home health
4 services ~~provided~~ by a home health agency ~~are~~ in accordance
5 with the plan of care ~~treatment~~ established for each patient
6 for whom a plan of care is required.

7 ~~(8)(9)~~ Geographic service areas.

8 ~~(9)(10)~~ Standards for contractual arrangements for the
9 provision of home health services by providers not employed by
10 the home health agency providing for the patient's care and
11 treatment.

12 Section 70. Subsection (1) of section 400.506, Florida
13 Statutes, is amended, present subsections (2), (3), (4), (5),
14 (6), (7), (8), (10), (11), (12), (13), (14), (15), and (16) of
15 that section are redesignated as subsections (3), (4), (5),
16 (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), and
17 (17), respectively, present subsection (9) of that section is
18 redesignated as subsection (10) and amended, and a new
19 subsection (2) is added to that section, to read:

20 400.506 Licensure of nurse registries; requirements;
21 penalties.--

22 (1) A nurse registry is exempt from the licensing
23 requirements of a home health agency, but must be licensed as
24 a nurse registry. Each operational site of a nurse registry
25 must be licensed unless the nurse registry operates more than
26 one site within a county. If the nurse registry operates more
27 than one site within a county, only one license is required
28 for the sites within that county and each operational site
29 shall be listed on the license.

30 ~~(2)~~ Each applicant for licensure must comply with the
31 following requirements:

1 (a) Upon receipt of a completed, signed, and dated
2 application, the agency shall require background screening, in
3 accordance with the level 2 standards for screening set forth
4 in chapter 435, of the managing employee, or other similarly
5 titled individual who is responsible for the daily operation
6 of the nurse registry, and of the financial officer, or other
7 similarly titled individual who is responsible for the
8 financial operation of the registry, including billings for
9 patient care and services. The applicant shall comply with
10 the procedures for level 2 background screening as set forth
11 in chapter 435.

12 (b) The agency may require background screening of any
13 other individual who is an applicant if the agency has a
14 reasonable basis for believing that he or she has been
15 convicted of a crime or has committed any other offense
16 prohibited under the level 2 standards for screening set forth
17 in chapter 435.

18 (c) Proof of compliance with the level 2 background
19 screening requirements of chapter 435 which has been submitted
20 within the previous 5 years in compliance with any other
21 health care or assisted living licensure requirements of this
22 state is acceptable in fulfillment of the requirements of
23 paragraph (a).

24 (d) A provisional license may be granted to an
25 applicant when each individual required by this section to
26 undergo background screening has met the standards for the
27 abuse registry background check and the Department of Law
28 Enforcement background check but the agency has not yet
29 received background screening results from the Federal Bureau
30 of Investigation. A standard license may be granted to the
31 applicant upon the agency's receipt of a report of the results

1 of the Federal Bureau of Investigation background screening
2 for each individual required by this section to undergo
3 background screening which confirms that all standards have
4 been met, or upon the granting of a disqualification exemption
5 by the agency as set forth in chapter 435. Any other person
6 who is required to undergo level 2 background screening may
7 serve in his or her capacity pending the agency's receipt of
8 the report from the Federal Bureau of Investigation. However,
9 the person may not continue to serve if the report indicates
10 any violation of background screening standards and a
11 disqualification exemption has not been requested of and
12 granted by the agency as set forth in chapter 435.

13 (e) Each applicant must submit to the agency, with its
14 application, a description and explanation of any exclusions,
15 permanent suspensions, or terminations of the applicant from
16 the Medicare or Medicaid programs. Proof of compliance with
17 the requirements for disclosure of ownership and control
18 interests under the Medicaid or Medicare programs may be
19 accepted in lieu of this submission.

20 (f) Each applicant must submit to the agency a
21 description and explanation of any conviction of an offense
22 prohibited under the level 2 standards of chapter 435 by a
23 member of the board of directors of the applicant, its
24 officers, or any individual owning 5 percent or more of the
25 applicant. This requirement does not apply to a director of a
26 not-for-profit corporation or organization if the director
27 serves solely in a voluntary capacity for the corporation or
28 organization, does not regularly take part in the day-to-day
29 operational decisions of the corporation or organization,
30 receives no remuneration for his or her services on the
31 corporation or organization's board of directors, and has no

1 financial interest and has no family members with a financial
2 interest in the corporation or organization, provided that the
3 director and the not-for-profit corporation or organization
4 include in the application a statement affirming that the
5 director's relationship to the corporation satisfies the
6 requirements of this paragraph.

7 (g) A license may not be granted to an applicant if
8 the applicant or managing employee has been found guilty of,
9 regardless of adjudication, or has entered a plea of nolo
10 contendere or guilty to, any offense prohibited under the
11 level 2 standards for screening set forth in chapter 435,
12 unless an exemption from disqualification has been granted by
13 the agency as set forth in chapter 435.

14 (h) The agency may deny or revoke the license if any
15 applicant:

16 1. Has falsely represented a material fact in the
17 application required by paragraph (e) or paragraph (f), or has
18 omitted any material fact from the application required by
19 paragraph (e) or paragraph (f); or

20 2. Has had prior action taken against the applicant
21 under the Medicaid or Medicare program as set forth in
22 paragraph (e).

23 (i) An application for license renewal must contain
24 the information required under paragraphs (e) and (f).

25 (10)(9)(a) A nurse registry may refer for contract in
26 private residences registered nurses and licensed practical
27 nurses registered and licensed under chapter 464, certified
28 nursing assistants certified under s. 400.211, home health
29 aides who present documented proof of successful completion of
30 the training required by rule of the agency, and ~~sitters,~~
31 companions, or homemakers for the purposes of providing those

1 services authorized under s. 400.509(1). A person referred by
2 a nurse registry must provide current documentation that he or
3 she is free from any communicable disease.

4 (b) A certified nursing assistant or home health aide
5 may be referred for a contract to provide care to a patient in
6 his or her home only if that patient is under a physician's
7 care. A certified nursing assistant, or home health aide,
8 referred for contract in a private residence shall be limited
9 to assisting a patient with bathing, dressing, toileting,
10 grooming, eating, physical transfer, and those normal daily
11 routines the patient could perform for himself or herself were
12 he or she physically capable. A certified nursing assistant
13 or home health aide may not provide medical or other health
14 care services that require specialized training and that may
15 be performed only by licensed health care professionals. The
16 nurse registry shall obtain the name and address of the
17 attending physician and send written notification to the
18 physician within 48 hours after a contract is concluded that a
19 certified nursing assistant or home health aide will be
20 providing care for that patient.

21 (c) A registered nurse shall make monthly visits to
22 the patient's home to assess the patient's condition and
23 quality of care being provided by the certified nursing
24 assistant or home health aide. Any condition which in the
25 professional judgment of the nurse requires further medical
26 attention shall be reported to the attending physician and the
27 nurse registry. The assessment shall become a part of the
28 patient's file with the nurse registry and may be reviewed by
29 the Agency for Health Care Administration during their survey
30 procedure.

31

1 ~~(d) In order to refer for contract in private~~
2 ~~residences a certified nursing assistant or any person~~
3 ~~specified in s. 400.509(1), the nurse registry and such person~~
4 ~~registered with the nurse registry must also be registered~~
5 ~~under s. 400.509. Any person registered as an independent~~
6 ~~contractor with a nurse registry for the purpose of providing~~
7 ~~services authorized under s. 400.509(1) on or before October~~
8 ~~1, 1990, is exempt from registration under s. 400.509 so long~~
9 ~~as such person remains continuously registered with that nurse~~
10 ~~registry.~~

11 Section 71. Subsections (1) and (2) of section
12 400.509, Florida Statutes, are amended, present subsections
13 (3), (6), (7), (8), (9), (10), (11), (12), and (13) of that
14 section are redesignated as subsections (4), (7), (8), (9),
15 (10), (11), (12), (13), and (14), respectively, subsections
16 (4) and (5) of that section are redesignated as subsections
17 (5) and (6), respectively, and amended, and a new subsection
18 (3) is added to that section, to read:

19 400.509 Registration of particular service providers
20 exempt from licensure; certificate of registration; regulation
21 of registrants.--

22 (1) Any person who ~~that~~ provides domestic maid
23 services, ~~sitter services~~, companion services, or homemaker
24 services and does not provide a home health service to a
25 person is exempt from licensure under this part. However, any
26 person who ~~that~~ provides ~~sitter services for adults~~, companion
27 services, or homemaker services must register with the Agency
28 for Health Care Administration. This section does not apply to
29 an individual who provides services under a contract with the
30 Department of Children and Family Services and who has
31 undergone screening under s. 393.0655.

1 (2) Registration consists of annually filing with the
2 agency ~~for Health Care Administration~~, under oath, on forms
3 provided by it, the following information:

4 (a) The name, address, date of birth, and social
5 security number of the individual, ~~or the name and address of~~
6 ~~the person~~, providing the service.

7 (b) If the registrant is a firm or partnership, the
8 name, address, date of birth, and social security number of
9 every member.

10 (c) If the registrant is a corporation or association,
11 its name and address, the name, address, date of birth, and
12 social security number of each of its directors and officers,
13 and the name and address of each person having at least a
14 5-percent ~~10-percent~~ interest in the corporation or
15 association.

16 (d) The name, address, date of birth, and social
17 security number of each person employed or under contract.

18 (3) Each applicant for registration must comply with
19 the following requirements:

20 (a) Upon receipt of a completed, signed, and dated
21 application, the agency shall require background screening, in
22 accordance with the level 1 standards for screening set forth
23 in chapter 435, of the individual providing the service. If
24 the applicant is a firm or partnership, the agency shall
25 require background screening of the managing employee, or
26 other similarly titled individual who is responsible for the
27 operation of the entity, and of the financial officer, or
28 other similarly titled individual who is responsible for the
29 financial operation of the entity, including billings for
30 client services, in accordance with level 2 standards for
31 background screening as set forth in chapter 435.

1 (b) The agency may require background screening of any
2 other individual who is an applicant if the agency has a
3 reasonable basis for believing that he or she has been
4 convicted of a crime or has committed any other offense
5 prohibited under the level 2 standards for screening set forth
6 in chapter 435.

7 (c) Proof of compliance with the level 2 background
8 screening requirements of chapter 435 which has been submitted
9 within the previous 5 years in compliance with any other
10 healthcare or assisted living licensure requirements of this
11 state is acceptable in fulfillment of the requirements of
12 paragraph (a).

13 (d) A provisional registration may be granted to an
14 applicant when each individual required by this section to
15 undergo background screening has met the standards for the
16 abuse registry background check and the Department of Law
17 Enforcement background check but the agency has not yet
18 received background screening results from the Federal Bureau
19 of Investigation. A standard registration may be granted to
20 the applicant upon the agency's receipt of a report of the
21 results of the Federal Bureau of Investigation background
22 screening for each individual required by this section to
23 undergo background screening which confirms that all standards
24 have been met, or upon the granting of a disqualification
25 exemption by the agency as set forth in chapter 435. Any other
26 person who is required to undergo level 2 background screening
27 may serve in his or her capacity pending the agency's receipt
28 of the report from the Federal Bureau of Investigation.
29 However, the person may not continue to serve if the report
30 indicates any violation of background screening standards and
31

1 a disqualification exemption has not been requested of and
2 granted by the agency as set forth in chapter 435.

3 (e) Each applicant must submit to the agency, with its
4 application, a description and explanation of any exclusions,
5 permanent suspensions, or terminations of the applicant from
6 the Medicare or Medicaid programs. Proof of compliance with
7 the requirements for disclosure of ownership and control
8 interests under the Medicaid or Medicare programs may be
9 accepted in lieu of this submission.

10 (f) Each applicant must submit to the agency a
11 description and explanation of any conviction of an offense
12 prohibited under the level 2 standards of chapter 435 by a
13 member of the board of directors of the applicant, its
14 officers, or any individual owning 5 percent or more of the
15 applicant. This requirement does not apply to a director of a
16 not-for-profit corporation or organization if the director
17 serves solely in a voluntary capacity for the corporation or
18 organization, does not regularly take part in the day-to-day
19 operational decisions of the corporation or organization,
20 receives no remuneration for his or her services on the
21 corporation or organization's board of directors, and has no
22 financial interest and has no family members with a financial
23 interest in the corporation or organization, provided that the
24 director and the not-for-profit corporation or organization
25 include in the application a statement affirming that the
26 director's relationship to the corporation satisfies the
27 requirements of this paragraph.

28 (g) A registration may not be granted to an applicant
29 if the applicant or managing employee has been found guilty
30 of, regardless of adjudication, or has entered a plea of nolo
31 contendere or guilty to, any offense prohibited under the

1 level 2 standards for screening set forth in chapter 435,
2 unless an exemption from disqualification has been granted by
3 the agency as set forth in chapter 435.

4 (h) The agency may deny or revoke the registration if
5 any applicant:

6 1. Has falsely represented a material fact in the
7 application required by paragraph (e) or paragraph (f), or has
8 omitted any material fact from the application required by
9 paragraph (e) or paragraph (f); or

10 2. Has had prior action taken against the applicant
11 under the Medicaid or Medicare program as set forth in
12 paragraph (e).

13 (i) An application for registration renewal must
14 contain the information required under paragraphs (e) and (f).

15 (5)(4) Each registrant must establish the employment
16 history of persons employed or under contract having contact
17 at any time with clients ~~patients~~ in their homes by:

18 (a) Requiring persons employed or under contract to
19 submit an employment history to the registrant; and

20 (b) Verifying the employment history, unless through
21 diligent efforts such verification is not possible. The
22 agency ~~for Health Care Administration~~ shall prescribe by rule
23 the minimum requirements for establishing that diligent
24 efforts have been made.

25
26 There is no monetary liability on the part of, and no cause of
27 action for damages arises against, a former employer of a
28 prospective employee of or prospective independent contractor
29 with a registrant who reasonably and in good faith
30 communicates his or her honest opinions about the former
31 employee's job performance. This subsection does not affect

1 the official immunity of an officer or employee of a public
2 corporation.

3 ~~(6)(5)~~ On or before the first day on which services
4 are provided to a client ~~patient~~, any registrant under this
5 part must inform the client ~~patient~~ and his or her immediate
6 family, if appropriate, of the right to report abusive,
7 neglectful, or exploitative practices. The statewide
8 toll-free telephone number for the central abuse registry must
9 be provided to patients in a manner that is clearly legible
10 and must include the words: "To report abuse, neglect, or
11 exploitation, please call toll-free ...(phone number)...."
12 Registrants must establish appropriate policies and procedures
13 for providing such notice to clients ~~patients~~.

14 Section 72. Section 400.512, Florida Statutes, is
15 amended to read:

16 400.512 Screening of home health agency personnel;
17 nurse registry personnel; and ~~sitters, companions, and~~
18 ~~homemakers.--The agency for Health Care Administration shall~~
19 require employment, or contractor, screening as provided in
20 chapter 435, using the level 1 standards for screening set
21 forth in that chapter, for home health agency personnel;
22 persons referred for contract employment by nurse registries;
23 and persons employed or referred by ~~sitter, companion, or~~
24 homemaker services registered under s. 400.509.

25 (1) The agency ~~for Health Care Administration~~ may
26 grant exemptions from disqualification from employment under
27 this section as provided in s. 435.07.

28 (2) The administrator of each home health agency,
29 nurse registry, or ~~sitter, companion, or~~ homemaker service
30 registered under s. 400.509 must sign an affidavit annually,
31 under penalty of perjury, stating that all personnel hired, or

1 registered, on or after October 1, 1994 ~~1989~~, who enter the
2 home of a patient or client in ~~the capacity of their service~~
3 capacity ~~employment~~ have been screened and that its remaining
4 personnel have worked for the home health agency or
5 registrant, or have been registered with the nurse registry,
6 continuously since before October 1, 1994 ~~1989~~.

7 (3) As a prerequisite to operating as a home health
8 agency, or ~~sitter, companion, or homemaker~~ service under s.
9 400.509, the administrator must submit to the agency his or
10 her ~~for Health Care Administration~~ their name and any other
11 information necessary to conduct a complete screening
12 according to this section. The agency ~~for Health Care~~
13 ~~Administration~~ shall submit the information to the Department
14 of Law Enforcement and the department's abuse hotline for
15 state processing. The agency ~~for Health Care Administration~~
16 shall review the record of the administrator with respect to
17 the offenses specified in this section and shall notify the
18 owner of its findings. If disposition information is missing
19 on a criminal record, the administrator, upon request of the
20 agency ~~for Health Care Administration~~, must obtain and supply
21 within 30 days the missing disposition information to the
22 agency ~~for Health Care Administration~~. Failure to supply
23 missing information within 30 days or to show reasonable
24 efforts to obtain such information will result in automatic
25 disqualification.

26 (4) Proof of compliance with the screening
27 requirements of chapter 435 shall be accepted in lieu of the
28 requirements of this section if the ~~provided that~~ such person
29 has been continuously employed, or registered, without a
30 breach in service that exceeds 180 days, the proof of
31 compliance is not more than 2 years old, and the person has

1 been screened through the central abuse registry and tracking
2 system of the department and by the Department of Law
3 Enforcement. An employer or registry shall directly provide
4 proof of compliance to another home health agency or registry,
5 and a potential home health agency or registry may not accept
6 any proof of compliance directly from the person who requires
7 screening. Proof of compliance with the screening requirements
8 of this section shall be provided upon request to the person
9 screened by the home health agencies; nurse registries; or
10 ~~sitter, companion, or homemaker services registered under s.~~
11 400.509.

12 (5) There is no monetary liability on the part of, and
13 no cause of action for damages arises against, a licensed home
14 health agency, licensed nurse registry, or ~~sitter, companion,~~
15 or homemaker service registered under s. 400.509, that, upon
16 notice of a confirmed report of adult abuse, neglect, or
17 exploitation ~~under paragraph (2)(b),~~ terminates the employee,
18 or removes from the licensed nurse registry the person,
19 against whom the report was issued, whether or not the
20 employee or contractor has filed for an exemption with the
21 agency in accordance with chapter 435 for Health Care
22 ~~Administration under subparagraph (3)(a)5.~~ and whether or not
23 the time for filing has expired.

24 (6) The costs of processing the statewide
25 correspondence criminal records checks and the search of the
26 department's central abuse hotline must be borne by the home
27 health agency; the nurse registry; or the ~~sitter, companion,~~
28 or homemaker service registered under s. 400.509, or by the
29 person being screened, at the discretion of the home health
30 agency, nurse registry, or s. 400.509 registrant.

31

1 ~~(7) The Agency for Health Care Administration; the~~
2 ~~home health agency; nurse registry; or sitter, companion, or~~
3 ~~homemaker service registered under s. 400.509 may not use the~~
4 ~~criminal records, juvenile records, or central abuse hotline~~
5 ~~information of a person for any purpose other than determining~~
6 ~~whether that person meets minimum standards of good moral~~
7 ~~character for home health agency personnel. The criminal~~
8 ~~records, juvenile records, or central abuse hotline~~
9 ~~information obtained by the Agency for Health Care~~
10 ~~Administration; home health agency; nurse registry; or sitter,~~
11 ~~companion, or homemaker service for determining the moral~~
12 ~~character of such personnel are confidential and exempt from~~
13 ~~the provisions of s. 119.07(1) and s. 24(a), Art. I of the~~
14 ~~State Constitution.~~

15 ~~(8)(a) It is a misdemeanor of the first degree,~~
16 ~~punishable under s. 775.082 or s. 775.083, for any person~~
17 ~~willfully, knowingly, or intentionally to:~~

18 ~~1. Fail, by false statement, misrepresentation,~~
19 ~~impersonation, or other fraudulent means, to disclose in any~~
20 ~~application for voluntary or paid employment a material fact~~
21 ~~used in making a determination as to such person's~~
22 ~~qualifications to be an employee under this section;~~

23 ~~2. Operate or attempt to operate an entity licensed or~~
24 ~~registered under this part with persons who do not meet the~~
25 ~~minimum standards for good moral character as contained in~~
26 ~~this section; or~~

27 ~~3. Use information from the criminal records or~~
28 ~~central abuse hotline obtained under this section for any~~
29 ~~purpose other than screening that person for employment as~~
30 ~~specified in this section or release such information to any~~
31

1 ~~other person for any purpose other than screening for~~
2 ~~employment under this section.~~

3 ~~(b) It is a felony of the third degree, punishable~~
4 ~~under s. 775.082, s. 775.083, or s. 775.084, for any person~~
5 ~~willfully, knowingly, or intentionally to use information from~~
6 ~~the juvenile records of a person obtained under this section~~
7 ~~for any purpose other than screening for employment under this~~
8 ~~section.~~

9 Section 73. Subsections (3), (4), (5), (6), (7), (8),
10 (9), (10), and (11) are added to section 400.555, Florida
11 Statutes, to read:

12 400.555 Application for licensure.--

13 (3) Each applicant for licensure must comply with the
14 following requirements:

15 (a) Upon receipt of a completed, signed, and dated
16 application, the agency shall require background screening of
17 the applicant, in accordance with the level 2 standards for
18 screening set forth in chapter 435. As used in this
19 subsection, the term "applicant" means the facility
20 administrator or similarly titled individual who is
21 responsible for the day-to-day operation of the licensed
22 facility and the facility financial officer or similarly
23 titled individual who is responsible for the financial
24 operation of the licensed facility.

25 (b) The agency may require background screening for a
26 member of the board of directors of the licensee or an officer
27 or an individual owning 5 percent or more of the licensee if
28 the agency reasonably suspects that such individual has been
29 convicted of an offense prohibited under the level 2 standards
30 for screening set forth in chapter 435.

31

1 (c) Proof of compliance with the level 2 background
2 screening requirements of chapter 435 which has been submitted
3 within the previous 5 years in compliance with any other
4 healthcare or assisted living licensure requirements of this
5 state is acceptable in fulfillment of the requirements of
6 paragraph (a).

7 (d) A provisional license may be granted to an
8 applicant when each individual required by this section to
9 undergo background screening has met the standards for the
10 abuse registry background check and the Department of Law
11 Enforcement background check but the agency has not yet
12 received background screening results from the Federal Bureau
13 of Investigation, or a request for a disqualification
14 exemption has been submitted to the agency as set forth in
15 chapter 435 but a response has not yet been issued. A
16 standard license may be granted to the applicant upon the
17 agency's receipt of a report of the results of the Federal
18 Bureau of Investigation background screening for each
19 individual required by this section to undergo background
20 screening which confirms that all standards have been met, or
21 upon the granting of a disqualification exemption by the
22 agency as set forth in chapter 435. Any other person who is
23 required to undergo level 2 background screening may serve in
24 his or her capacity pending the agency's receipt of the report
25 from the Federal Bureau of Investigation. However, the person
26 may not continue to serve if the report indicates any
27 violation of background screening standards and a
28 disqualification exemption has not been requested of and
29 granted by the agency as set forth in chapter 435.

30 (e) Each applicant must submit to the agency, with its
31 application, a description and explanation of any exclusions,

1 permanent suspensions, or terminations of the applicant from
2 the Medicare or Medicaid programs. Proof of compliance with
3 disclosure of ownership and control interest requirements of
4 the Medicaid or Medicare programs may be accepted in lieu of
5 this submission.

6 (f) Each applicant must submit to the agency a
7 description and explanation of any conviction of an offense
8 prohibited under the level 2 standards of chapter 435 by a
9 member of the board of directors of the applicant, its
10 officers, or any individual owning 5 percent or more of the
11 applicant. This requirement shall not apply to a director of a
12 not-for-profit corporation or organization if the director
13 serves solely in a voluntary capacity for the corporation or
14 organization, does not regularly take part in the day-to-day
15 operational decisions of the corporation or organization,
16 receives no remuneration for his or her services on the
17 corporation or organization's board of directors, and has no
18 financial interest and has no family members with a financial
19 interest in the corporation or organization, provided that the
20 director and the not-for-profit corporation or organization
21 include in the application a statement affirming that the
22 director's relationship to the corporation satisfies the
23 requirements of this paragraph.

24 (g) A license may not be granted to an applicant if
25 the applicant, operator, or financial officer has been found
26 guilty of, regardless of adjudication, or has entered a plea
27 of nolo contendere or guilty to, any offense prohibited under
28 the level 2 standards for screening set forth in chapter 435,
29 unless an exemption from disqualification has been granted by
30 the agency as set forth in chapter 435.

31

1 (h) The agency may deny or revoke licensure if the
2 applicant:

3 1. Has falsely represented a material fact in the
4 application required by paragraph (e) or paragraph (f), or has
5 omitted any material fact from the application required by
6 paragraph (e) or paragraph (f); or

7 2. Has had prior action taken against the applicant
8 under the Medicaid or Medicare program as set forth in
9 paragraph (e).

10 (i) An application for license renewal must contain
11 the information required under paragraphs (e) and (f).

12 Section 74. Section 400.5572, Florida Statutes, is
13 created to read:

14 400.5572 Background screening.--

15 (1) The center owner or operator shall conduct level 1
16 background screening, as set forth in chapter 435, on all
17 employees hired on or after October 1, 1998, who perform basic
18 or supportive and optional services defined in s. 400.551.
19 The agency may exempt an individual from employment
20 disqualification as set forth in chapter 435.

21 (2) Proof of compliance with the level 1 background
22 screening requirements of chapter 435 may be satisfied as
23 follows:

24 (a) The employee or applicant for employment has had a
25 level 1 background screening to qualify for a professional
26 license in this state. Proof of compliance with the level 1
27 screening requirements must be accompanied, under penalty of
28 perjury, by a copy of the applicant's current professional
29 license and an affidavit of compliance with the level 1
30 screening requirements.

31

1 (b) The employee or applicant for employment has been
2 continuously employed in the same type of occupation for which
3 the person is seeking employment without a breach in service
4 that exceeds 180 days, and proof of compliance with the level
5 1 screening requirement is no more than 2 years old. Proof of
6 compliance shall be provided directly from one employer or
7 contractor to another, and a potential employer or contractor
8 may not accept any proof of compliance directly from the
9 person who was screened. Upon request, proof of completion of
10 the level 1 screening requirements of this section shall be
11 provided by the employer retaining documentation of the
12 screening to the person who was screened.

13 (c) The employee or applicant seeking employment is
14 employed by a corporation or business entity or related
15 corporation or business entity that owns, operates, or manages
16 more than one facility or agency licensed under chapter 400
17 for whom a level 1 screening was conducted by the corporation
18 or business entity as a condition of initial employment or
19 continued employment.

20 (3) When an employee, volunteer, operator, or owner of
21 a facility has a confirmed report of adult abuse, neglect, or
22 exploitation, as defined in s. 415.102, and the protective
23 investigator knows that the individual is an employee,
24 volunteer, operator, or owner of a center, the agency must be
25 notified of the confirmed report.

26 Section 75. Section 400.606, Florida Statutes, is
27 amended to read:

28 400.606 License; application; provisional license
29 renewal; conditional license or permit; certificate of need.--

30 (1) A license application must be filed on a form
31 provided by the agency and must be accompanied by the

1 appropriate license fee as well as satisfactory proof that the
2 hospice is in compliance with this part and any rules adopted
3 by the department and proof of financial ability to operate
4 and conduct the hospice in accordance with the requirements of
5 this part. The initial application must be accompanied by a
6 plan for the delivery of home, residential, and homelike
7 inpatient hospice services to terminally ill persons and their
8 families. Such plan must contain, but need not be limited to:
9 (a) The estimated average number of terminally ill
10 persons to be served monthly.
11 (b) The geographic area in which hospice services will
12 be available.
13 (c) A listing of services which are or will be
14 provided, either directly by the applicant or through
15 contractual arrangements with existing providers.
16 (d) Provisions for the implementation of hospice home
17 care within 3 months after licensure.
18 (e) Provisions for the implementation of hospice
19 homelike inpatient care within 12 months after licensure.
20 (f) The number and disciplines of professional staff
21 to be employed.
22 (g) The name and qualifications of any existing or
23 potential contractee.
24 (h) A plan for attracting and training volunteers.
25 (i) The projected annual operating cost of the
26 hospice.
27 (j) A statement of financial resources and personnel
28 available to the applicant to deliver hospice care.
29
30 If the applicant is an existing health care provider, the
31 application must be accompanied by a copy of the most recent

1 profit-loss statement and, if applicable, the most recent
2 licensure inspection report.

3 (2) Each applicant for licensure must comply with the
4 following requirements:

5 (a) Upon receipt of a completed, signed, and dated
6 application, the agency shall require background screening of
7 the applicant, in accordance with the level 2 standards for
8 screening set forth in chapter 435. As used in this
9 subsection, the term "applicant" means the facility
10 administrator or similarly titled individual who is
11 responsible for the day-to-day operation of the licensed
12 facility and the facility financial officer or similarly
13 titled individual who is responsible for the financial
14 operation of the licensed facility.

15 (b) The agency may require background screening for a
16 member of the board of directors of the licensee or an officer
17 or an individual owning 5 percent or more of the licensee if
18 the agency reasonably suspects that such individual has been
19 convicted of an offense prohibited under the level 2 standards
20 for screening set forth in chapter 435.

21 (c) Proof of compliance with the level 2 background
22 screening requirements of chapter 435 which has been submitted
23 within the previous 5 years in compliance with any other
24 health care or assisted living licensure requirements of this
25 state is acceptable in fulfillment of paragraph (a).

26 (d) A provisional license may be granted to an
27 applicant when each individual required by this section to
28 undergo background screening has met the standards for the
29 abuse registry background check and the Department of Law
30 Enforcement background check but the agency has not yet
31 received background screening results from the Federal Bureau

1 of Investigation. A standard license may be granted to the
2 applicant upon the agency's receipt of a report of the results
3 of the Federal Bureau of Investigation background screening
4 for each individual required by this section to undergo
5 background screening which confirms that all standards have
6 been met, or upon the granting of a disqualification exemption
7 by the agency as set forth in chapter 435. Any other person
8 who is required to undergo level 2 background screening may
9 serve in his or her capacity pending the agency's receipt of
10 the report from the Federal Bureau of Investigation. However,
11 the person may not continue to serve if the report indicates
12 any violation of background screening standards and a
13 disqualification exemption has not been requested of and
14 granted by the agency as set forth in chapter 435.

15 (e) Each applicant must submit to the agency, with its
16 application, a description and explanation of any exclusions,
17 permanent suspensions, or terminations of the applicant from
18 the Medicare or Medicaid programs. Proof of compliance with
19 disclosure of ownership and control interest requirements of
20 the Medicaid or Medicare programs may be accepted in lieu of
21 this submission.

22 (f) Each applicant must submit to the agency a
23 description and explanation of any conviction of an offense
24 prohibited under the level 2 standards of chapter 435 by a
25 member of the board of directors of the applicant, its
26 officers, or any individual owning 5 percent or more of the
27 applicant. This requirement does not apply to a director of a
28 not-for-profit corporation or organization if the director
29 serves solely in a voluntary capacity for the corporation or
30 organization, does not regularly take part in the day-to-day
31 operational decisions of the corporation or organization,

1 receives no remuneration for his or her services on the
2 corporation or organization's board of directors, and has no
3 financial interest and has no family members with a financial
4 interest in the corporation or organization, provided that the
5 director and the not-for-profit corporation or organization
6 include in the application a statement affirming that the
7 director's relationship to the corporation satisfies the
8 requirements of this paragraph.

9 (g) A license may not be granted to an applicant if
10 the applicant, managing employee, or financial officer has
11 been found guilty of, regardless of adjudication, or has
12 entered a plea of nolo contendere or guilty to, any offense
13 prohibited under the level 2 standards for screening set forth
14 in chapter 435, unless an exemption from disqualification has
15 been granted by the agency as set forth in chapter 435.

16 (h) The agency may deny or revoke licensure if the
17 applicant:

18 1. Has falsely represented a material fact in the
19 application required by paragraph (e) or paragraph (f), or has
20 omitted any material fact from the application required by
21 paragraph (e) or paragraph (f); or

22 2. Has had prior action taken against the applicant
23 under the Medicaid or Medicare program as set forth in
24 paragraph (e).

25 (i) An application for license renewal must contain
26 the information required under paragraphs (e) and (f).

27 (3)(2) A license issued for the operation of a
28 hospice, unless sooner suspended or revoked, shall expire
29 automatically 1 year from the date of issuance. Sixty days
30 prior to the expiration date, a hospice wishing to renew its
31 license shall submit an application for renewal to the agency

1 on forms furnished by the agency. The agency shall renew the
2 license if the applicant has first met the requirements
3 established under this part and all applicable rules and has
4 provided the information described in subsection (1) in
5 addition to the application. However, the application for
6 license renewal shall be accompanied by an update of the plan
7 for delivery of hospice care only if information contained in
8 the plan submitted pursuant to subsection (1) is no longer
9 applicable.

10 (4)~~(3)~~ A hospice against which a revocation or
11 suspension proceeding is pending at the time of license
12 renewal may be issued a conditional license by the agency
13 effective until final disposition of such proceeding. If
14 judicial relief is sought from the final agency action, the
15 court having jurisdiction may issue a conditional permit for
16 the duration of the judicial proceeding.

17 (5)~~(4)~~ The agency shall not issue a license to a
18 hospice that fails to receive a certificate of need under the
19 provisions of ss. 408.031-408.045. A licensed hospice is a
20 health care facility as that term is used in s. 408.039(5) and
21 is entitled to initiate or intervene in an administrative
22 hearing.

23 (6)~~(5)~~ A freestanding hospice facility that is
24 primarily engaged in providing inpatient and related services
25 and that is not otherwise licensed as a health care facility
26 shall be required to obtain a certificate of need. However, a
27 freestanding hospice facility with six or fewer beds shall not
28 be required to comply with institutional standards such as,
29 but not limited to, standards requiring sprinkler systems,
30 emergency electrical systems, or special lavatory devices.

31

1 Section 76. Subsection (4) of section 400.619, Florida
2 Statutes, is amended, present subsections (5), (6), (7), (8),
3 (9), (10), (12), and (13) of that section are redesignated as
4 subsections (11), (12), (13), (14), (15), (16), (18) and (19),
5 respectively, present subsection (11) is redesignated as
6 subsection (17) and amended, and new subsections (5), (6),
7 (7), (8), (9), and (10), are added to that section, to read:

8 400.619 Licensure requirements.--

9 (4) Upon receipt of a completed, signed, and dated
10 license application and the fee, the agency must initiate
11 background screening using the level 1 standards for screening
12 which are set forth in chapter 435 for ~~check with the abuse~~
13 ~~registry and the Department of Law Enforcement~~ concerning the
14 adult family-care home applicant, designated relief persons,
15 all adult household members, and all staff members. The
16 applicant must comply with the procedures for background
17 screening as set forth in chapter 435.The agency shall also
18 conduct an onsite visit to the home that is to be licensed.

19 (5) Proof of compliance with the level 1 background
20 screening requirements of chapter 435 which has been submitted
21 within the previous 5 years in compliance with any other
22 healthcare or assisted living licensure requirements of this
23 state is acceptable in fulfillment of the required level 1
24 background screening of the applicant.

25 (6) Proof of compliance with the level 1 background
26 screening requirements of chapter 435 may be satisfied as
27 follows:

28 (a) The applicant, adult household member, staff
29 person, or designated relief person has had a level 1
30 background screening to qualify for a professional license in
31 this state. Proof of compliance with the level 1 screening

1 requirement must be accompanied, under penalty of perjury, by
2 a copy of the applicant's current professional license and an
3 affidavit of compliance with the level 1 screening
4 requirement.

5 (b) The applicant, adult household member, staff
6 person, or designated relief person has been continuously
7 employed in the same type of occupation for which the person
8 is seeking employment without a breach in service that exceeds
9 180 days, and proof of compliance with the level 1 screening
10 requirement is no more than 2 years old. Proof of compliance
11 shall be provided directly from one employer or contractor to
12 another, and a potential employer or contractor may not accept
13 any proof of compliance directly from the person who was
14 screened. Upon request, proof of completion of the level 1
15 screening requirement of this section shall be provided by the
16 employer retaining documentation of the screening to the
17 person who was screened.

18 (7) The application must be accompanied by an
19 affidavit, under penalty of perjury, providing the following
20 information regarding the applicant:

21 (a) A description and explanation of any exclusions,
22 permanent suspensions, or terminations of the applicant from
23 participation in the Medicaid or Medicare programs or any
24 other governmental healthcare or governmental health insurance
25 program.

26 (b) Proof of compliance by the applicant with the
27 level 1 background screening standards as set forth in chapter
28 435, and by all adult household members, all staff, and all
29 relief persons with the level 1 background screening standards
30 set forth in chapter 435.

31

1 (8) A license may not be granted to any applicant if
2 the applicant, adult household member, staff member, or
3 designated relief person has been found guilty of, regardless
4 of adjudication, or has entered a plea of nolo contendere or
5 guilty to, any offense prohibited under the level 1 standards
6 for screening set forth in chapter 435, unless an exemption
7 from disqualification has been granted by the agency as set
8 forth in chapter 435.

9 ~~(17)(11)~~ The agency may deny, suspend, or revoke a
10 license for any of the following reasons:

11 (a) A confirmed report, obtained under s. 415.1075, of
12 abuse, neglect, or exploitation, or conviction of a crime
13 related to abuse, neglect, or exploitation.

14 (b) A proposed confirmed report that remains unserved
15 and is maintained in the central abuse registry and tracking
16 system pursuant to s. 415.1065(2)(c).

17 (c) An intentional or negligent act materially
18 affecting the health, safety, or welfare of the adult
19 family-care home residents.

20 (d) A violation of ss. 400.616-400.629 or rules
21 adopted under ss. 400.616-400.629, including the failure to
22 comply with any restrictions specified in the license.

23 (e) Submission of fraudulent or inaccurate information
24 to the agency.

25 (f) Conviction of a felony involving violence to a
26 person.

27 (g) Failure to pay a civil penalty assessed under this
28 part.

29 (h) Has had prior Medicaid or Medicare action taken
30 against the applicant as set forth in subsection (8).

31

1 Section 77. Subsection (1) of section 400.702, Florida
2 Statutes, is amended to read:

3 400.702 Development of intermediate care facilities.--

4 (1) The Department of Health and Rehabilitative
5 Services is directed to issue a request for proposals,
6 pursuant to the provisions of chapter 287, for a pilot program
7 of intermediate-level care facilities. The development of
8 intermediate-level care facilities under this pilot program
9 shall be limited to four projects in geographic locations
10 distributed in the south, north, and central part of the state
11 and shall not exceed a total of 120 beds in each location.
12 None of the projects may accept residents prior to July 1,
13 1990. The intermediate-level care facilities shall:

14 (a) Provide care to residents whose condition requires
15 intermediate care services, including 24-hour observation and
16 care and the constant availability of medical and nursing
17 treatment and care, but not to the degree of care and
18 treatment provided in a hospital or that which meets the
19 criteria for skilled nursing services.

20 ~~(b) Accept only low-income residents who receive~~
21 ~~subsidized housing vouchers through the United States~~
22 ~~Department of Housing and Urban Development or other~~
23 ~~subsidized housing programs.~~

24 (b)(e) Accept only low-income residents who are
25 Medicaid recipients or Medicaid-eligible recipients.

26 (c)(d) Be exempt from all requirements to obtain a
27 certificate of need pursuant to ss. 408.031-408.045; however,
28 the beds so utilized will be counted in the total bed supply
29 for determination of nursing home bed needs.

30 (d)(e) Be licensed as a nursing home pursuant to part
31 II and ss. 408.061, 408.08, and 408.20, except that the

1 department is given the authority to waive any requirement
2 that unnecessarily restricts the development of intermediate
3 care facilities, provided such waiver does not contravene
4 federal or state law. The department shall, however, ensure
5 that the health and safety of residents of intermediate care
6 facilities are adequately protected.

7 Section 78. Section 400.801, Florida Statutes, is
8 amended to read:

9 400.801 Homes for special services.--

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

11 (a) "Agency" means the "Agency for Health Care
12 Administration."

13 (b) "Home for special services" means a site where
14 specialized health care services are provided, including
15 personal and custodial care, but not continuous nursing
16 services.

17 (2) A person must obtain a license from the agency to
18 operate a home for special services. A license is valid for 1
19 year.

20 (3) The application for a license under this section
21 must be made on a form provided by the agency. A
22 nonrefundable license fee of not more than \$1,000 must be
23 submitted with the license application.

24 (4) Each applicant for licensure must comply with the
25 following requirements:

26 (a) Upon receipt of a completed, signed, and dated
27 application, the agency shall require background screening, in
28 accordance with the level 2 standards for screening set forth
29 in chapter 435, of the managing employee, or other similarly
30 titled individual who is responsible for the daily operation
31 of the facility, and of the financial officer, or other

1 similarly titled individual who is responsible for the
2 financial operation of the facility, including billings for
3 client care and services, in accordance with the level 2
4 standards for screening set forth in chapter 435. The
5 applicant must comply with the procedures for level 2
6 background screening as set forth in chapter 435.

7 (b) The agency may require background screening of any
8 other individual who is an applicant if the agency has a
9 reasonable basis for believing that he or she has been
10 convicted of a crime or has committed any other offense
11 prohibited under the level 2 standards for screening set forth
12 in chapter 435.

13 (c) Proof of compliance with the level 2 background
14 screening requirements of chapter 435 which has been submitted
15 within the previous 5 years in compliance with any other
16 health care or assisted living licensure requirements of this
17 state is acceptable in fulfillment of the requirements of
18 paragraph (a).

19 (d) A provisional license may be granted to an
20 applicant when each individual required by this section to
21 undergo background screening has met the standards for the
22 abuse registry background check and the Department of Law
23 Enforcement background check but the agency has not yet
24 received background screening results from the Federal Bureau
25 of Investigation, or a request for a disqualification
26 exemption has been submitted to the agency as set forth in
27 chapter 435 but a response has not yet been issued. A standard
28 license may be granted to the applicant upon the agency's
29 receipt of a report of the results of the Federal Bureau of
30 Investigation background screening for each individual
31 required by this section to undergo background screening which

1 confirms that all standards have been met, or upon the
2 granting of a disqualification exemption by the agency as set
3 forth in chapter 435. Any other person who is required to
4 undergo level 2 background screening may serve in his or her
5 capacity pending the agency's receipt of the report from the
6 Federal Bureau of Investigation. However, the person may not
7 continue to serve if the report indicates any violation of
8 background screening standards and a disqualification
9 exemption has not been requested of and granted by the agency
10 as set forth in chapter 435.

11 (e) Each applicant must submit to the agency, with its
12 application, 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 the requirements for disclosure of ownership and control
16 interests under the Medicaid or Medicare programs may be
17 accepted in lieu of this submission.

18 (f) Each applicant must submit to the agency a
19 description and explanation of any conviction of an offense
20 prohibited under the level 2 standards of chapter 435 by a
21 member of the board of directors of the applicant, its
22 officers, or any individual owning 5 percent or more of the
23 applicant. This requirement does not apply to a director of a
24 not-for-profit corporation or organization if the director
25 serves solely in a voluntary capacity for the corporation or
26 organization, does not regularly take part in the day-to-day
27 operational decisions of the corporation or organization,
28 receives no remuneration for his or her services on the
29 corporation or organization's board of directors, and has no
30 financial interest and has no family members with a financial
31 interest in the corporation or organization, provided that the

1 director and the not-for-profit corporation or organization
2 include in the application a statement affirming that the
3 director's relationship to the corporation satisfies the
4 requirements of this paragraph.

5 (g) A license may not be granted to an applicant if
6 the applicant or managing employee has been found guilty of,
7 regardless of adjudication, or has entered a plea of nolo
8 contendere or guilty to, any offense prohibited under the
9 level 2 standards for screening set forth in chapter 435,
10 unless an exemption from disqualification has been granted by
11 the agency as set forth in chapter 435.

12 (h) The agency may deny or revoke licensure if the
13 applicant:

14 1. Has falsely represented a material fact in the
15 application required by paragraph (e) or paragraph (f), or has
16 omitted any material fact from the application required by
17 paragraph (e) or paragraph (f); or

18 2. Has had prior action taken against the applicant
19 under the Medicaid or Medicare program as set forth in
20 paragraph (e).

21 (i) An application for license renewal must contain
22 the information required under paragraphs (e) and (f).

23 ~~(5)(4)~~ Application for license renewal must be
24 submitted 90 days before the expiration of the license.

25 ~~(6)(5)~~ A change of ownership or control of a home for
26 special services must be reported to the agency in writing at
27 least 60 days before the change is scheduled to take effect.

28 ~~(7)(6)~~ The agency shall adopt rules for implementing
29 and enforcing this section.

30
31

1 ~~(8)(7)~~(a) It is unlawful for any person to establish,
2 conduct, manage, or operate a home for special services
3 without obtaining a license from the agency.

4 (b) It is unlawful for any person to offer or
5 advertise to the public, in any medium whatever, specialized
6 health care services without obtaining a license from the
7 agency.

8 (c) It is unlawful for a holder of a license issued
9 under this section to advertise or represent to the public
10 that it holds a license for a type of facility other than the
11 facility for which its license is issued.

12 ~~(9)(8)~~(a) A violation of any provision of this section
13 or rules adopted by the agency for implementing this section
14 is punishable by payment of an administrative fine not to
15 exceed \$5,000.

16 (b) A violation of subsection~~(8)(7)~~or rules adopted
17 under that subsection is a misdemeanor of the first degree,
18 punishable as provided in s. 775.082 or s. 775.083. Each day
19 of continuing violation is a separate offense.

20 Section 79. Present subsections (4), (5), and (6) of
21 section 400.805, Florida Statutes, are redesignated as
22 subsections (5), (6), and (7), respectively, present
23 subsections (3) and (7) of that section are redesignated as
24 subsections (4) and (8), respectively, and amended, and a new
25 subsection (3) is added to that section, to read:

26 400.805 Transitional living facilities.--

27 (3) Each applicant for licensure must comply with the
28 following requirements:

29 (a) Upon receipt of a completed, signed, and dated
30 application, the agency shall require background screening, in
31 accordance with the level 2 standards for screening set forth

1 in chapter 435, of the managing employee, or other similarly
2 titled individual who is responsible for the daily operation
3 of the facility, and of the financial officer, or other
4 similarly titled individual who is responsible for the
5 financial operation of the facility, including billings for
6 client care and services. The applicant must comply with the
7 procedures for level 2 background screening as set forth in
8 chapter 435.

9 (b) The agency may require background screening of any
10 other individual who is an applicant if the agency has a
11 reasonable basis for believing that he or she has been
12 convicted of a crime or has committed any other offense
13 prohibited under the level 2 standards for screening set forth
14 in chapter 435.

15 (c) Proof of compliance with the level 2 background
16 screening requirements of chapter 435 which has been submitted
17 within the previous 5 years in compliance with any other
18 health care or assisted living licensure requirements of this
19 state is acceptable in fulfillment of the requirements of
20 paragraph (a).

21 (d) A provisional license may be granted to an
22 applicant when each individual required by this section to
23 undergo background screening has met the standards for the
24 abuse registry background check and the Department of Law
25 Enforcement background check, but the agency has not yet
26 received background screening results from the Federal Bureau
27 of Investigation, or a request for a disqualification
28 exemption has been submitted to the agency as set forth in
29 chapter 435 but a response has not yet been issued. A standard
30 license may be granted to the applicant upon the agency's
31 receipt of a report of the results of the Federal Bureau of

1 Investigation background screening for each individual
2 required by this section to undergo background screening which
3 confirms that all standards have been met, or upon the
4 granting of a disqualification exemption by the agency as set
5 forth in chapter 435. Any other person who is required to
6 undergo level 2 background screening may serve in his or her
7 capacity pending the agency's receipt of the report from the
8 Federal Bureau of Investigation. However, the person may not
9 continue to serve if the report indicates any violation of
10 background screening standards and a disqualification
11 exemption has not been requested of and granted by the agency
12 as set forth in chapter 435.

13 (e) Each applicant must submit to the agency, with its
14 application, a description and explanation of any exclusions,
15 permanent suspensions, or terminations of the applicant from
16 the Medicare or Medicaid programs. Proof of compliance with
17 the requirements for disclosure of ownership and control
18 interests under the Medicaid or Medicare programs may be
19 accepted in lieu of this submission.

20 (f) Each applicant must submit to the agency a
21 description and explanation of any conviction of an offense
22 prohibited under the level 2 standards of chapter 435 by a
23 member of the board of directors of the applicant, its
24 officers, or any individual owning 5 percent or more of the
25 applicant. This requirement does not apply to a director of a
26 not-for-profit corporation or organization if the director
27 serves solely in a voluntary capacity for the corporation or
28 organization, does not regularly take part in the day-to-day
29 operational decisions of the corporation or organization,
30 receives no remuneration for his or her services on the
31 corporation or organization's board of directors, and has no

1 financial interest and has no family members with a financial
2 interest in the corporation or organization, provided that the
3 director and the not-for-profit corporation or organization
4 include in the application a statement affirming that the
5 director's relationship to the corporation satisfies the
6 requirements of this paragraph.

7 (g) A license may not be granted to an applicant if
8 the applicant or managing employee has been found guilty of,
9 regardless of adjudication, or has entered a plea of nolo
10 contendere or guilty to, any offense prohibited under the
11 level 2 standards for screening set forth in chapter 435,
12 unless an exemption from disqualification has been granted by
13 the agency as set forth in chapter 435.

14 (h) The agency may deny or revoke licensure if the
15 applicant:

16 1. Has falsely represented a material fact in the
17 application required by paragraph (e) or paragraph (f), or has
18 omitted any material fact from the application required by
19 paragraph (e) or paragraph (f); or

20 2. Has had prior action taken against the applicant
21 under the Medicaid or Medicare program as set forth in
22 paragraph (e).

23 (i) An application for license renewal must contain
24 the information required under paragraphs (e) and (f).

25 ~~(4)~~(3) An application for renewal of license must be
26 submitted 90 days before the expiration of the license. Upon
27 renewal of licensure, each applicant must submit to the
28 agency, under penalty of perjury, an affidavit as set forth in
29 s. 400.805(3)(d).

30 ~~(8)~~(7)(a) A violation of any provision of this section
31 or rules adopted by the agency or division under this section

1 is punishable by payment of an administrative or a civil
2 penalty fine not to exceed \$5,000.

3 (b) A violation of subsection (7)~~(6)~~ or rules adopted
4 under that subsection is a misdemeanor of the first degree,
5 punishable as provided in s. 775.082 or s. 775.083. Each day
6 of a continuing violation is a separate offense.

7 Section 80. Subsection (1), paragraphs (e) and (f) of
8 subsection (3), subsection (6), and paragraphs (c) and (d) of
9 subsection (7) of section 408.05, Florida Statutes, are
10 amended to read:

11 408.05 State Center for Health Statistics.--

12 (1) ESTABLISHMENT.--The agency ~~department~~ shall
13 establish a State Center for Health Statistics. The center
14 shall establish a comprehensive health information system to
15 provide for the collection, compilation, coordination,
16 analysis, indexing, dissemination, and utilization of both
17 purposefully collected and extant health-related data and
18 statistics. The center shall be staffed with public health
19 experts, biostatisticians, information system analysts, health
20 policy experts, economists, and other staff necessary to carry
21 out its functions.

22 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.--In order
23 to produce comparable and uniform health information and
24 statistics, the agency shall perform the following functions:

25 (e) The agency ~~department~~ shall establish by rule the
26 types of data collected, compiled, processed, used, or shared.
27 Decisions regarding center data sets should be made based on
28 consultation with the Comprehensive Health Information System
29 Advisory Council and other public and private users regarding
30 the types of data which should be collected and their uses.

31

1 (f) The center shall establish standardized means for
2 collecting health information and statistics under laws and
3 rules administered by the agency ~~department~~.

4 (6) PROVIDER DATA REPORTING.--This section does not
5 confer on the agency ~~department~~ the power to demand or require
6 that a health care provider or professional furnish
7 information, records of interviews, written reports,
8 statements, notes, memoranda, or data other than as expressly
9 required by law.

10 (7) BUDGET; FEES; TRUST FUND.--

11 (c) The center may charge such reasonable fees for
12 services as the agency ~~department~~ prescribes by rule. The
13 established fees may ~~shall~~ not exceed the reasonable cost for
14 such services. Fees collected may not be used to offset
15 annual appropriations from the General Revenue Fund.

16 (d) The agency ~~department~~ shall establish a
17 Comprehensive Health Information System Trust Fund as the
18 repository of all funds appropriated to, and fees and grants
19 collected for, services of the State Center for Health
20 Statistics. Any funds, other than funds appropriated to the
21 center from the General Revenue Fund, which are raised or
22 collected by the agency ~~department~~ for the operation of the
23 center and which are not needed to meet the expenses of the
24 center for its current fiscal year shall be available to the
25 agency ~~board~~ in succeeding years.

26 Section 81. Subsections (10) and (11) of section
27 408.061, Florida Statutes, are amended to read:

28 408.061 Data collection; uniform systems of financial
29 reporting; information relating to physician charges;
30 confidentiality of patient records; immunity.--

31

1 (10) No health care facility, health care provider,
2 health insurer, or other reporting entity or its employees or
3 agents shall be held liable for civil damages or subject to
4 criminal penalties either for the reporting of patient data to
5 the agency board or for the release of such data by the agency
6 board as authorized by this chapter.

7 (11) The agency shall be the primary source for
8 collection and dissemination of health care data. No other
9 agency of state government may gather data from a health care
10 provider licensed or regulated under this chapter without
11 first determining if the data is currently being collected by
12 the agency and affirmatively demonstrating that it would be
13 more cost-effective for an agency of state government other
14 than the agency to gather the health care data. The director
15 ~~secretary~~ shall ensure that health care data collected by the
16 divisions within the agency is coordinated. It is the express
17 intent of the Legislature that all health care data be
18 collected by a single source within the agency and that other
19 divisions within the agency, and all other agencies of state
20 government, obtain data for analysis, regulation, and public
21 dissemination purposes from that single source. Confidential
22 information may be released to other governmental entities or
23 to parties contracting with the agency to perform agency
24 duties or functions as needed in connection with the
25 performance of the duties of the receiving entity. The
26 receiving entity or party shall retain the confidentiality of
27 such information as provided for herein.

28 Section 82. Subsections (2) and (5) of section
29 408.062, Florida Statutes, are amended to read:

30 408.062 Research, analyses, studies, and reports.--

31

1 (2) The agency ~~board~~ shall evaluate data from nursing
2 home financial reports and shall document and monitor:

3 (a) Total revenues, annual change in revenues, and
4 revenues by source and classification, including contributions
5 for a resident's care from the resident's resources and from
6 the family and contributions not directed toward any specific
7 resident's care.

8 (b) Average resident charges by geographic region,
9 payor, and type of facility ownership.

10 (c) Profit margins by geographic region and type of
11 facility ownership.

12 (d) Amount of charity care provided by geographic
13 region and type of facility ownership.

14 (e) Resident days by payor category.

15 (f) Experience related to Medicaid conversion as
16 reported under s. 408.061.

17 (g) Other information pertaining to nursing home
18 revenues and expenditures.

19
20 The findings of the agency ~~board~~ shall be included in an
21 annual report to the Governor and Legislature by January 1
22 each year.

23 (5)(a) The agency may conduct data-based studies and
24 evaluations and make recommendations to the Legislature and
25 the Governor concerning exemptions, the effectiveness of
26 limitations of referrals, restrictions on investment interests
27 and compensation arrangements, and the effectiveness of public
28 disclosure. Such analysis may include, but need not be
29 limited to, utilization of services, cost of care, quality of
30 care, and access to care. The agency may require the
31 submission of data necessary to carry out such investigations,

1 which may include, but need not be limited to, data concerning
2 ownership, Medicare and Medicaid, charity care, types of
3 services offered to patients, revenues and expenses,
4 patient-encounter data, and other data reasonably necessary to
5 study utilization patterns and the impact of health care
6 provider ownership interests in health-care-related entities
7 on the cost, quality, and accessibility of health care.

8 (b) The agency may collect such data from any health
9 facility as a special study.~~The board is directed to research~~
10 ~~hospital financial and nonfinancial data in order to determine~~
11 ~~the need for establishing a category of inpatient hospital~~
12 ~~patients defined as medically indigent. For purposes of this~~
13 ~~section, a medically indigent patient is an individual who is~~
14 ~~admitted as an inpatient to a hospital, who is not classified~~
15 ~~as a Medicare beneficiary, a Medicaid recipient, or a charity~~
16 ~~care patient, but who has insufficient financial resources to~~
17 ~~pay for needed medical care. In its determination of the need~~
18 ~~for establishing a category of medically indigent patients,~~
19 ~~the board shall consider the creation of income and asset~~
20 ~~levels that would establish a person as medically indigent.~~
21 ~~The board shall submit a report and recommendations to the~~
22 ~~Governor and the Legislature on the establishment of a~~
23 ~~category of medically indigent inpatient hospital patients on~~
24 ~~or before January 1, 1994. If the board recommends the~~
25 ~~establishment of a category of medically indigent patients, it~~
26 ~~shall provide a specific recommendation for the eligibility~~
27 ~~determination process to be used in classifying a patient as~~
28 ~~medically indigent.~~

29 Section 83. Subsection (1) of section 408.063, Florida
30 Statutes, is amended to read:

31 408.063 Dissemination of health care information.--

1 (1) The agency, relying on data collected pursuant to
2 this chapter, shall establish a reliable, timely, and
3 consistent information system which distributes information
4 and serves as the basis for the agency's ~~board's~~ public
5 education programs. The agency shall seek advice from
6 consumers, health care purchasers, health care providers,
7 health care facilities, health insurers, and local health
8 councils in the development and implementation of its
9 information system. Whenever appropriate, the agency shall use
10 the local health councils for the dissemination of information
11 and education of the public.

12 Section 84. Section 408.07, Florida Statutes, is
13 amended to read:

14 408.07 Definitions.--As used in this chapter, with the
15 exception of ss. 408.031-408.045, the term:

16 (1) "Accepted" means that the agency ~~board~~ has found
17 that a report or data submitted by a health care facility or a
18 health care provider contains all schedules and data required
19 by the agency ~~board~~ and has been prepared in the format
20 specified by the agency ~~board~~, and otherwise conforms to
21 applicable rule or Florida Hospital Uniform Reporting System
22 manual requirements regarding reports in effect at the time
23 such report was submitted, and the data are mathematically
24 reasonable and accurate.

25 (2) "Adjusted admission" means the sum of acute and
26 intensive care admissions divided by the ratio of inpatient
27 revenues generated from acute, intensive, ambulatory, and
28 ancillary patient services to gross revenues. If a hospital
29 reports only subacute admissions, then "adjusted admission"
30 means the sum of subacute admissions divided by the ratio of
31 total inpatient revenues to gross revenues.

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

3 (4) "Alcohol or chemical dependency treatment center"
4 means an organization licensed under chapter 397.

5 (5) "Ambulatory care center" means an organization
6 which employs or contracts with licensed health care
7 professionals to provide diagnosis or treatment services
8 predominantly on a walk-in basis and the organization holds
9 itself out as providing care on a walk-in basis. Such an
10 organization is not an ambulatory care center if it is wholly
11 owned and operated by five or fewer health care providers.

12 (6) "Ambulatory surgical center" means a facility
13 licensed as an ambulatory surgical center under chapter 395.

14 ~~(7) "Applicable rate of increase" means the maximum~~
15 ~~allowable rate of increase (MARI) when applied to gross~~
16 ~~revenue per adjusted admission, unless the board has approved~~
17 ~~a different rate of increase, in which case the board-approved~~
18 ~~rate of increase shall apply.~~

19 (7)(8) "Audited actual data" means information
20 contained within financial statements examined by an
21 independent, Florida-licensed, certified public accountant in
22 accordance with generally accepted auditing standards, but
23 does not include data within a financial statement about which
24 the certified public accountant does not express an opinion or
25 issues a disclaimer.

26 ~~(9) "Banked points" means the percentage points earned~~
27 ~~by a hospital when the actual rate of increase in gross~~
28 ~~revenue per adjusted admission (GRAA) is less than the maximum~~
29 ~~allowable rate of increase (MARI) or the actual rate of~~
30 ~~increase in the net revenue per adjusted admission (NRAA) is~~
31 ~~less than the market basket index.~~

1 (8)~~(10)~~ "Birth center" means an organization licensed
2 under s. 383.305.
3 ~~(11)~~ "Board" means the Health Care Board established
4 ~~under s. 408.003.~~
5 ~~(12)~~ "Budget" means the projections by the hospital,
6 for a specified future time period, of expenditures and
7 revenues, with supporting statistical indicators, or a budget
8 letter verified by the board pursuant to s. ~~408.072(3)(a).~~
9 (9)~~(13)~~ "Cardiac catheterization laboratory" means a
10 freestanding facility that ~~which~~ employs or contracts with
11 licensed health care professionals to provide diagnostic or
12 therapeutic services for cardiac conditions such as cardiac
13 catheterization or balloon angioplasty.
14 (10)~~(14)~~ "Case mix" means a calculated index for each
15 health care facility or health care provider, based on patient
16 data, reflecting the relative costliness of the mix of cases
17 to that facility or provider compared to a state or national
18 mix of cases.
19 (11)~~(15)~~ "Clinical laboratory" means a facility
20 licensed under s. 483.091, excluding: any hospital laboratory
21 defined under s. 483.041(5); any clinical laboratory operated
22 by the state or a political subdivision of the state; any
23 blood or tissue bank where the majority of revenues are
24 received from the sale of blood or tissue and where blood,
25 plasma, or tissue is procured from volunteer donors and
26 donated, processed, stored, or distributed on a nonprofit
27 basis; and any clinical laboratory which is wholly owned and
28 operated by physicians who are licensed pursuant to chapter
29 458 or chapter 459 and who practice in the same group
30 practice, and at which no clinical laboratory work is
31

1 performed for patients referred by any health care provider
2 who is not a member of that same group practice.

3 (12)~~(16)~~ "Comprehensive rehabilitative hospital" or
4 "rehabilitative hospital" means a hospital licensed by the
5 agency ~~for Health Care Administration~~ as a specialty hospital
6 as defined in s. 395.002; provided that the hospital provides
7 a program of comprehensive medical rehabilitative services and
8 is designed, equipped, organized, and operated solely to
9 deliver comprehensive medical rehabilitative services, and
10 further provided that all licensed beds in the hospital are
11 classified as "comprehensive rehabilitative beds" pursuant to
12 s. 395.003(4), and are not classified as "general beds."

13 (13)~~(17)~~ "Consumer" means any person other than a
14 person who administers health activities, is a member of the
15 governing body of a health care facility, provides health
16 services, has a fiduciary interest in a health facility or
17 other health agency or its affiliated entities, or has a
18 material financial interest in the rendering of health
19 services.

20 (14)~~(18)~~ "Continuing care facility" means a facility
21 licensed under chapter 651.

22 (15)~~(19)~~ "Cross-subsidization" means that the revenues
23 from one type of hospital service are sufficiently higher than
24 the costs of providing such service as to offset some of the
25 costs of providing another type of service in the hospital.
26 Cross-subsidization results from the lack of a direct
27 relationship between charges and the costs of providing a
28 particular hospital service or type of service.

29 (16)~~(20)~~ "Deductions from gross revenue" or
30 "deductions from revenue" means reductions from gross revenue
31 resulting from inability to collect payment of charges. For

1 hospitals, such reductions include contractual adjustments;
2 uncompensated care; administrative, courtesy, and policy
3 discounts and adjustments; and other such revenue deductions,
4 but also includes the offset of restricted donations and
5 grants for indigent care.

6 (17)~~(21)~~ "Diagnostic-imaging center" means a
7 freestanding outpatient facility that provides specialized
8 services for the diagnosis of a disease by examination and
9 also provides radiological services. Such a facility is not a
10 diagnostic-imaging center if it is wholly owned and operated
11 by physicians who are licensed pursuant to chapter 458 or
12 chapter 459 and who practice in the same group practice and no
13 diagnostic-imaging work is performed at such facility for
14 patients referred by any health care provider who is not a
15 member of that same group practice.

16 (18)~~(22)~~ "FHURS" means the Florida Hospital Uniform
17 Reporting System developed by the agency board.

18 (19)~~(23)~~ "Freestanding" means that a health facility
19 bills and receives revenue which is not directly subject to
20 the hospital assessment for the Public Medical Assistance
21 Trust Fund as described in s. 395.701.

22 (20)~~(24)~~ "Freestanding radiation therapy center" means
23 a facility where treatment is provided through the use of
24 radiation therapy machines that are registered under s. 404.22
25 and the provisions of the Florida Administrative Code
26 implementing s. 404.22. Such a facility is not a freestanding
27 radiation therapy center if it is wholly owned and operated by
28 physicians licensed pursuant to chapter 458 or chapter 459 who
29 practice within the specialty of diagnostic or therapeutic
30 radiology.

31

1 (21)~~(25)~~ "GRAA" means gross revenue per adjusted
2 admission.

3 (22)~~(26)~~ "Gross revenue" means the sum of daily
4 hospital service charges, ambulatory service charges,
5 ancillary service charges, and other operating revenue. Gross
6 revenues do not include contributions, donations, legacies, or
7 bequests made to a hospital without restriction by the donors.

8 (23)~~(27)~~ "Health care facility" means an ambulatory
9 surgical center, a hospice, a nursing home, a hospital, a
10 diagnostic-imaging center, a freestanding or hospital-based
11 therapy center, a clinical laboratory, a home health agency, a
12 cardiac catheterization laboratory, a medical equipment
13 supplier, an alcohol or chemical dependency treatment center,
14 a physical rehabilitation center, a lithotripsy center, an
15 ambulatory care center, a birth center, or a nursing home
16 component licensed under chapter 400 within a continuing care
17 facility licensed under chapter 651.

18 (24)~~(28)~~ "Health care provider" means a health care
19 professional licensed under chapter 458, chapter 459, chapter
20 460, chapter 461, chapter 463, chapter 464, chapter 465,
21 chapter 466, part I, part III, part IV, part V, or part X of
22 chapter 468, chapter 483, chapter 484, chapter 486, chapter
23 490, or chapter 491.

24 (25)~~(29)~~ "Health care purchaser" means an employer in
25 the state, other than a health care facility, health insurer,
26 or health care provider, who provides health care coverage for
27 her or his employees.

28 (26)~~(30)~~ "Health insurer" means any insurance company
29 authorized to transact health insurance in the state, any
30 insurance company authorized to transact health insurance or
31 casualty insurance in the state that is offering a minimum

1 premium plan or stop-loss coverage for any person or entity
2 providing health care benefits, any self-insurance plan as
3 defined in s. 624.031, any health maintenance organization
4 authorized to transact business in the state pursuant to part
5 I of chapter 641, any prepaid health clinic authorized to
6 transact business in the state pursuant to part II of chapter
7 641, any multiple-employer welfare arrangement authorized to
8 transact business in the state pursuant to ss. 624.436-624.45,
9 or any fraternal benefit society providing health benefits to
10 its members as authorized pursuant to chapter 632.

11 (27)~~(31)~~ "Home health agency" means an organization
12 licensed under part IV of chapter 400.

13 (28)~~(32)~~ "Hospice" means an organization licensed
14 under part VI of chapter 400.

15 (29)~~(33)~~ "Hospital" means a health care institution
16 licensed by the Agency for Health Care Administration as a
17 hospital under chapter 395.

18 (30)~~(34)~~ "Lithotripsy center" means a freestanding
19 facility that ~~which~~ employs or contracts with licensed health
20 care professionals to provide diagnosis or treatment services
21 using electro-hydraulic shock waves.

22 (31)~~(35)~~ "Local health council" means the agency
23 defined in s. 408.033.

24 (32)~~(36)~~ "Market basket index" means the Florida
25 hospital input price index (FHIPI), which is a statewide
26 market basket index used to measure inflation in hospital
27 input prices weighted for the Florida-specific experience
28 which uses multistate regional and state-specific price
29 measures, when available. The index shall be constructed in
30 the same manner as the index employed by the Secretary of the
31 United States Department of Health and Human Services for

1 determining the inflation in hospital input prices for
2 purposes of Medicare reimbursement.

3 ~~(37) "Maximum allowable rate of increase" or "MARI"~~
4 ~~means the maximum rate at which a hospital is normally~~
5 ~~expected to increase its average gross revenues per adjusted~~
6 ~~admission for a given period. The board, using the most~~
7 ~~recent audited actual data for each hospital, shall calculate~~
8 ~~the MARI for each hospital as follows: The projected rate of~~
9 ~~increase in the market basket index shall be divided by a~~
10 ~~number which is determined by subtracting the sum of one-half~~
11 ~~of the proportion of Medicare days plus one-half of the~~
12 ~~proportion of CHAMPUS days plus the proportion of Medicaid~~
13 ~~days plus 1.5 times the proportion of charity care days from~~
14 ~~the number one. The formula to be employed by the board to~~
15 ~~calculate the MARI shall take the following form:~~

16
17
$$\text{MARI} = \frac{\text{FHPI}}{1 - [(Me \times 0.5) + (Cp \times 0.5) + Md + (Cc \times 1.5)]}$$

21 where:
22 ~~MARI = maximum allowable rate of increase applied to~~
23 ~~gross revenue.~~

24 ~~FHPI = Florida hospital input price index, which shall~~
25 ~~be the projected rate of change in the market basket index.~~

26 ~~Me = proportion of Medicare days, including when~~
27 ~~available and reported to the board Medicare HMO days, to~~
28 ~~total days.~~

29 ~~Cp = proportion of Civilian Health and Medical Program~~
30 ~~of the Uniformed Services (CHAMPUS) days to total days.~~

31

1 ~~Md = proportion of Medicaid days, including when~~
2 ~~available and reported to the board Medicaid HMO days, to~~
3 ~~total days.~~

4 ~~Cc = proportion of charity care days to total days with~~
5 ~~a 50-percent offset for restricted grants for charity care and~~
6 ~~unrestricted grants from local governments.~~

7 (33)~~(38)~~ "Medical equipment supplier" means an
8 organization that ~~which~~ provides medical equipment and
9 supplies used by health care providers and health care
10 facilities in the diagnosis or treatment of disease.

11 (34)~~(39)~~ "Net revenue" means gross revenue minus
12 deductions from revenue.

13 (35)~~(40)~~ "New hospital" means a hospital in its
14 initial year of operation as a licensed hospital and does not
15 include any facility which has been in existence as a licensed
16 hospital, regardless of changes in ownership, for over 1
17 calendar year.

18 (36)~~(41)~~ "Nursing home" means a facility licensed
19 under s. 400.062 or, for resident level and financial data
20 collection purposes only, any institution licensed under
21 chapter 395 and which has a Medicare or Medicaid certified
22 distinct part used for skilled nursing home care, but does not
23 include a facility licensed under chapter 651.

24 (37)~~(42)~~ "Operating expenses" means total expenses
25 excluding income taxes.

26 (38)~~(43)~~ "Other operating revenue" means all revenue
27 generated from hospital operations other than revenue directly
28 associated with patient care.

29 (39)~~(44)~~ "Physical rehabilitation center" means an
30 organization that ~~which~~ employs or contracts with health care
31 professionals licensed under part I or part III of chapter 468

1 or chapter 486 to provide speech, occupational, or physical
2 therapy services on an outpatient or ambulatory basis.

3 (40)~~(45)~~ "Prospective payment arrangement" means a
4 financial agreement negotiated between a hospital and an
5 insurer, health maintenance organization, preferred provider
6 organization, or other third-party payor which contains, at a
7 minimum, the elements provided for in s. 408.50.

8 (41)~~(46)~~ "Rate of return" means the financial
9 indicators used to determine or demonstrate reasonableness of
10 the financial requirements of a hospital. Such indicators
11 shall include, but not be limited to: return on assets,
12 return on equity, total margin, and debt service coverage.

13 (42)~~(47)~~ "Rural hospital" means an acute care hospital
14 licensed under chapter 395, with 85 licensed beds or fewer,
15 which has an emergency room and is located in an area defined
16 as rural by the United States Census, and which is:

17 (a) The sole provider within a county with a
18 population density of no greater than 100 persons per square
19 mile;

20 (b) An acute care hospital, in a county with a
21 population density of no greater than 100 persons per square
22 mile, which is at least 30 minutes of travel time, on normally
23 traveled roads under normal traffic conditions, from another
24 acute care hospital within the same county; or

25 (c) A hospital supported by a tax district or
26 subdistrict whose boundaries encompass a population of 100
27 persons or less per square mile.

28 (43)~~(48)~~ "Special study" means a nonrecurring
29 data-gathering and analysis effort designed to aid the agency
30 ~~for Health Care Administration~~ in meeting its responsibilities
31 pursuant to this chapter.

1 ~~(44)(49)~~ "Teaching hospital" means any hospital
2 formally affiliated with an accredited medical school which
3 ~~that~~ exhibits activity in the area of medical education as
4 reflected by at least seven different resident physician
5 specialties and the presence of 100 or more resident
6 physicians.

7 Section 85. Section 408.08, Florida Statutes, is
8 amended to read:

9 408.08 Inspections and audits; violations; penalties;
10 fines; enforcement.--

11 (1) The agency may inspect and audit books and records
12 of individual or corporate ownership, including books and
13 records of related organizations with which a health care
14 provider or a health care facility had transactions, for
15 compliance with this chapter. Upon presentation of a written
16 request for inspection to a health care provider or a health
17 care facility by the agency or its staff, the health care
18 provider or the health care facility shall make available to
19 the agency or its staff for inspection, copying, and review
20 all books and records relevant to the determination of whether
21 the health care provider or the health care facility has
22 complied with this chapter.

23 ~~(2) The board shall annually compare the audited~~
24 ~~actual experience of each hospital to the audited actual~~
25 ~~experience of that hospital for the previous year.~~

26 ~~(a) For a hospital submitting a budget letter, if the~~
27 ~~board determines that the audited actual experience of the~~
28 ~~hospital exceeded its previous year's audited actual~~
29 ~~experience by more than the maximum allowable rate of increase~~
30 ~~as certified in the budget letter plus any banked points~~
31 ~~utilized in the budget letter, the amount of such excess shall~~

1 ~~be determined by the board and a penalty shall be levied~~
2 ~~against such hospital pursuant to subsection (3).~~

3 ~~(b) For a hospital subject to budget review, if the~~
4 ~~board determines that the audited actual experience of the~~
5 ~~hospital exceeded its previous year's audited actual~~
6 ~~experience by more than the most recent approved budget or the~~
7 ~~most recent approved budget as amended, the amount of such~~
8 ~~excess shall be determined by the board, and a penalty shall~~
9 ~~be levied against such hospital pursuant to subsection (3).~~

10 ~~(c) For a hospital submitting a budget letter and for~~
11 ~~a hospital subject to budget review, the board shall annually~~
12 ~~compare each hospital's audited actual experience for net~~
13 ~~revenues per adjusted admission to the hospital's audited~~
14 ~~actual experience for net revenues per adjusted admission for~~
15 ~~the previous year. If the rate of increase in net revenues~~
16 ~~per adjusted admission between the previous year and the~~
17 ~~current year was less than the market basket index, the~~
18 ~~hospital may carry forward the difference and earn up to a~~
19 ~~cumulative maximum of 3 banked net revenue percentage points.~~
20 ~~Such banked net revenue percentage points shall be available~~
21 ~~to the hospital to offset, in any future year, penalties for~~
22 ~~exceeding the approved budget or the maximum allowable rate of~~
23 ~~increase as set forth in subsection (3). Nothing in this~~
24 ~~paragraph shall be used by a hospital to justify the approval~~
25 ~~of a budget or a budget amendment by the board in excess of~~
26 ~~the maximum allowable rate of increase pursuant to s. 408.072.~~

27 ~~(3) Penalties shall be assessed as follows:~~

28 ~~(a) For the first occurrence within a 5-year period,~~
29 ~~the board shall prospectively reduce the current budget of the~~
30 ~~hospital by the amount of the excess up to 5 percent; and, if~~
31 ~~such excess is greater than 5 percent over the maximum~~

1 ~~allowable rate of increase, any amount in excess of 5 percent~~
2 ~~shall be levied by the board as a fine against such hospital~~
3 ~~to be deposited in the Public Medical Assistance Trust Fund.~~

4 ~~(b) For the second occurrence with the 5-year period~~
5 ~~following the first occurrence as set forth in paragraph (a),~~
6 ~~the board shall prospectively reduce the current budget of the~~
7 ~~hospital by the amount of the excess up to 2 percent; and, if~~
8 ~~such excess is greater than 2 percent over the maximum~~
9 ~~allowable rate of increase, any amount in excess of 2 percent~~
10 ~~shall be levied by the board as a fine against such hospital~~
11 ~~to be deposited in the Public Medical Assistance Trust Fund.~~

12 ~~(c) For the third occurrence within the 5-year period~~
13 ~~following the first occurrence as set forth in paragraph (a),~~
14 ~~the board shall:~~

15 ~~1. Levy a fine against the hospital in the total~~
16 ~~amount of the excess, to be deposited in the Public Medical~~
17 ~~Assistance Trust Fund.~~

18 ~~2. Notify the agency of the violation, whereupon the~~
19 ~~agency shall not accept any application for a certificate of~~
20 ~~need pursuant to ss. 408.031-408.045 from or on behalf of such~~
21 ~~hospital until such time as the hospital has demonstrated to~~
22 ~~the satisfaction of the board that, following the date the~~
23 ~~penalty was imposed under subparagraph 1., the hospital has~~
24 ~~stayed within its projected or amended budget or its~~
25 ~~applicable maximum allowable rate of increase for a period of~~
26 ~~at least 1 year. However, this provision does not apply with~~
27 ~~respect to a certificate-of-need application filed to satisfy~~
28 ~~a life or safety code violation.~~

29 ~~3. Upon a determination that the hospital knowingly~~
30 ~~and willfully generated such excess, notify the agency,~~
31 ~~whereupon the agency shall initiate disciplinary proceedings~~

1 ~~to deny, modify, suspend, or revoke the license of such~~
2 ~~hospital or impose an administrative fine on such hospital not~~
3 ~~to exceed \$20,000.~~
4
5 ~~The determination of the amount of any such excess shall be~~
6 ~~based upon net revenues per adjusted admission, excluding~~
7 ~~funds distributed to the hospital from the Public Medical~~
8 ~~Assistance Trust Fund. However, in making such determination,~~
9 ~~the board shall appropriately reduce the amount of the excess~~
10 ~~by the total amount of the assessment paid by such hospital~~
11 ~~pursuant to s. 395.701 minus the amount of revenues received~~
12 ~~by the hospital through the Public Medical Assistance Trust~~
13 ~~Fund. It is the responsibility of the hospital to demonstrate~~
14 ~~to the satisfaction of the board its entitlement to such~~
15 ~~reduction. It is the intent of the Legislature that the~~
16 ~~Health Care Board, in levying any penalty imposed against a~~
17 ~~hospital for exceeding its maximum allowable rate of increase~~
18 ~~or its approved budget pursuant to this subsection, consider~~
19 ~~the effect of changes in the case mix of the hospital and in~~
20 ~~the hospital's intensity and severity of illness as measured~~
21 ~~by changes in the hospital's actual proportion of outlier~~
22 ~~cases to total cases and dollar increases in outlier cases'~~
23 ~~average charge per case. It is the responsibility of the~~
24 ~~hospital to demonstrate to the satisfaction of the board any~~
25 ~~change in its case mix and in its intensity and severity of~~
26 ~~illness. For psychiatric hospitals and other hospitals not~~
27 ~~reimbursed under a prospective payment system by the Federal~~
28 ~~Government, until a proxy for case mix is available, the board~~
29 ~~shall also reduce the amount of excess by the change in a~~
30 ~~hospital's audited actual average length of stay without any~~
31 ~~thresholds or limitations.~~

1 ~~(4) The following factors may be used by the board to~~
2 ~~reduce the amount of excess of the hospital as determined~~
3 ~~pursuant to this section:~~

4 ~~(a) Unforeseen and unforeseeable events which affect~~
5 ~~the net revenue per adjusted admission and which are beyond~~
6 ~~the control of the hospital, such as prior year Medicare cost~~
7 ~~report settlements, retroactive changes in Medicare~~
8 ~~reimbursement methodology, and increases in malpractice~~
9 ~~insurance premiums, which occurred in the last 3 months of the~~
10 ~~hospital fiscal year during which the hospital generated the~~
11 ~~excess; or~~

12 ~~(b) Imposition of the penalty would have a severe~~
13 ~~adverse effect which would jeopardize the continued existence~~
14 ~~of an otherwise economically viable hospital.~~

15 ~~(5) The board shall reduce the amount of the excess~~
16 ~~for hospitals submitting budget letters pursuant to s.~~
17 ~~408.072(3)(a) by the amount of any documented costs from~~
18 ~~financial assistance provided to expand or supplement the~~
19 ~~curriculum of a community college, university, or vocational~~
20 ~~training school for the purpose of training nurses or other~~
21 ~~health professionals, not including physicians. Financial~~
22 ~~assistance would include, but not be limited to, the direct~~
23 ~~costs for faculty salaries and expenses, books, equipment,~~
24 ~~recruiting efforts, tuition assistance, and hospital~~
25 ~~internships. The reduction would be based on actual~~
26 ~~documented expenses increased by the gross revenues necessary~~
27 ~~to generate net revenues sufficient to cover the expenses.~~

28 ~~(6) If the board finds that any hospital chief~~
29 ~~executive officer or any person who is in charge of hospital~~
30 ~~administration or operations has knowingly and willfully~~
31 ~~allowed or authorized actual operating revenues or~~

1 ~~expenditures that are in excess of projected operating~~
2 ~~revenues or expenditures in the hospital's approved budget,~~
3 ~~the board shall order such officer or person to pay an~~
4 ~~administrative fine not to exceed \$5,000.~~

5 ~~(7) For hospitals filing budget letters, the board~~
6 ~~shall annually compare the audited actual experience of each~~
7 ~~hospital for the year under review to the audited actual~~
8 ~~experience of that hospital for the previous year. For~~
9 ~~hospitals which submitted detailed budgets or budget~~
10 ~~amendments, the board shall compare the audited actual~~
11 ~~experience of each hospital for the year under review to its~~
12 ~~approved gross revenue per adjusted admission for the year~~
13 ~~under review, for purposes of levying an administrative fine.~~

14 ~~(a) For a hospital submitting a budget letter pursuant~~
15 ~~to s. 408.072(3)(a), if the board determines that the audited~~
16 ~~actual experience for the year under review exceeded the~~
17 ~~hospital's previous year's audited actual experience by more~~
18 ~~than the maximum allowable rate of increase as certified in~~
19 ~~the budget letter plus any banked points utilized in the~~
20 ~~budget letter, the amount of the excess shall be determined~~
21 ~~and an administrative fine shall be levied against such~~
22 ~~hospital pursuant to subsection (8).~~

23 ~~(b) For a hospital which submitted a budget pursuant~~
24 ~~to s. 408.072(1), or a budget amendment pursuant to s.~~
25 ~~408.072(6), if the board determines that the gross revenue per~~
26 ~~adjusted admission contained in the hospital's audited actual~~
27 ~~experience exceeded its board-approved gross revenue per~~
28 ~~adjusted admission, the amount of the excess shall be~~
29 ~~determined and an administrative fine shall be levied against~~
30 ~~such hospital pursuant to subsection (8).~~

31

1 ~~(8) If the board determines that an excess exists~~
2 ~~pursuant to subsection (7), the board shall multiply the~~
3 ~~excess by the number of actual adjusted admissions contained~~
4 ~~in the year at issue to determine the amount of the base fine.~~
5 ~~The base fine shall be multiplied by the applicable occurrence~~
6 ~~factor to determine the amount of the administrative fine~~
7 ~~levied against the hospital.~~

8 ~~(a) For the first occurrence within a 5-year period,~~
9 ~~the applicable occurrence factor shall be 0.25. For the~~
10 ~~second occurrence within a 5-year period, the applicable~~
11 ~~occurrence factor shall be 0.55. For the third occurrence~~
12 ~~within a 5-year period, the applicable occurrence factor shall~~
13 ~~be 1.0.~~

14 ~~(b) In no event shall any administrative fine levied~~
15 ~~pursuant to this subsection exceed \$365,000.~~

16 ~~(9) In levying any administrative fine against a~~
17 ~~hospital pursuant to subsection (8), the board shall consider~~
18 ~~the effect of any changes in the hospital's case mix, and in~~
19 ~~the hospital's intensity and severity of illness as measured~~
20 ~~by changes in the hospital's actual proportion of outlier~~
21 ~~cases to total cases and dollar increases in outlier cases'~~
22 ~~average charge per case. The board shall adjust the amount of~~
23 ~~any excess by the changes in the hospital's case mix and in~~
24 ~~its intensity and severity of illness, based upon certified~~
25 ~~hospital patient discharge data provided to the board pursuant~~
26 ~~to s. 408.061. For psychiatric hospitals and other hospitals~~
27 ~~not reimbursed under a prospective payment system by the~~
28 ~~Federal Government, until a proxy for case mix is available,~~
29 ~~the board shall adjust the amount of any excess by the change~~
30 ~~in a hospital's audited actual average length of stay without~~
31 ~~any thresholds or limitation.~~

1 ~~(10) In levying any administrative fine against a~~
2 ~~hospital pursuant to subsection (8), it is the intent of the~~
3 ~~Legislature that if a hospital can demonstrate to the~~
4 ~~satisfaction of the board that it operated within its approved~~
5 ~~gross revenue per adjusted admission for the first 8 months of~~
6 ~~its fiscal year and did not increase its prices, except for~~
7 ~~exceptions determined by the board during the last 5 months of~~
8 ~~its fiscal year, it shall not be subject to any administrative~~
9 ~~fine levied pursuant to subsection (8).~~

10 ~~(11) It is the further intent of the Legislature that~~
11 ~~if a hospital can demonstrate to the satisfaction of the board~~
12 ~~that it did not increase its prices on average in excess of~~
13 ~~the MARI for the prior year, it shall not be subject to any~~
14 ~~administrative fine levied pursuant to subsection (8).~~

15 ~~(12) If the board finds that any hospital chief~~
16 ~~executive officer or any person who is in charge of hospital~~
17 ~~administration or operations has knowingly and willfully~~
18 ~~allowed or authorized gross revenue per adjusted admission,~~
19 ~~net revenue per adjusted admission, or rates of increase that~~
20 ~~are in excess of gross or net revenue per adjusted admission,~~
21 ~~or rates of increase in the hospital's approved budget, budget~~
22 ~~amendment, or budget letter, the agency shall order such~~
23 ~~officer or person to pay an administrative fine not to exceed~~
24 ~~\$5,000.~~

25 (2)~~(13)~~ Any health care facility that refuses to file
26 a report, fails to timely file a report, files a false report,
27 or files an incomplete report and upon notification fails to
28 timely file a complete report required under ~~this section and~~
29 ~~s. 408.061; that violates any provision of this section, s.~~
30 ~~408.061, or s. 408.20, or rule adopted thereunder; or that~~
31 ~~fails to provide documents or records requested by the agency~~

1 under ~~the provisions of~~ this chapter shall be punished by a
2 fine not exceeding \$1,000 per day for each day in violation,
3 to be imposed and collected by the agency.

4 (3)~~(14)~~ Any health care provider that refuses to file
5 a report, fails to timely file a report, files a false report,
6 or files an incomplete report and upon notification fails to
7 timely file a complete report required under ~~this section and~~
8 s. 408.061; that violates ~~any provision of~~ this section, s.
9 408.061, or s. 408.20, or rule adopted thereunder; or that
10 fails to provide documents or records requested by the agency
11 under ~~the provisions of~~ this chapter shall be referred to the
12 appropriate licensing board which shall take appropriate
13 action against the health care provider.

14 (4)~~(15)~~ If ~~in the event that~~ a health insurer does not
15 comply with the requirements of s. 408.061, the agency shall
16 report a health insurer's failure to comply to the Department
17 of Insurance, which shall take into account the failure by the
18 health insurer to comply in conjunction with its approval
19 authority under s. 627.410. The agency shall adopt any rules
20 necessary to carry out its responsibilities required by this
21 subsection.

22 (5)~~(16)~~ Refusal to file, failure to timely file, or
23 filing false or incomplete reports or other information
24 required to be filed under the provisions of this chapter,
25 failure to pay or failure to timely pay any assessment
26 authorized to be collected by the agency, or violation of any
27 other provision of this chapter or lawfully entered order of
28 the agency or rule adopted under this chapter, shall be
29 punished by a fine not exceeding \$1,000 a day for each day in
30 violation, to be fixed, imposed, and collected by the agency.
31 Each day in violation shall be considered a separate offense.

1 (6)(17) Notwithstanding any other provisions of this
2 chapter, when a hospital alleges that a factual determination
3 made by the agency board is incorrect, the burden of proof
4 shall be on the hospital to demonstrate that such
5 determination is, in light of the total record, not supported
6 by a preponderance of the evidence. The burden of proof
7 remains with the hospital in all cases involving
8 administrative agency action.

9 Section 86. Section 408.40, Florida Statutes, 1996
10 Supplement, is amended to read:

11 408.40 ~~Budget review proceedings; duty of~~ Public
12 Counsel.--

13 (1) Notwithstanding any other provisions of this
14 chapter, ~~it shall be the duty of~~ the Public Counsel shall ~~to~~
15 represent the ~~general public of the state~~ in any proceeding
16 before the agency or its advisory panels in any administrative
17 hearing conducted pursuant to ~~the provisions of~~ chapter 120 or
18 before any other state and federal agencies and courts in any
19 issue before the agency, any court, or any agency. With
20 respect to any such proceeding, the Public Counsel is subject
21 to the provisions of and may use ~~utilize~~ the powers granted to
22 him or her by ss. 350.061-350.0614.

23 (2) The Public Counsel shall:

24 (a) Recommend to the agency, by petition, the
25 commencement of any proceeding or action or to appear, in the
26 name of the state or its citizens, in any proceeding or action
27 before the agency and urge therein any position that ~~which~~ he
28 or she deems to be in the public interest, whether consistent
29 or inconsistent with positions previously adopted by the
30 agency, and use ~~utilize~~ therein all forms of discovery
31 available to attorneys in civil actions generally, subject to

1 protective orders of the agency, which shall be reviewable by
2 summary procedure in the circuit courts of this state.

3 (b) Have access to and use of all files, records, and
4 data of the agency available to any other attorney
5 representing parties in a proceeding before the agency.

6 (c) In any proceeding in which he or she has
7 participated as a party, seek review of any determination,
8 finding, or order of the agency, or of any administrative law
9 judge, or any hearing officer or hearing examiner designated
10 by the agency, in the name of the state or its citizens.

11 (d) Prepare and issue reports, recommendations, and
12 proposed orders to the agency, the Governor, and the
13 Legislature on any matter or subject within the jurisdiction
14 of the agency, and to make such recommendations as he or she
15 deems appropriate for legislation relative to agency
16 procedures, rules, jurisdiction, personnel, and functions.

17 (e) Appear before other state agencies, federal
18 agencies, and state and federal courts in connection with
19 matters under the jurisdiction of the agency, in the name of
20 the state or its citizens.

21 Section 87. Paragraph (e) of subsection (10) and
22 subsection (14) of section 409.2673, Florida Statutes, are
23 amended to read:

24 409.2673 Shared county and state health care program
25 for low-income persons; trust fund.--

26 (10) Under the shared county and state program,
27 reimbursement to a hospital for services for an eligible
28 person must:

29 (e) Be conditioned, for tax district hospitals that
30 deliver services as part of this program, on the delivery of
31 charity care, as defined in the rules of the Agency for Health

1 Care Administration ~~Health Care Cost Containment Board~~, which
2 equals a minimum of 2.5 percent of the tax district hospital's
3 net revenues; however, those tax district hospitals which by
4 virtue of the population within the geographic boundaries of
5 the tax district can not feasibly provide this level of
6 charity care shall assure an "open door" policy to those
7 residents of the geographic boundaries of the tax district who
8 would otherwise be considered charity cases.

9 (14) Any dispute among a county, the Agency for Health
10 Care Administration ~~Health Care Cost Containment Board~~, the
11 department, or a participating hospital shall be resolved by
12 order as provided in chapter 120. Hearings held under this
13 subsection shall be conducted in the same manner as provided
14 in ss. 120.569 and 120.57, except that the administrative law
15 judge's or hearing officer's order constitutes final agency
16 action. Cases filed under chapter 120 may combine all relevant
17 disputes between parties.

18 Section 88. Subsection (8) of section 409.905, Florida
19 Statutes, is amended to read:

20 409.905 Mandatory Medicaid services.--The agency may
21 make payments for the following services, which are required
22 of the state by Title XIX of the Social Security Act,
23 furnished by Medicaid providers to recipients who are
24 determined to be eligible on the dates on which the services
25 were provided. Any service under this section shall be
26 provided only when medically necessary and in accordance with
27 state and federal law. Nothing in this section shall be
28 construed to prevent or limit the agency from adjusting fees,
29 reimbursement rates, lengths of stay, number of visits, number
30 of services, or any other adjustments necessary to comply with
31

1 the availability of moneys and any limitations or directions
2 provided for in the General Appropriations Act or chapter 216.

3 (8) NURSING FACILITY SERVICES.--The agency shall pay
4 for 24-hour-a-day nursing and rehabilitative services for a
5 recipient in a nursing facility licensed under part II of
6 chapter 400 or in a rural hospital, as defined in s. 395.602,
7 or in a Medicare certified skilled nursing facility operated
8 by a hospital, as defined by s. 395.002(13)~~s. 395.002(10)~~,
9 that is licensed under part I of chapter 395, and in
10 accordance with provisions set forth in s. 409.908(2)(a),
11 which services are ordered by and provided under the direction
12 of a licensed physician. However, if a nursing facility has
13 been destroyed or otherwise made uninhabitable by natural
14 disaster or other emergency and another nursing facility is
15 not available, the agency must pay for similar services
16 temporarily in a hospital licensed under part I of chapter 395
17 provided federal funding is approved and available.

18 Section 89. Section 409.9113, Florida Statutes, is
19 amended to read:

20 409.9113 Disproportionate share program for teaching
21 hospitals.--In addition to the payments made under ss. 409.911
22 and 409.9112, the Agency for Health Care Administration
23 ~~Department of Health and Rehabilitative Services~~ shall make
24 disproportionate share payments to statutorily defined
25 teaching hospitals for their increased costs associated with
26 medical education programs and for tertiary health care
27 services provided to the indigent. This system of payments
28 shall conform with federal requirements and shall distribute
29 funds in each fiscal year for which an appropriation is made
30 by making quarterly Medicaid payments. Notwithstanding ~~the~~
31 ~~provisions of~~ s. 409.915, counties are exempt from

1 contributing toward the cost of this special reimbursement for
2 hospitals serving a disproportionate share of low-income
3 patients.

4 (1) On or before September 15 of each year, the Agency
5 for Health Care Administration shall calculate an allocation
6 fraction to be used for distributing funds to state statutory
7 teaching hospitals. Subsequent to the end of each quarter of
8 the state fiscal year, the agency ~~department~~ shall distribute
9 to each statutory teaching hospital, as defined in s. 408.07,
10 an amount determined by multiplying one-fourth of the funds
11 appropriated for this purpose by the Legislature times such
12 hospital's allocation fraction. The allocation fraction for
13 each such hospital shall be determined by the sum of three
14 primary factors, divided by three. The primary factors are:

15 (a) The number of nationally accredited graduate
16 medical education programs offered by the hospital, including
17 programs accredited by the Accreditation Council for Graduate
18 Medical Education and the combined Internal Medicine and
19 Pediatrics programs acceptable to both the American Board of
20 Internal Medicine and the American Board of Pediatrics at the
21 beginning of the state fiscal year preceding the date on which
22 the allocation fraction is calculated. The numerical value of
23 this factor is the fraction that the hospital represents of
24 the total number of programs, where the total is computed for
25 all state statutory teaching hospitals.

26 (b) The number of full-time equivalent trainees in the
27 hospital, which comprises two components:

28 1. The number of trainees enrolled in nationally
29 accredited graduate medical education programs, as defined in
30 paragraph (a). Full-time equivalents are computed using the
31 fraction of the year during which each trainee is primarily

1 assigned to the given institution, over the state fiscal year
2 preceding the date on which the allocation fraction is
3 calculated. The numerical value of this factor is the fraction
4 that the hospital represents of the total number of full-time
5 equivalent trainees enrolled in accredited graduate programs,
6 where the total is computed for all state statutory teaching
7 hospitals.

8 2. The number of medical students enrolled in
9 accredited colleges of medicine and engaged in clinical
10 activities, including required clinical clerkships and
11 clinical electives. Full-time equivalents are computed using
12 the fraction of the year during which each trainee is
13 primarily assigned to the given institution, over the course
14 of the state fiscal year preceding the date on which the
15 allocation fraction is calculated. The numerical value of this
16 factor is the fraction that the given hospital represents of
17 the total number of full-time equivalent students enrolled in
18 accredited colleges of medicine, where the total is computed
19 for all state statutory teaching hospitals.

20
21 The primary factor for full-time equivalent trainees is
22 computed as the sum of these two components, divided by two.

23 (c) A service index that ~~which~~ comprises three
24 components:

25 1. The Agency for Health Care Administration ~~Health~~
26 ~~Care Cost Containment Board~~ Service Index, computed by
27 applying the standard Service Inventory Scores established by
28 the Agency for Health Care Administration ~~Health Care Cost~~
29 ~~Containment Board~~ to services offered by the given hospital,
30 as reported on ~~the Health Care Cost Containment Board~~
31 Worksheet A-2 for the last fiscal year reported to the agency

1 ~~board~~ before the date on which the allocation fraction is
2 calculated. The numerical value of this factor is the
3 fraction that the given hospital represents of the total
4 Agency for Health Care Administration ~~Health Care Cost~~
5 ~~Containment Board~~ Service Index values, where the total is
6 computed for all state statutory teaching hospitals.

7 2. A volume-weighted service index, computed by
8 applying the standard Service Inventory Scores established by
9 the Agency for Health Care Administration ~~Health Care Cost~~
10 ~~Containment Board~~ to the volume of each service, expressed in
11 terms of the standard units of measure reported on ~~the Health~~
12 ~~Care Cost Containment Board~~ Worksheet A-2 for the last fiscal
13 year reported to the agency board before the date on which the
14 allocation factor is calculated. The numerical value of this
15 factor is the fraction that the given hospital represents of
16 the total volume-weighted service index values, where the
17 total is computed for all state statutory teaching hospitals.

18 3. Total Medicaid payments to each hospital for direct
19 inpatient and outpatient services during the fiscal year
20 preceding the date on which the allocation factor is
21 calculated. This includes payments made to each hospital for
22 such services by Medicaid prepaid health plans, whether the
23 plan was administered by the hospital or not. The numerical
24 value of this factor is the fraction that each hospital
25 represents of the total of such Medicaid payments, where the
26 total is computed for all state statutory teaching hospitals.

27
28 The primary factor for the service index is computed as the
29 sum of these three components, divided by three.

30 (2) By October 1 of each year, the agency shall use
31 the following formula ~~shall be utilized by the department~~ to

1 calculate the maximum additional disproportionate share
2 payment for statutorily defined teaching hospitals:

$$3 \qquad \qquad \qquad 4 \qquad \qquad \qquad \text{TAP} = \text{THAF} \times \text{A}$$

5
6 Where:

7 TAP = total additional payment.

8 THAF = teaching hospital allocation factor.

9 A = amount appropriated for a teaching hospital
10 disproportionate share program.

11
12 ~~(3) The Health Care Cost Containment Board shall~~
13 ~~report to the department the statutory teaching hospital~~
14 ~~allocation fraction prior to October 1 of each year.~~

15 Section 90. Paragraph (g) of subsection (1) of section
16 440.13, Florida Statutes, is amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

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

20 (g) "Emergency services and care" means emergency
21 services and care as defined in s. 395.002(10)~~s. 395.002(9)~~.

22 Section 91. Paragraphs (i) and (k) of subsection (3)
23 of section 455.654, Florida Statutes, are amended to read:

24 455.654 Financial arrangements between referring
25 health care providers and providers of health care services.--

26 (3) DEFINITIONS.--For the purpose of this section, the
27 word, phrase, or term:

28 (i) "Investment interest" means an equity or debt
29 security issued by an entity, including, without limitation,
30 shares of stock in a corporation, units or other interests in
31 a partnership, bonds, debentures, notes, or other equity

1 interests or debt instruments. ~~Except for purposes of s.~~
2 ~~455.661,~~The following investment interests shall be excepted
3 from this definition:
4 1. An investment interest in an entity that is the
5 sole provider of designated health services in a rural area;
6 2. An investment interest in notes, bonds, debentures,
7 or other debt instruments issued by an entity which provides
8 designated health services, as an integral part of a plan by
9 such entity to acquire such investor's equity investment
10 interest in the entity, provided that the interest rate is
11 consistent with fair market value, and that the maturity date
12 of the notes, bonds, debentures, or other debt instruments
13 issued by the entity to the investor is not later than October
14 1, 1996.
15 3. An investment interest in real property resulting
16 in a landlord-tenant relationship between the health care
17 provider and the entity in which the equity interest is held,
18 unless the rent is determined, in whole or in part, by the
19 business volume or profitability of the tenant or exceeds fair
20 market value; or
21 4. An investment interest in an entity which owns or
22 leases and operates a hospital licensed under chapter 395 or a
23 nursing home facility licensed under chapter 400.
24 (k) "Referral" means any referral of a patient by a
25 health care provider for health care services, including,
26 without limitation:
27 1. The forwarding of a patient by a health care
28 provider to another health care provider or to an entity which
29 provides or supplies designated health services or any other
30 health care item or service; or
31

1 2. The request or establishment of a plan of care by a
2 health care provider, which includes the provision of
3 designated health services or other health care item or
4 service.

5 3. ~~Except for the purposes of s. 455.661,~~The
6 following orders, recommendations, or plans of care shall not
7 constitute a referral by a health care provider:

8 a. By a radiologist for diagnostic-imaging services.

9 b. By a physician specializing in the provision of
10 radiation therapy services for such services.

11 c. By a medical oncologist for drugs and solutions to
12 be prepared and administered intravenously to such
13 oncologist's patient, as well as for the supplies and
14 equipment used in connection therewith to treat such patient
15 for cancer and the complications thereof.

16 d. By a cardiologist for cardiac catheterization
17 services.

18 e. By a pathologist for diagnostic clinical laboratory
19 tests and pathological examination services, if furnished by
20 or under the supervision of such pathologist pursuant to a
21 consultation requested by another physician.

22 f. By a health care provider who is the sole provider
23 or member of a group practice for designated health services
24 or other health care items or services that are prescribed or
25 provided solely for such referring health care provider's or
26 group practice's own patients, and that are provided or
27 performed by or under the direct supervision of such referring
28 health care provider or group practice.

29 g. By a health care provider for services provided by
30 an ambulatory surgical center licensed under chapter 395.

31

1 h. By a health care provider for diagnostic clinical
2 laboratory services where such services are directly related
3 to renal dialysis.

4 i. By a urologist for lithotripsy services.

5 j. By a dentist for dental services performed by an
6 employee of or health care provider who is an independent
7 contractor with the dentist or group practice of which the
8 dentist is a member.

9 k. By a physician for infusion therapy services to a
10 patient of that physician or a member of that physician's
11 group practice.

12 l. By a nephrologist for renal dialysis services and
13 supplies.

14 Section 92. Subsections (7) and (9) of section
15 458.331, Florida Statutes, are amended to read:

16 458.331 Grounds for disciplinary action; action by the
17 board and department.--

18 (7) Upon the department's receipt from the Agency for
19 Health Care Administration ~~Department of Health and~~
20 ~~Rehabilitative Services~~ pursuant to s. 395.0197 of the name of
21 a physician whose conduct may constitute grounds for
22 disciplinary action by the department, the department shall
23 investigate the occurrences upon which the report was based
24 and determine if action by the department against the
25 physician is warranted.

26 (9) When an investigation of a physician is
27 undertaken, the department shall promptly furnish to the
28 physician or the physician's attorney a copy of the complaint
29 or document that ~~which~~ resulted in the initiation of the
30 investigation. For purposes of this subsection, such
31 documents include, but are not limited to: the pertinent

1 portions of an annual report submitted to the department
2 pursuant to s. 395.0197(6)~~s. 395.0197(5)(b)~~; a report of an
3 adverse ~~or untoward~~ incident which is provided to the
4 department pursuant to the provisions of s. 395.0197(8)~~s.~~
5 ~~395.0197(6)~~; a report of peer review disciplinary action
6 submitted to the department pursuant to the provisions of s.
7 395.0193(4) or s. 458.337, providing that the investigations,
8 proceedings, and records relating to such peer review
9 disciplinary action shall continue to retain their privileged
10 status even as to the licensee who is the subject of the
11 investigation, as provided by ss. 395.0193(8)~~ss. 395.0193(7)~~
12 and 458.337(3); a report of a closed claim submitted pursuant
13 to s. 627.912; a presuit notice submitted pursuant to s.
14 766.106(2); and a petition brought under the Florida
15 Birth-Related Neurological Injury Compensation Plan, pursuant
16 to s. 766.305(2). The physician may submit a written response
17 to the information contained in the complaint or document
18 which resulted in the initiation of the investigation within
19 45 days after service to the physician of the complaint or
20 document. The physician's written response shall be considered
21 by the probable cause panel.

22 Section 93. Subsections (7) and (9) of section
23 459.015, Florida Statutes, are amended to read:

24 459.015 Grounds for disciplinary action by the
25 board.--

26 (7) Upon the department's receipt from the Agency for
27 Health Care Administration ~~Department of Health and~~
28 ~~Rehabilitative Services~~ pursuant to s. 395.0197 of the name of
29 an osteopathic physician whose conduct may constitute grounds
30 for disciplinary action by the department, the department
31 shall investigate the occurrences upon which the report was

1 based and determine if action by the department against the
2 osteopathic physician is warranted.

3 (9) When an investigation of an osteopathic physician
4 is undertaken, the department shall promptly furnish to the
5 osteopathic physician or his or her attorney a copy of the
6 complaint or document that ~~which~~ resulted in the initiation of
7 the investigation. For purposes of this subsection, such
8 documents include, but are not limited to: the pertinent
9 portions of an annual report submitted to the department
10 pursuant to s. 395.0197(6)~~s. 395.0197(5)(b)~~; a report of an
11 adverse ~~or untoward~~ incident which is provided to the
12 department pursuant to the provisions of s. 395.0197(8)~~s.~~
13 ~~395.0197(6)~~; a report of peer review disciplinary action
14 submitted to the department pursuant to the provisions of s.
15 395.0193(4) or s. 459.016, provided that the investigations,
16 proceedings, and records relating to such peer review
17 disciplinary action shall continue to retain their privileged
18 status even as to the licensee who is the subject of the
19 investigation, as provided by ss. 395.0193(8)~~ss. 395.0193(7)~~
20 and 459.016(3); a report of a closed claim submitted pursuant
21 to s. 627.912; a presuit notice submitted pursuant to s.
22 766.106(2); and a petition brought under the Florida
23 Birth-Related Neurological Injury Compensation Plan, pursuant
24 to s. 766.305(2). The osteopathic physician may submit a
25 written response to the information contained in the complaint
26 or document which resulted in the initiation of the
27 investigation within 45 days after service to the osteopathic
28 physician of the complaint or document. The osteopathic
29 physician's written response shall be considered by the
30 probable cause panel.

31

1 Section 94. Paragraph (b) of subsection (5) of section
2 461.013, Florida Statutes, is amended to read:

3 461.013 Grounds for disciplinary action; action by the
4 board; investigations by department.--

5 (5)

6 (b) Upon the department's receipt from the Agency for
7 Health Care Administration ~~Department of Health and~~
8 ~~Rehabilitative Services~~ pursuant to s. 395.0197 of the name of
9 the podiatrist whose conduct may constitute grounds for
10 disciplinary action by the department, the department shall
11 investigate the occurrences upon which the report was based
12 and determine if action by the department against the
13 podiatrist is warranted.

14 Section 95. Subsection (1) of section 468.505, Florida
15 Statutes, is amended to read:

16 468.505 Exemptions; exceptions.--

17 (1) Nothing in this part may be construed as
18 prohibiting or restricting the practice, services, or
19 activities of:

20 (a) A person licensed in this state under chapter 457,
21 chapter 458, chapter 459, chapter 460, chapter 461, chapter
22 462, chapter 463, chapter 464, chapter 465, chapter 466,
23 chapter 480, chapter 490, or chapter 491, when engaging in the
24 profession or occupation for which he or she is licensed, or
25 of any person employed by and under the supervision of the
26 licensee when rendering services within the scope of the
27 profession or occupation of the licensee.†

28 (b) A person employed as a dietitian by the government
29 of the United States, if the person engages in dietetics
30 solely under direction or control of the organization by which
31 the person is employed.†

1 (c) A person employed as a cooperative extension home
2 economist.†

3 (d) A person pursuing a course of study leading to a
4 degree in dietetics and nutrition from a program or school
5 accredited pursuant to s. 468.509(2), if the activities and
6 services constitute a part of a supervised course of study and
7 if the person is designated by a title that clearly indicates
8 the person's status as a student or trainee.†

9 (e) A person fulfilling the supervised experience
10 component of s. 468.509, if the activities and services
11 constitute a part of the experience necessary to meet the
12 requirements of s. 468.509.†

13 (f) Any dietitian or nutritionist from another state
14 practicing dietetics or nutrition incidental to a course of
15 study when taking or giving a postgraduate course or other
16 course of study in this state, provided such dietitian or
17 nutritionist is licensed in another jurisdiction or is a
18 registered dietitian or holds an appointment on the faculty of
19 a school accredited pursuant to s. 468.509(2).†

20 (g) A person who markets or distributes food, food
21 materials, or dietary supplements, or any person who engages
22 in the explanation of the use and benefits of those products
23 or the preparation of those products, if that person does not
24 engage for a fee in dietetics and nutrition practice or
25 nutrition counseling.†

26 (h) A person who markets or distributes food, food
27 materials, or dietary supplements, or any person who engages
28 in the explanation of the use of those products or the
29 preparation of those products, as an employee of an
30 establishment permitted pursuant to chapter 465.†

31

1 (i) An educator who is in the employ of a nonprofit
2 organization approved by the council; a federal, state,
3 county, or municipal agency, or other political subdivision;
4 an elementary or secondary school; or an accredited
5 institution of higher education the definition of which, as
6 provided in s. 468.509(2), applies to other sections of this
7 part, insofar as the activities and services of the educator
8 are part of such employment.†

9 (j) Any person who provides weight control services or
10 related weight control products, provided the program has been
11 reviewed by, consultation is available from, and no program
12 change can be initiated without prior approval by a licensed
13 dietitian/nutritionist, a dietitian or nutritionist licensed
14 in another state that has licensure requirements considered by
15 the council to be at least as stringent as the requirements
16 for licensure under this part, or a registered dietitian.†

17 (k) A person employed by a hospital licensed under
18 chapter 395, or by a nursing home or assisted living facility
19 licensed under part II or part III of chapter 400, or by a
20 continuing care facility certified under chapter 651, if the
21 person is employed in compliance with the laws and rules
22 adopted thereunder regarding the operation of its dietetic
23 department.†

24 (l) A person employed by a nursing facility exempt
25 from licensing under s. 395.002(13)~~s. 395.002(12)~~, or a
26 person exempt from licensing under s. 464.022.†~~or~~

27 (m) A person employed as a dietetic technician.

28 Section 96. Section 483.101, Florida Statutes, is
29 amended to read:

30 483.101 Application for clinical laboratory license.--
31

1 (1) An application for a clinical laboratory license
2 must be made under oath by the owner or ~~director~~ operator of
3 the clinical laboratory or by the public official responsible
4 for operating a state, municipal, or county clinical
5 laboratory or institution that contains a clinical laboratory,
6 upon forms provided by the agency.

7 (2) Each applicant for licensure must comply with the
8 following requirements:

9 (a) Upon receipt of a completed, signed, and dated
10 application, the agency shall require background screening, in
11 accordance with the level 2 standards for screening set forth
12 in chapter 435, of the director and of the financial officer,
13 or other similarly titled individual who is responsible for
14 the financial operation of the laboratory, including billings
15 for patient services. The applicant must comply with the
16 procedures for level 2 background screening as set forth in
17 chapter 435.

18 (b) The agency may require background screening of any
19 other individual who is an applicant if the agency has a
20 reasonable basis for believing that he or she has been
21 convicted of a crime or has committed any other offense
22 prohibited under the level 2 standards for screening set forth
23 in chapter 435.

24 (c) Proof of compliance with the level 2 background
25 screening requirements of chapter 435 which has been submitted
26 within the previous 5 years in compliance with any other
27 health care licensure requirements of this state is acceptable
28 in fulfillment of the requirements of paragraph (a).

29 (d) A provisional license may be granted to an
30 applicant when each individual required by this section to
31 undergo background screening has met the standards for the

1 abuse registry background check and the Department of Law
2 Enforcement background check but the agency has not yet
3 received background screening results from the Federal Bureau
4 of Investigation, or a request for a disqualification
5 exemption has been submitted to the agency as set forth in
6 chapter 435 but a response has not yet been issued. A license
7 may be granted to the applicant upon the agency's receipt of a
8 report of the results of the Federal Bureau of Investigation
9 background screening for each individual required by this
10 section to undergo background screening which confirms that
11 all standards have been met, or upon the granting of a
12 disqualification exemption by the agency as set forth in
13 chapter 435. Any other person who is required to undergo level
14 2 background screening may serve in his or her capacity
15 pending the agency's receipt of the report from the Federal
16 Bureau of Investigation. However, the person may not continue
17 to serve if the report indicates any violation of background
18 screening standards and a disqualification exemption has not
19 been requested of and granted by the agency as set forth in
20 chapter 435.

21 (e) Each applicant must submit to the agency, with its
22 application, a description and explanation of any exclusions,
23 permanent suspensions, or terminations of the applicant from
24 the Medicare or Medicaid programs. Proof of compliance with
25 the requirements for disclosure of ownership and control
26 interests under the Medicaid or Medicare programs may be
27 accepted in lieu of this submission.

28 (f) Each applicant must submit to the agency a
29 description and explanation of any conviction of an offense
30 prohibited under the level 2 standards of chapter 435 by a
31 member of the board of directors of the applicant, its

1 officers, or any individual owning 5 percent or more of the
2 applicant. This requirement does not apply to a director of a
3 not-for-profit corporation or organization if the director
4 serves solely in a voluntary capacity for the corporation or
5 organization, does not regularly take part in the day-to-day
6 operational decisions of the corporation or organization,
7 receives no remuneration for his or her services on the
8 corporation or organization's board of directors, and has no
9 financial interest and has no family members with a financial
10 interest in the corporation or organization, provided that the
11 director and the not-for-profit corporation or organization
12 include in the application a statement affirming that the
13 director's relationship to the corporation satisfies the
14 requirements of this paragraph.

15 (g) A license may not be granted to an applicant if
16 the applicant or managing employee has been found guilty of,
17 regardless of adjudication, or has entered a plea of nolo
18 contendere or guilty to, any offense prohibited under the
19 level 2 standards for screening set forth in chapter 435,
20 unless an exemption from disqualification has been granted by
21 the agency as set forth in chapter 435.

22 (h) The agency may deny or revoke licensure if the
23 applicant:

24 1. Has falsely represented a material fact in the
25 application required by paragraph (e) or paragraph (f), or has
26 omitted any material fact from the application required by
27 paragraph (e) or paragraph (f); or

28 2. Has had prior action taken against the applicant
29 under the Medicaid or Medicare program as set forth in
30 paragraph (e).

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1 (i) An application for license renewal must contain
2 the information required under paragraphs (e) and (f).

3 (3) A license must be issued authorizing the
4 performance of one or more clinical laboratory procedures or
5 one or more tests on each specialty or subspecialty. A
6 separate license is required of all laboratories maintained on
7 separate premises even if the laboratories are operated under
8 the same management. Upon receipt of a request for an
9 application for a clinical laboratory license, the agency
10 shall provide to the applicant a copy of the rules relating to
11 licensure and operations applicable to the laboratory for
12 which licensure is sought.

13 Section 97. Section 483.106, Florida Statutes, is
14 amended to read:

15 483.106 Application for a certificate of
16 exemption.--An application for a certificate of exemption must
17 be made under oath by the owner or director ~~operator~~ of a
18 clinical laboratory that performs only waived tests as defined
19 in s. 483.041. A certificate of exemption authorizes a
20 clinical laboratory to perform waived tests. Laboratories
21 maintained on separate premises and operated under the same
22 management may apply for a single certificate of exemption or
23 multiple certificates of exemption. The agency shall, by rule,
24 specify the process for biennially issuing certificates of
25 exemption. Sections 483.011, 483.021, 483.031, 483.041,
26 483.172, 483.23, and 483.25 apply to a clinical laboratory
27 that obtains a certificate of exemption under this section.

28 Section 98. Section 483.30, Florida Statutes, is
29 amended to read:

30 483.30 Licensing of centers.--

31

1 (1) A person may not conduct, maintain, or operate a
2 multiphasic health testing center in this state without
3 obtaining a multiphasic health testing center license from the
4 agency. The license is valid only for the person or persons
5 to whom it is issued and may not be sold, assigned, or
6 transferred, voluntarily or involuntarily. A license is not
7 valid for any premises other than the center for which it is
8 issued. However, a new license may be secured for the new
9 location for a fixed center before the actual change, if the
10 contemplated change is in compliance with this part and the
11 rules adopted under this part. A center must be relicensed if
12 a change of ownership occurs. Application for relicensure
13 must be made 60 days before the change of ownership.

14 (2) Each applicant for licensure must comply with the
15 following requirements:

16 (a) Upon receipt of a completed, signed, and dated
17 application, the agency shall require background screening, in
18 accordance with the level 2 standards for screening set forth
19 in chapter 435, of the managing employee, or other similarly
20 titled individual who is responsible for the daily operation
21 of the center, and of the financial officer, or other
22 similarly titled individual who is responsible for the
23 financial operation of the center, including billings for
24 patient services. The applicant must comply with the
25 procedures for level 2 background screening as set forth in
26 chapter 435.

27 (b) The agency may require background screening of any
28 other individual who is an applicant if the agency has a
29 reasonable basis for believing that he or she has been
30 convicted of a crime or has committed any other offense
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1 prohibited under the level 2 standards for screening set forth
2 in chapter 435.

3 (c) Proof of compliance with the level 2 background
4 screening requirements of chapter 435 which has been submitted
5 within the previous 5 years in compliance with any other
6 health care licensure requirements of this state is acceptable
7 in fulfillment of the requirements of paragraph (a).

8 (d) A provisional license may be granted to an
9 applicant when each individual required by this section to
10 undergo background screening has met the standards for the
11 abuse registry background check and the Department of Law
12 Enforcement background check, but the agency has not yet
13 received background screening results from the Federal Bureau
14 of Investigation, or a request for a disqualification
15 exemption has been submitted to the agency as set forth in
16 chapter 435 but a response has not yet been issued. A license
17 may be granted to the applicant upon the agency's receipt of a
18 report of the results of the Federal Bureau of Investigation
19 background screening for each individual required by this
20 section to undergo background screening which confirms that
21 all standards have been met, or upon the granting of a
22 disqualification exemption by the agency as set forth in
23 chapter 435. Any other person who is required to undergo level
24 2 background screening may serve in his or her capacity
25 pending the agency's receipt of the report from the Federal
26 Bureau of Investigation. However, the person may not continue
27 to serve if the report indicates any violation of background
28 screening standards and a disqualification exemption has not
29 been requested of and granted by the agency as set forth in
30 chapter 435.

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1 (e) Each applicant must submit to the agency, with its
2 application, a description and explanation of any exclusions,
3 permanent suspensions, or terminations of the applicant from
4 the Medicare or Medicaid programs. Proof of compliance with
5 the requirements for disclosure of ownership and control
6 interests under the Medicaid or Medicare programs may be
7 accepted in lieu of this submission.

8 (f) Each applicant must submit to the agency a
9 description and explanation of any conviction of an offense
10 prohibited under the level 2 standards of chapter 435 by a
11 member of the board of directors of the applicant, its
12 officers, or any individual owning 5 percent or more of the
13 applicant. This requirement does not apply to a director of a
14 not-for-profit corporation or organization if the director
15 serves solely in a voluntary capacity for the corporation or
16 organization, does not regularly take part in the day-to-day
17 operational decisions of the corporation or organization,
18 receives no remuneration for his or her services on the
19 corporation or organization's board of directors, and has no
20 financial interest and has no family members with a financial
21 interest in the corporation or organization, provided that the
22 director and the not-for-profit corporation or organization
23 include in the application a statement affirming that the
24 director's relationship to the corporation satisfies the
25 requirements of this paragraph.

26 (g) A license may not be granted to an applicant if
27 the applicant or managing employee has been found guilty of,
28 regardless of adjudication, or has entered a plea of nolo
29 contendere or guilty to, any offense prohibited under the
30 level 2 standards for screening set forth in chapter 435,
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1 unless an exemption from disqualification has been granted by
2 the agency as set forth in chapter 435.

3 (h) The agency may deny or revoke licensure if the
4 applicant:

5 1. Has falsely represented a material fact in the
6 application required by paragraph (e) or paragraph (f), or has
7 omitted any material fact from the application required by
8 paragraph (e) or paragraph (f); or

9 2. Has had prior action taken against the applicant
10 under the Medicaid or Medicare program as set forth in
11 paragraph (e).

12 (i) An application for license renewal must contain
13 the information required under paragraphs (e) and (f).

14 Section 99. Effective January 1, 1999, subsection (2)
15 of section 641.55, Florida Statutes, is amended to read:

16 641.55 Internal risk management program.--

17 (2) The risk management program shall be the
18 responsibility of the governing authority or board of the
19 organization. Every organization which has an annual premium
20 volume of \$10 million or more and which directly provides
21 health care in a building owned or leased by the organization
22 shall hire a risk manager, certified under ss.

23 395.10971-395.10975 ~~ss. 626.941-626.945~~, who shall be
24 responsible for implementation of the organization's risk
25 management program required by this section. A part-time risk
26 manager shall not be responsible for risk management programs
27 in more than four organizations or facilities. Every
28 organization which does not directly provide health care in a
29 building owned or leased by the organization and every
30 organization with an annual premium volume of less than \$10

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1 million shall designate an officer or employee of the
2 organization to serve as the risk manager.

3

4 The gross data compiled under this section or s. 395.0197
5 shall be furnished by the agency upon request to organizations
6 to be utilized for risk management purposes. The agency shall
7 adopt rules necessary to carry out the provisions of this
8 section.

9 Section 100. Paragraph (c) of subsection (4) of
10 section 766.1115, Florida Statutes, is amended to read:

11 766.1115 Health care providers; creation of agency
12 relationship with governmental contractors.--

13 (4) CONTRACT REQUIREMENTS.--A health care provider
14 that executes a contract with a governmental contractor to
15 deliver health care services on or after April 17, 1992, as an
16 agent of the governmental contractor is an agent for purposes
17 of s. 768.28(9), while acting within the scope of duties
18 pursuant to the contract, if the contract complies with the
19 requirements of this section. A health care provider under
20 contract with the state may not be named as a defendant in any
21 action arising out of the medical care or treatment provided
22 on or after April 17, 1992, pursuant to contracts entered into
23 under this section. The contract must provide that:

24 (c) Adverse incidents and information on treatment
25 outcomes must be reported by any health care provider to the
26 governmental contractor if such incidents and information
27 pertain to a patient treated pursuant to the contract. The
28 health care provider shall annually submit an adverse incident
29 report that includes all information required by s.
30 395.0197(6)~~s. 395.0197(5)(a)~~, unless the adverse incident
31 involves a result described by s. 395.0197(8)~~s. 395.0197(6)~~,

1 in which case it shall be reported within 15 days of the
2 occurrence of such incident. If an incident involves a
3 professional licensed by the Department of Health Business and
4 Professional Regulation or a facility licensed by the Agency
5 for Health Care Administration ~~Department of Health and~~
6 ~~Rehabilitative Services~~, the governmental contractor shall
7 submit such incident reports to the appropriate department or
8 agency, which shall review each incident and determine whether
9 it involves conduct by the licensee that is subject to
10 disciplinary action. All patient medical records and any
11 identifying information contained in adverse incident reports
12 and treatment outcomes which are obtained by governmental
13 entities pursuant to this paragraph are confidential and
14 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
15 I of the State Constitution.

16
17 A governmental contractor that is also a health care provider
18 is not required to enter into a contract under this section
19 with respect to the health care services delivered by its
20 employees.

21 Section 101. Subsection (9) of section 395.403,
22 Florida Statutes, and sections 407.61, 408.003, 408.072,
23 408.085, and 455.661, Florida Statutes, are repealed.

24 Section 102. The repeal of laws governing the review
25 of hospital budgets and related penalties contained in this
26 act operates retroactively and applies to any hospital budget
27 prepared for a fiscal year that ended during the 1995 calendar
28 year.

29 Section 103. Effective January 1, 1999, all powers,
30 duties, and functions and all rules, records, personnel,
31 property, and unexpended balances of appropriations,

1 allocations, or other funds of the Department of Insurance
2 related to the health care risk manager licensure program, as
3 established in part IX of chapter 626, Florida Statutes, are
4 transferred by a type two transfer, as defined in section
5 20.06(2), Florida Statutes, from the Department of Insurance
6 to the Agency for Health Care Administration.

7 Section 104. There is appropriated \$143,510 from the
8 Health Care Trust Fund to the Agency for Health Care
9 Administration for the purpose of funding two full-time
10 positions to administer the health care risk manager licensure
11 program.

12 Section 105. Two full-time positions are allocated to
13 the Agency for Health Care Administration to implement and
14 administer a background screening exemption program pursuant
15 to section 400.4174, Florida Statutes, as amended by this act,
16 section 400.5572, Florida Statutes, as created by this act,
17 and chapter 435, Florida Statutes, and the sum of \$127,350 is
18 appropriated from the Health Care Trust Fund for this purpose.

19 Section 106. The provisions of this act which require
20 an applicant for licensure, certification, or registration to
21 undergo background screening shall apply to any individual or
22 entity that applies, on or after July 1, 1998, for renewal of
23 a license, certificate, or registration that is subject to the
24 background screening required by this act.

25 Section 107. Except as otherwise expressly provided in
26 this act, this act shall take effect July 1, 1998.

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SENATE SUMMARY

Provides for health care quality assurance by requiring background screening of specified personnel associated with certain entities that provide health care services. Specifies standards for such screening. Transfers duties pertaining to health care risk management from the Insurance Commissioner to the Director for Health Care Administration. Removes and repeals provisions relating to the Health Care Board and review of hospital budgets. Revises, updates, and conforms various provisions to reflect the assumption by the Agency for Health Care Administration of the duties of the Health Care Board and the former Health Care Cost Containment Board and duties of the former Department of Health and Rehabilitative Services relating to indigent medical care and the State Center for Health Statistics. Requires licensed hospital facilities to be capable of serving as disaster shelters for patients, staff, and families of staff only, limits applicability of the requirement to new facilities and new wings or floors of existing facilities, and requires the agency to recommend to the Governor and Legislature cost-effective renovation standards for existing hospital facilities. Authorizes the agency to conduct data-based studies and evaluations and make certain recommendations to the Governor and Legislature. (See bill for details.)